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YEARBOOK ON HUMAN RIGHTS FOR 1967

INTRODUCTION

The present *Yearbook on Human Rights for 1967* contains three parts. Part I describes constitutional, legislative and judicial developments in eighty-eight States. Part II surveys such developments in certain Trust and Non-Self-Governing Territories. Part III reproduces the texts of international agreements bearing on human rights.

The year 1967 saw the promulgation of new constitutions in Bolivia, Brazil, the Democratic Republic of the Congo, Ecuador and the Republic of Viet-Nam. Each of these constitutions reflects certain of the principles set out in the Universal Declaration of Human Rights. The Constitution of the Democratic Republic of the Congo proclaims, in its Preamble, the adherence of the Congolese People "to the Universal Declaration of Human Rights".

The *Yearbook on Human Rights for 1967* also makes reference to amendments to constitutions adopted in 1967 by the Governments of Australia : the Constitution Alteration (Aboriginals) Act, 1967 (Act No. 55 of 1967), amending the Commonwealth Constitution by removing the two explicit references to people of the aboriginal race contained in that Constitution; Chile: Act No. 16,615 of 18 January 1967, amending the Political Constitution of the State by replacing its article 10 (10), dealing with the right of property, by a new text; Finland: Act No. 518 of 1 December 1967, amending article 4, paragraph 1, of the Constitution Act to the effect that a foreign woman, when married to a Finnish man, will no longer be granted Finnish citizenship without her own application; Gabon: Act No. 1/67 of 17 February 1967, amending, *inter alia*, article 7 of the Constitution concerning the election of the President and the Vice-President of the Republic; Mexico: Decree of 1 June 1967, amending and supplementing certain articles of the Constitution of the United Mexican States dealing with the organization of the judicial power in the Federation; Norway: Amendments of 24 November and 15 December 1967 to paragraphs 50 and 61 of the Constitution, lowering the voting and eligibility age in parliamentary and municipal elections from 21 to 20 years; Panama: Legislative Act No. 1 of 30 January 1967, supplementing article 13 of the Constitution and providing that the Colombians who took part in the movement for independence are Panamians by virtue of the Constitution without the necessity of naturalization papers; Senegal: Act No. 67-32 of 20 June 1967 abrogating and replacing several provisions of the Constitution; Sierra Leone: Proclamation of 23 March 1967, forming the basis for constitutional changes, and Constitutional Provisions (Suspension) Decree, 1967, suspending subsections (6) and (7) of Section 13 (Protection from Arbitrary Arrest and Detention), and subsections (4) and (5) of Section 14 (Protection of Freedom of Movement) of the Constitution; Togo: suspension of the Constitution on 13 January 1967; Uganda: The Constituent Assembly Act, 1967, establishing a Constituent Assembly for the purpose of enacting a Constitution; and the United Republic of Tanzania: The Interim Constitution of Tanzania (Amendment) (No. 2) Act, 1967, adding, *inter alia*, below section 34 of the Interim Constitution new sections 34 A and 34 B, under which every member of the National Assembly shall lodge with the speaker a statement that he is not disqualified from being a member of the National Assembly and a statement of affairs giving particulars of his income and assets and of the income and assets of his spouse.

The legislative developments presented in this volume relate to civil and political rights, as well as to economic, social and cultural rights.

The Government of Australia, in its contribution, makes reference to the Ruling of 15 September 1967 of the Commonwealth Conciliation and Arbitration Commission, by which it was decided that full-blood aboriginal station hands employed on sheep stations would receive the same pay as other workers. With reference to the elimination of discrimination, mention may also be made of the Age Discrimination in Employment Act, adopted by the United States of America in 1967 and dealing specifically with discrimination on the ground of age. The Act aims at promoting the employment of the older people based on ability rather than age, prohibiting arbitrary discrimination in employment, and assisting employers and employees to find ways of meeting problems arising from the impact of age on employment.

Laws relating to the elimination of discrimination on the ground of sex were adopted in 1967 in Australia: The Jury Acts Amendment Act of 1967 (No. 16 of 1967) of Queensland, tending to equalize the duties placed on men and women so far as jury service is concerned; Austria: The Federal Act of 8 March 1967, repealing provisions of the General Civil Code which had placed women in a worse position than men in the matter of guardianship; Iraq: the National Assembly Electoral Law (No. 7) of 1967, granting women for the first time the right to vote and to be elected to membership in the National Assembly; and Monaco: Act No. 823 of 23 June 1967, granting women access to the judiciary and entitling them to exercise the professions of defence counsel and counsel.

Legislation on the right to a nationality was adopted in 1967 in Finland: Act No. 519 of 1 December 1967, on the Amendment of the Act on the Acquisition and Loss of Finnish Citizenship of 9 May 1941; the Republic of Korea: Act No. 1865 of 16 January 1967, on the Acquisition of Citizenship by Korean Residents Abroad, and Act No. 1867 of 16 January 1967, on the Absentee Pronouncement, under which absentees, having disappeared during the period from 15 August 1945 to 28 July 1953, shall be considered dead in accordance with the decisions made by the court; and Senegal: Act No. 67-17 of 28 February 1967 amending article 12 of Act No. 61-10 of 7 March 1961 by reducing to five years the required term of residence of a person married to a Senegalese woman seeking to acquire Senegalese nationality.

Matters concerning the right to freedom of movement and residence were dealt with in the Bolivian Supreme Decree No. 07885 of 1967, article 1 of which provides that no minor under 21 years of age shall travel inside or outside the Republic unless so authorized by the Minors' Council; the Immigration (Visa) Regulations, 1967, of Botswana; Law No. 249 of 9 June 1967, of Denmark on extradition; Decree No. 1701 of 8 September 1967 of Guatemala, promulgating the Organic Law of the Guatemalan Institute of Tourism; the Basic Register of Residents Law of 25 June 1967 of Japan; the Immigration Act, 1967, the Public Security (Control of Movement) Regulations 1967, and the Immigration Regulations, 1967, of Kenya; and the Decision of 21 January 1967, of Luxembourg, to facilitate the circulation of people in border areas of that country.

Laws relating to the right of everyone to take part in the government of his country were adopted in 1967 in Czechoslovakia: Act No. 113/1967 of 30 Novemner 1967, on Elections to the National Asssembly, and Act No. 114/1967 of 30 November 1967, on Elections to National Committees; Ecuador: Decree No. 009 of 23 January 1967 of the National Constituent Assembly, on the holding of popular elections for provincial councillors and cantonal councillors, and for mayors in the chief cantons of the provinces; the Federal Republic of Germany: Ordinances of 22 February 1967, amending the Bavarian Municipal Elections Order with the result that postal voting is now possible even for elections to the municipal assemblies; Gabon: Act No. 2/67 of 17 February 1967, concerning the election of the President and the Vice-President of the Republic, and Act No. 3/67 of 20 February 1967 concerning the election of deputies to the National Assembly; Iraq: the National Assembly Electoral Law (No. 7) of 1967, granting Iraqi women for the first time the right to vote and to be elected for membership of the National Assembly; New Zealand: the Electoral Amendment Act 1967, enabling Maoris to be Parliamentary candidates for European seats and vice versa; and Singapore: the Singapore Parliament Elections (Amendment) Act, 1967.

The right to freedom of opinion and expression was the subject of several new laws: in the Central African Republic: Ordinance No. 67/01 of 13 January 1967, establishing a certificate for cinematographic films; Chile: Amendments to Act No. 15,576 (1964), concerning the Abuse of Publicity; Congo (Brazzaville): Decree No. 67-135 of 5 June 1967, concerning the Congolese Radio and Television Broadcasting Service; Denmark: Statute No. 248 of 9 June 1967, amending the Penal Code by abolishing, *inter alia*, the prohibition against publishing or importing pornographic literature, as well as a number of other restrictions regarding obscene publications; Sierra Leone: The Newspaper Decree, 1967 (N.R.C. Decree No. 4 of 1967); Singapore: The Undesirable Publications Act, 1967; South Africa: The Performers' Protection Act, 1967, and the Indecent or Obscene Photographic Matter Act, 1967; Tunisia: Act No. 67-3 of 4 January 1967, amending Act No. 66-12 of 14 February 1966, concerning literary and artistic copyright; and the United Republic of Tanzania: The Cinematographic Ordinance (Amendment) Act, 1967.

With regard to the right to freedom of expression, the Federal Republic of Germany adopted a law in 1967 by which two new provisions were inserted into the Penal Code making the misuse of sound-recording and listening devices a punishable offence. In the Netherlands, a bill aiming to afford protection against the tapping and recording of conversations by technical appliances was submitted to the States-General on 4 December 1967.

Laws relating to freedom of peaceful assembly and association were adopted in 1967 in Costa Rica: Decree No. 5 of 2 March 1967, establishing a tripartite Committee to study and assess periodically the extent to which freedom of association exists in the country; and Sierra Leone: The Public Meetings (Prohibition) Decree (N.R.C. Decree No. 15 of 1967).

Provisions relating to the exercise of these freedoms may also be found in a number of laws adopted in 1967, including The Public Order Act, 1967 (Act. No. 6 of 1967), of Botswana; The Terrorism Act, 1967, of South Africa; The Defence of the Sudan (General) Regulations, 1967, and The State of Emergency Order, 1967, of the Sudan; and the Public Order and Security Act, 1967 (Act No. 20 of 1967), of Uganda.

The treatment of offenders and detainees was the subject of legislation in 1967, in Australia: The Criminal Injuries Compensation Act, 1967 (No. 14 of 1967); Finland: Act No. 477 of 10 November 1967, on the Pardoning of Certain Convicted Persons; Israel: The Amnesty Law 5727-1967; Norway: Act of 27 May 1967, amending the Prison Act; the United Republic of Tanzania: The Prisons Act. 1967; and Zambia: The Legal Aid Act (Act No. 30 of 1967).

During 1967, new codes of criminal procedure, amendments to existing codes, or laws on the establishment of criminal courts were promulgated in Argentina, Australia, Botswana, the Central African Republic, China, Ecuador, Ireland, Kenya, Monaco, New Zealand, Norway, Uganda, the United Arab Republic, the United Kingdom, Upper Volta and Yugoslavia.

The right to marry and the rights as to marriage were dealt with in legislation promulgated in 1967, in the Dominican Republic: Act No. 112 of 8 March 1967, amending article 22 of Divorce Act No. 1306 *bis* of 12 June 1937; Gambia: The Dissolution of Marriage (Special Circumstamces) Act, 1967 (Act No. 18 of 1967); Iran: Decree No. 50990 of 25 February 1967, of the Council of Ministers approving regulations governing the marriage of Iranian women with aliens, and Act No. 51052 of 8 February 1967, prohibiting marriage between employees of the Ministry of Foreign Affairs and foreign nationals; and Zambia: The Law Reform (Miscellaneous Provisions) Act, 1967 containing provisions, *inter alia*, on the property, capacity, and liabilities of married women, and the liabilities of husbands.

Legislation bearing on the protection of young persons was adopted in 1967 in Australia: The Adoption of Children Act, 1966-1967; Bolivia: Supreme Decree No. 07885, requiring authorization by the Youth Council for minors under 21 years of age travelling abroad; Chile: the Youth Act of 3 February 1967, and the Regulations concerning minimum obligations to be observed in implementing a policy of protection and treatment for juvenile offenders; Italy: Act No. 977 of 17 October 1967, containing general regulations for the employment of minors; and the Union of Soviet Socialist Republics: Decree of the Presidium of the Supreme Soviet of the USSR concerning improved arrangements for the payment and recovery of alimony for children's maintenance, and Decree of the Council of Ministers of the USSR concerning monthly allowances to invalids since childhood.

Various aspects of labour were dealt with in legislation adopted during 1967 in Australia, the Byelorussian Soviet Socialist Republic, Chad, the Democratic Republic of Congo, Cyprus, Czechoslovakia, Ecuador, Finland, Hungary, Iran, Israel, Lesotho, Mexico, Monaco, Pakistan, Rwanda, Singapore, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics.

Social legislation adopted during 1967 and reproduced in the present volume, includes laws promulgated in Ecuador, Haiti, Hungary, Iran, Iraq, Ireland, Italy, Mauritania, Romania, Switzerland, Syria, Thailand, the United Arab Republic, the United Kingdom and Yugoslavia.

The right to education was the subject of legislation in 1967 in Czechoslovakia, Honduras, New Zealand, Romania, South Africa and the United States of America.

Court decisions bearing on human rights and relating, *inter alia*, to the right to a fair trial. the right to liberty, the right to freedom of opinion and expression, the right to freedom of movement, the right to freedom of peaceful assembly and association, and the right to education, were rendered in 1967 by various courts in Australia, Belgium, Denmark, Finland, Israel, Lebanon, the Netherlands, New Zealand, Nigeria, Poland, Singapore, Thailand and the United States of America.

Part II of the present volume 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 the United Kingdom (Territories of Antigua, Dominica, Grenada, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent).

Part III contains the texts of the following international instruments: the Declaration on Territorial Asylum and the Declaration on the Elimination of Discrimination against Women, adopted by the General Assembly on 14 December and 7 November 1967 respectively; the European Convention on the Adoption of Children, and the Protocol to the European Convention on Consular Functions concerning the Protection of Refugees, adopted by the Council of Europe on 24 April and 11 December 1967 respectively; and the Protocol of Amendment to the Charter of the Organization of American States, approved by the Third Special Inter-American Conference on 27 February 1967.

Part III also contains an indication on the status of various international agreements in the field of human rights.

The index to the present volume is arranged according to the rights enumerated in the Universal Declaration of Human Rights.

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

PART I

STATES

ARGENTINA

NOTE [1]

The Government of Argentina has consistently taken every precaution to ensure the observance and protection of human rights. This is demonstrated by its adoption of amendments to the Penal Code, which entered into force on 1 April 1968. These amendments contain provisions and substantive changes with respect to the punishment of offences that may be considered in violation of human rights.

Article 213 *bis* of the present Code provides for the punishment of offences in violation of human rights, incitement to commit such offences and collective violence against specific groups of persons or institutions. That article is incorporated in article 209 of the new Code, thus maintaining the policy designed to prohibit this type of behaviour.

Further evidence of the Argentine Government's continuing efforts to ensure the protection of the rights of the individual can be seen in the increased penalty for illegal deprivation of liberty (article 141) and the inclusion of a new category of offence, namely, threat and coercion (article 149 *bis*). As noted by the drafting committee in its statement of purpose, this new provision will make it unnecessary to enumerate other offences relating to freedom of assembly, work and association.

There have been no judicial decisions during 1967, since violations of human rights requiring court action are very infrequent in Argentina in view of its long-standing tradition of protection of and respect for human rights in general, which dates back to 1813.

[1] Note furnished by the Government of Argentina.

AUSTRALIA

NOTE [1]

HUMAN RIGHTS IN AUSTRALIA IN 1967

I. Legislation

A. The principle of equal treatment
(Universal Declaration, articles 2, 6, 7)

In 1967, the Commonwealth Constitution was amended so as to remove any ground for belief that it discriminated against the aboriginal natives of Australia.

A referendum proposing the necessary amendments received an overwhelming "Yes" vote on 27 May 1967, and the Constitution was subsequently amended by the Constitution Alteration (Aboriginals), Act, 1967 (Act No. 55 of 1967).

The result was that the two explicit references to people of the aboriginal race contained in the Constitution were removed.

Section 51 (xxvi) of the Constitution read:

"51. The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and government of the Commonwealth with respect to:

"...

"(xxvi) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws."

The first amendment affected by Act No. 55 of 1967 was the omission of the words, "other than the aboriginal race in any State," from paragraph (xxvi) of section 51 of the Constitution.

Section 127 of the Constitution read:

"127. In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted."

The second amendment effected by Act No. 55 of 1967 was the repeal of section 127.

The Jury Act 1966 (No. 50 of 1966), of Tasmania provided that, subject to that Act, every man between the ages of 21 and 65 who is enrolled on the Assembly roll, and every woman between those ages who is so enrolled and notifies the Sheriff in writing that she desires to act as a juror, is qualified and liable to serve as a juror.

The Jury Acts Amendment Act of 1967 (No. 16 of 1967) of Queensland provided that every person who is resident in Queensland, is under the age of 65 years in the case of a male or under the age of 60 years in the case of a female, and enrolled on the annual roll of electors in an electoral district, shall, subject to the Act, be qualified and liable to serve as a juror.

Provision was also made under which women who inform the Sheriff that they desire to be exempt from serving on any jury, may be so exempted.

This Act and the Act of Tasmania referred to above are examples of the trend in Australia to impose equal duties on men and women so far as jury service is concerned. Women are enabled, however, to obtain exemption from the obligation to serve, on application.

B. Fair trial
(Universal Declaration, article 10)

The Police (Photographs) Act of 1966 (No. 21 of 1966) of Queensland provides that where a

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

print of a photograph has been made by or on behalf of a member of the Police Force in the execution of his duty, and has been exhibited by or on behalf of the Crown or a member of the Police Force in a proceeding in any court or tribunal, a person who requires a print of the photograph for the purpose of answering a charge of an offence or for the purposes of a proceeding commenced in any court or tribunal, shall be entitled to have a print, upon payment of a reasonable sum.

Section 4 of the Act provides for an exception in the case of a proceeding commenced on account of anything alleged to have been done or omitted by any member of the Police Force or servant of the Crown in right of the State in the execution of his duty, unless a print of the photograph has been exhibited in the proceeding.

The Costs in Criminal Cases Act, 1967 (No. 13 of 1967), of New South Wales provided that in any proceedings relating to any offence, whether punishable summarily or upon indictment, the Court may, where the defendant is acquitted or discharged or his appeal is allowed, grant him a certificate for the payment to him out of the Consolidated Revenue Fund of his costs.

The Criminal Injuries Compensation Act, 1967 (No. 14 of 1967), of New South Wales provided that where a direction for compensation has been given under Section 437 or Section 554 (3.) of the Crimes Act, 1900 as amended, of the State, and the direction is for a sum in excess of $100.00, the aggrieved person in whose favour the direction is given, may apply to the Under-Secretary of the Department of the Attorney-General and of Justice for payment of the amount from the Consolidated Revenue Fund and that, where certain conditions are complied with, the amount may be paid from that Fund. Where any payment is made, the Under-Secretary is to be subrogated, to the extent of the payment, to all the rights and remedies of the aggrieved person against the person convicted of the offence.

C. Equal pay for equal work

(Universal Declaration, article 23 (2.))

The Public Service (Equal Pay) Act, 1966 (No. 60 of 1966), of Tasmania provided for the application to the Public Service of the principle of equal pay, as between the sexes, for the performance of work of the same or a like nature and of equal value.

The Commonwealth Conciliation and Arbitration Commission, on 15 September 1967, in varying the Pastoral Industry Award, ruled, amongst other matters, that full-blood aboriginal station hands employed on sheep stations in all States except Queensland (where there is a separate State award) are to receive the same pay as other workers, provided that they are members of the Australian Workers' Union. The ruling came into effect on different dates in different areas, but all areas were to be covered by 1 December 1968.

D. Conditions of work

(Universal Declaration, articles 23, 25)

The Commonwealth Employees' Compensation Act, 1967 (No. 96 of 1967), and the Seamen's Compensation Act, 1967 (No. 97 of 1967), of the Commonwealth increased the amounts of compensation payable for certain injuries sustained by Commonwealth employees and by seamen respectively. While the Silicosis and Tuberculosis (Mineworkers and Prospectors) Ordinance, 1966 (No. 20 of 1966), of the Northern Territory excludes infected workers from mining, the Workmen's Compensation Ordinance, 1967 (No. 32 of 1967), of that Territory, an amending Ordinance, provides for compensation to be paid to those excluded.

E. Social services

(Universal Declaration, article 25)

The Adoption of Children Act, 1966-1967 (No. 12 of 1967), of South Australia consolidated and amended the law relating to the adoption of children. This Act forms part of a system of uniform adoption laws in Australia (for further information relating to this system, see the *Yearbooks* for 1964, p. 16 and 1965, p. 18).

The National Health Act (No. 2), 1967 (No. 100 of 1967), of the Commonwealth made provision for the supply by the Commonwealth of hearing aids to pensioners or dependants of pensioners for the sum of ten dollars.

II. Court decisions

A. Fair trial

(Universal Declaration, article 10)

Evidence—Confession—Admissibility—Examination on voire dire*—Whether accused has right to give evidence on issue of admissibility of confession—Whether right is subject to court's discretion—Whether failure to permit exercise of right amounts to mistrial and vitiation of conviction.*

H. was charged with certan offences under the Vagrancy Act, 1902. At the hearing of these charges before a stipendiary magistrate, the police prosecutor sought to tender a record of the interview between H. and the police, the record amounting to a confession of guilt. His counsel objected to the tender of the record and sought leave to ask questions on the *voire dire* of the witness through whom the tender was sought. The magistrate granted leave and the witness was then cross-examined on the *voire dire*. H.'s counsel then indicated that he wished to call evidence on the *voire dire*, but this application was refused by the magistrate. Counsel for H. addressed the magistrate at the close of the case for the prosecution but, upon the magistrate ruling against his submissions, did not call evidence. H. was convicted of the offences and sentenced.

H. obtained a rule *nisi* for statutory prohibition to restrain further proceedings in respect of the conviction and, on the return of the rule *nisi*,

Held:

(1) In the State of New South Wales, an accused person has a statutory right to give evidence on the *voire dire* in relation to the admissibility of a statement allegedly made by him, and this right is not subject to the court's discretion and cannot be refused for any reason;

(2) This right is fundamental, and refusal to permit H. to exercise it in the present case resulted in the situation that he was not tried according to law;

(3) Accordingly, the rule *nisi* should be made absolute. *Ex parte* Hamilton; re Fagan [1966] 2. *New South Wales Reports,* 732 (Supreme Court of New South Wales).

Prohibition—Certiorari—*Denial of natural justice—Bail first granted then refused—Refusal of adjournment to obtain legal representation—Examination curtailed—Use of unproved psychiatric report—Prior convictions introduced before conviction.*

C., an invalid pensioner, was charged in a court of petty sessions with malicious damage to property and with assault. He pleaded not guilty and was granted bail, but subsequently the magistrate withdrew the grant of bail and remanded C. in custody for fourteen days, with a recommendation for medical and psychiatric observation and treatment.

When the matter again came on for hearing, before the same magistrate, the informant gave evidence and was cross-examined by C. During this cross-examination, in answer to a comment by the magistrate, C. said "I think I need legal representation". He then asked one more question of the informant, whereupon the magistrate ordered the informant to stand down from the witness box, thus preventing C. from cross-examining further.

The informant's wife gave evidence and was asked certain questions by C., who made a further application for an adjournment to get legal advice. When C. himself was giving evidence, be again stated that he wanted legal representation. This third request was ignored by the magistrate who questioned C. with reference to the contents of a report from a psychiatrist, which he described as having been furnished for the information of the court. This report had not been ordered when C. was remanded; it was in the hands of the magistrate without any proof from the doctor who made it, and its contents were highly prejudicial to C.

The magistrate, without having stated that he intended to convict C., made reference to a list of convictions which had been neither admitted nor proved, and which were denied by C.

In the result, the magistrate sentenced C. to imprisonment for six months on the damage to property charge, suspended upon his entering into a bond, and fined him in respect of the assault. C. appealed to Quarter Sessions and, in addition, obtained rules *nisi* for prohibition and *certiorari.*

Held: (1) That there was a clear denial of natural justice in the proceedings before the magistrate, such as would in ordinary circumstances require the court to make the rules absolute.

(2) That since the appeal to Quarter Sessions had transferred the proceedings into that court, there was nothing which could usefully be prohibited.

(3) That the court's discretion with respect to *certiorari* should be exercised in the same way as applied to prohibition.

(4) That the rules *nisi* would be discharged, but, in the circumstances of the case, with no order as to costs. *Ex parte* Corbishley; re Locke 86, *Weekly Notes* (Pt. 2), N.S.W. 215, N.S.W. Court of Appeal.

B. Freedom of expression and assembly

(Universal Declaration, articles 19 and 20)

Offensive behaviour—General principles—Political demonstration

A student, in the course of a political demonstration against the Vietnam war, hung a placard upon and squatted on the pedestal of a statue erected as a public memorial to King George V outside Parliament House, Canberra. The student was charged under section 17(*d*) of the Police Offences Ordinance, 1930-1961, of the Australian Capital Territory with behaving in an offensive manner in a public place and convicted. On appeal, *Held,* that the behaviour complained of,

considered in its full setting, was not a pre-arranged defilement, abuse or misuse of the statue but an incidental resort to it during the political protest or demonstration with the emphasis on the protest and not on some mistreatment of the statue and, as such, was not "offensive" behaviour within the meaning of section 17(*d*) of the Ordinance. *Ball* v. *McIntyre* 9, *Federal Law Reports* 237, Supreme Court of the Australian Capital Territory.

AUSTRIA

NOTE [1]

1. As in previous contributions, it should again be pointed out that for over a century, Austria has had a comprehensive system of fundamental rights and freedoms. This constitutional order has been refined by the wealth of judicial decisions rendered by the Constitutional Court and those rendered by the former Supreme Court of the *Reich* to such a degree that there is little scope for further developments in this field. The existence of a highly developed constitutional jurisdiction in Austria ensures that not only individual administrative acts but also general administrative acts (ordinances) and legislation are subject to full judicial review.

The work of the Federal Government in the field of human rights continues to be focused on the endeavour to prepare a new codification of fundamental rights and freedoms. The activities of the Committee of Experts which was established for this purpose in 1964, were described in Austria's contributions to the United Nations *Yearbook on Human Rights* for the years 1964 to 1966. The Committee of Experts met on ten occasions in 1967, for sessions lasting a full day each, and the following subjects were considered in their sessions:

(*a*) Right to non-interference with the home, with written correspondence and with telephonic and telegraphic communications;

(*b*) Protection of the independent status of physicians;

(*c*) Protection of marriage and of the family; the right to marry; the right of parents to bring up their own children;

(*d*) Right to freedom of movement within the country; the right of residence; freedom to emigrate and to return to the country; prohibition of expulsion from the country;

(*e*) Right of asylum; prohibition of extradition;

(*f*) Protection against arbitrary deprivation of nationality;

(*g*) Protection against arbitrary arrest, and in particular against arbitrary detention.

2. Judicial decisions in the field of fundamental rights and freedoms in 1967 remained true to principles evolved during the preceding decades. No new trends were discernible in the interpretation of the law by the courts.

3. Where legislation is concerned, only the following measures during 1967 call for special mention:

(*a*) The Austrian Federal Government declared in the name of the Republic of Austria that Austria was renewing for a period of three years as from 3 September 1967 the declaration which it had made on 3 September 1961 under article 25 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (consenting to individual petitions to the European Commission of Human Rights). The Austrian Federal Government similarly declared in the name of the Republic of Austria that Austria was renewing for a like period of three years as from 3 September 1967 the declaration which it had made on 3 September 1961 under article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (recognizing the jurisdiction of the European Court of Human Rights; cf. the notice published in the *Bundesgesetzblatt,* No. 331/1967).

The Republic of Austria thus subjected itself for a further period of three years, in a manner binding under international law, to the supervision of a supranational organ as concerns observance of the rights guaranteed by the European Human Rights Convention.

(*b*) The Federal Act of 8 March 1967, *BGBl.* No. 122, amending the provisions of the General Civil Code relating to guardianship. The Act repealed provisions of the Code which placed women in a worse position than men in the matter of guardianship.

4. Legislative initiatives by the Federal Government in the field of human rights included the following:

[1] Note furnished by the Government of Austria.

(*a*) The Government Bill of 1 June 1967 concerning the execution of prison sentences (Prison Sentences Execution Bill; 511 of the *Annexes* to the *Official Records of the National Council,* XI.GP.). The purpose of the Bill is to bring in uniform, clear and up-to-date legislation governing the execution of prison sentences. The Bill would not only regulate the prison system and define the competence of the institutions designated to execute sentences but would also spell out the obligations and rights of persons held in confinement in execution of a prison sentence. In keeping with the concept of the rule of law as being geared to the maintenance and protection of human dignity and freedom, the proposed Federal Act would also regulate the system of legal remedies available to prisoners.

(*b*) The Government Bill of 6 June 1967 concerning residence rights of refugees within the meaning of the Convention relating to the Status of Refugees, *BGBl.* No. 55/1955 (544 of the *Annexes* to the *Official Records of the National Council,* XLGP.). This Bill would place on an unassailable legal basis the procedure for determining the residence rights of refugees which is already being satisfactorily applied in practice and which is also recognized by the United Nations High Commissioner for Refugees. The result will be a considerable improvement through ordinary legislation, pending the proposed constitutional regulation of the right of asylum, of the status of most aliens who seek asylum in Austria for political reasons.

(*c*) The Government Bill of 25 September 1967 concerning Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which amends articles 22 and 40 of the Convention (627 of the *Annexes* to the *Official Records of the National Council*).

5. Lastly, of course, any legislation which brings about progress in the fields of education, social security, public health services, the provision of housing, and justice under law, is also, in the final analysis, conducive in a broader sense to the attainment of the objectives laid down in the Universal Declaration of Human Rights. There were numerous examples of such legislation in 1967.

BELGIUM

NOTE [1]

1. *Court of Appeals of Ghent*

10 January 1967

The judge has absolute discretion to decide whether or not the case should be heard in public. He is not violating the human rights and fundamental freedoms proclaimed in the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950[2] and approved by Belgium by the Act of 13 May 1955, if he decides that the trial will be held in public, where it does not appear that a public hearing would be prejudicial to the rights of the defence or the honour of the accused or his family. *Parquet* No. 2178/66; *Greffe* No. 11,480).

2. *Court of First Instance of Brussels,* sitting as a correctional court

26 January 1967

In Belgium, only lawyers are allowed to plead in court, and all lawyers must know one of the two official languages. Consequently, everyone in Belgium has the right to be assisted by counsel of his choice, provided that the latter can use the language in which the trial is conducted. This is fully in keeping with article 6 (3) (*c*) of the Convention which, moreover, leaves the responsibility of carrying out its provisions to the High Contracting Parties. (*Parquet* No. 4506/soc/65.)

3. *Court of First Instance of Brussels,* 19th chamber sitting as a correctional police court.

30 January 1967

The fact that the accused's confession was obtained by deceit constitutes a violation of the rights of the defence and vitiates the entire proceedings; it is also a violation of article 6 of the Convention. (*Parquet* No. 24.711/17/66; *Greffe* No. 1021.)

(N.B. Following an appeal by the *ministère public,* the Brussels Court of Appeals reversed this judgement on 28 March 1967, basing itself solely on the examination of the accused during her trial. It imposed a suspended sentence of imprisonment and ordered the accused to pay the State's costs for both proceedings.)

4. *Court of First Instance of Brussels,* 19th chamber, sitting as a correctional police court

1 February 1967

In the light of article 6 (3) (*a*) *in fine* of the Convention, the order whereby the Council Chamber transferred the cases of certain accused persons to the correctional court should give full details; i.e., in the present instance, information on whether the transfer implied the acknowledgement of extenuating circumstances in the offence charged. (*Parquet* No. 28.765/A/64; *Greffe* No. 1131.)

(Cf. decision of the same Court of 13 February 1967.)

5. *Court of First Instance of Brussels,* 19th chamber, sitting as a correctional police court

13 February 1967

Article 6 of the Convention states that everyone is entitled to a "fair ... hearing"; the idea of a "fair hearing" means that the judge of the merits must be able to study the offences referred to him on the basis of their complete statutory definitions, corresponding as closely as possible to the facts and to the intentions of all those involved in the offences.

Since in this case the court was unable itself to complete the preliminary investigation of the case by hearing the private plaintiff or his agent without, at the present stage of the case, confusing the prosecution and judgement by hearings which might compel a confession of offences outside the

[1] Note furnished by the Belgian Government.

[2] Hereafter referred to as "the Convention". For the text of the Convention, see *Yearbook on Human Rights for 1950*, pp. 420 to 426.

jurisdiction of the correctional court, the court transfers the files to the *ministère public* for appropriate action. (*Parquet* No. 16922/A/66; *Greffe* No. 1542.)

(Cf. decision of the same Court of 1 February 1967.)

(N.B. Following an appeal by the private plaintiff and the *ministère public,* the Court of Appeals of Brussels reversed this judgement on 15 November 1967, in the following terms:

"Whereas the judge may rule only with respect to the offences referred to him in the indictment; whereas it is his right and even duty to consider them in their relation to the criminal law and thus to determine their statutory character, even if, in so doing, he is obliged to alter the specification of the offences given provisionally by the *ministère public,* by the court to which the case is referred or by the private plaintiff in his direct summons;

"Whereas he cannot, accordingly, decide to refer the case back to the *ministère public* on the ground that the documents indicate 'evidence of offences' which had not been referred to him and which in his view should first have been made the subject of an inquiry or preliminary investigation and then set out in statutory form before being submitted to him for judgement;

"Whereas judgements in which, as in the present case, the judge refuses to rule on offences referred to him in due form are subject to appeal;

"Whereas his decision in fact constitutes a denial of justice;

"And whereas it is necessary to set aside the judgement and—by evocation—to give a new ruling;

" . . . ".)

6. *Rechtbank van 1ste Aanleg* (Court of First Instance) of Brussels

14 September 1967

The failure to appear of a subpoenaed witness does not constitute a violation of article 6 (3) (*d*) of the Convention. It is the responsibility of the judge to subpoena, or not to subpoena, witnesses for the prosecution or the defence.

An accused person who is informed of the charge against him in a language which he understands cannot allege a violation of article 6 (3) (*a*) of the Convention because he would have preferred another language to be used.

Article 6 (3) (*b*) of the Convention is violated by an association's disciplinary rules where they provide that the file of a member of the association may be communicated to him only after the first-instance adjudication of his case, or, at the appeal stage, only on the day before the hearing and if the Appeals Committee, representing the respondent association, authorizes this action and considers that it will not hamper the investigation.

In the case at issue there was no breach of article 6 (3) (*c*), because the accused was assisted by counsel and both he and his counsel had the opportunity to submit statements.

Royal Order No. 53124.

7. *Correctional Court of Brussels,* ruling on appeal

2 October 1967

The fact of an accused person's being confronted, during his examination, by a deputy police superintendent, with a version of the indictment bearing no relation to its actual terms is also contrary to article 6 (1) of the Convention. (*Parquet* No. 14.40.1187/67, A IV; *Greffe* No. 8201.)

8. *Supreme Court of Appeal*

2 October 1967

It is the responsibility of the judge to decide whether all the provisions of article 6 (1) of the Convention have been observed.

These provisions are designed to protect the private lives of the parties to the proceedings alone, not of members of their family.

Judgement No. 8616.

(Appeal from Judgement No. 5550 delivered on 20 June 1967 by the Assize Court of East Flanders (Ghent).)

9. *Supreme Court of Appeal*

2 October 1967

Articles 1 and 6 of the Convention do not deal with the enforcement of decisions and judgements or with the machinery provided for by national law.

Judgement No. 8618.

(Appeal from Judgement No. 5552 delivered on 22 June 1967 by the Assize Court of East Flanders (Ghent).)

10. *Court of Appeal of Brussels (Chambre des mises en accusation)*

19 October 1967

In permitting deprivation of liberty in the case of "The lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence . . . " (article 5 (1) (*c*), beginning), the Convention does not specify the grounds or reasons which may warrant pre-trial detention, the accused is in error in referring to these grounds, in his conclusions, as the "cases exhaustively enumerated in article 5".

The procedure prescribed in article 5 (3) of the Convention is (already) provided for in the Act of 17 April 1874, article 5 of which states that at the accused person's monthly appearances in court it must be decided whether the public interest requires his continued detention. The public interest does so require in the case at issue, in particular because of the many serious offences concerning which the preliminary investigation has brought to light evidence against the accused.

11. *Correctional Court of Louvain*

2 October 1967

The accused having persisted in invoking article 6 (2) (*sic*) (*d*) of the Convention, after the *ministère public* declined to subpoena as a witness a person who stated during the preliminary inquiry that he had seen nothing, the Court ordered a new trial to enable the accused to exercise his acknowledged right. (*Parquet* No. 7085; *Greffe* No. 1489.)

12. *Supreme Court of Appeal*

23 October 1967

From the mere fact that article 23 of the Forestry Code states that the proceeds of fines for offences under the Code, less the costs and unrecovered debts specified therein, are to be distributed each year as a gratuity among forest officers and wardens who have satisfactorily performed their duties, it cannot be inferred that any court order to pay such a fine made on the basis of a report submitted in due form by a forest warden is necessarily at variance with the safeguards provided in the articles of the Convention for the Protection of Human Rights and Fundamental Freedoms cited in the plea [i.e., articles 5, 6 and 7], including in particular those provided in article 6, under which everyone is entitled to a fair hearing by an independent and impartial tribunal. (No. 3832.)

13. *Court of First Instance of Brussels*

23 November 1967

Clauses of a covenant making one of the parties liable for the costs of court proceedings and lawyer's fees are contrary to public policy and, consequently, notwithstanding the defendant's acceptance of those clauses without objection, the judge cannot entertain a claim of this kind. Under the Belgian system of judicial organization and procedure, the fees of the lawyer engaged by a party are chargeable exclusively to that party, and the lawful exercise of the right to defend oneself at law (which is guaranteed by article 8 of the Belgian Constitution and article 6 of the Convention) may not be the subject of any kind of pecuniary penalty contrary to public policy, since this might lead the debtor to forgo his fundamental and natural right to defend himself at law, freely and without constraint. Any clause which intereferes with the right of defence is contrary to public policy.

Since only the judge has the right to award costs, a litigant cannot oblige the judge, any more than he can oblige his co-covenantor, to decide otherwise than is provided by the laws on judicial organization. (No. 553/1/67.) (*Journal des Tribunaux,* 23 December 1967, p. 741.)

14. *Court of Appeal of Brussels (Chambre des mises en accusation)*

12 December 1967

The order challenged, by which the Council Chamber of the Court of First Instance of Brussels confirmed the arrest warrant issued against the accused, is correctly based on the ground that "article 6 of the Convention concerns not custody pending trial but the right of defence before the court of trial" (Cass. 25.3.1963) P. 1963 I 808 and Cass. 23.3.1964 P. 1964 I 797). The decisions of the European Commission of Human Rights of 6 July 1964 and 16 December 1964 are opinions within the meaning of article 31 of the Convention, and neither Belgian law nor the Convention itself provides that such opinions are binding on the municipal judge. The accused therefore has no ground for claiming that they should prevail over the decisions of the Supreme Court of Appeal.

15. *Supreme Court of Appeal*

1 June 1966

"Whereas although he does not have the right to sue directly before the military court, a party injured by an offence is in no way denied the right proclaimed in article 6 (1) of the Convention... approved by the Act of 13 May 1955, which provides that "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law";

"Whereas the said party may sue for damages in the civil court, which mets the requirements of independence and impartiality laid down in the Convention and is the natural judge of the private suit for damages;

"Whereas in the present case the Judicial Commission's decision not to proceed further is no bar to the initiation of a private suit for damages, since that decision does not have the force of *res judicata* in respect of such a suit;

"Whrereas, so far as the criminal proceedings are concerned, it appears from the terms of the said article 6 that the Convention protects only the interests of the person ('against' whom a 'charge' is brought, the civil interests connected with the charge being protected by the other provisions of the same article;

"Whereas the plaintiff thus has an 'effective remedy' before the civil court, enabling him to obtain damages for the injury which he claims to have suffered as a result of the alleged violation of his rights, the judgement similarly entailed no breach of article 13 of the Convention".

Judgement No. 3165.

16. *Chambre des mises en accusation of Ghent*

8 December 1966

It is not contrary to article 5 (3) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 and approved by Belgium by the Act of 13 May 1955, to detain pending trial an accused person who was arrested and taken into custody in the circumstances specified in article 5 (1) (*e*), when interrogations and confrontations still have to take place on the basis of expert testimony, the bulk of which has already been filed. The resulting delay in the completion of the preliminary investigation cannot be considered unjustified. (*Parquet* No. 3061/63; 1380/66).

BOLIVIA

CONSTITUTION OF BOLIVIA OF 2 FEBRUARY 1967 [1]

PRELIMINARY TITLE

GENERAL PROVISIONS

Article 1. Bolivia, free, independent, and sovereign, constituted as a unitary republic, adopts for its government the democratic representative form.

Article 2. Sovereignty resides in the people; it is inalienable and imprescriptible; its exercise is delegated to the legislative, executive, and judicial powers. The independence and co-ordination of these powers is the basis of the government. The functions of the public power, legislative, executive, and judicial, cannot be united in a single organ.

Article 3. The State recognizes and upholds the Roman Catholic Apostolic Religion. It guarantees the public exercise of any other worship. Relations with the Catholic Church shall be governed by concordats and agreements between the Bolivian State and the Holy See.

Article 4. The people do not deliberate nor govern except through their representatives and the authorities created by law.

All armed forces or groups of persons who attribute to themselves the sovereignty of the people commit the crime of sedition.

PART ONE

The person as a member of the State

TITLE ONE

FUNDAMENTAL RIGHTS AND DUTIES OF THE PERSON

Article 5. No type of servitude is recognized and no one shall be compelled to render personal services without his full consent and due compensation. Personal services may be demanded only when so established by law.

Article 6. Every human being has legal personality and capacity, in accordance with the laws. He enjoys the rights, freedoms, and guarantees recognized by this Constitution, without distinction as to race, sex, language, religion, political or other opinion, origin, economic or social condition, or any other.

The dignity and freedom of the person are inviolable. To respect them and protect them is a primary duty of the State.

Article 7. Every person has the following fundamental rights, in accordance with the laws which regulate their exercise:

(*a*) To life, health, and safety;

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

(*c*) To assemble and to associate for lawful purposes;

(*d*) To work and to engage in commerce, industry, or any other lawful activity, under conditions which do not injure the collective welfare;

(*e*) To receive an education and acquire culture;

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

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

(*h*) To make petitions, individually or collectively;

(*i*) To private property, individually or collectively, provided it fulfils the social functions;

(j) To a fair remuneration for his labor, which which will ensure to himself and his family an existence worthy of a human being;

(k) To social security, in the form determined by this Constitution and the laws.

Article 8. Every person has the following fundamental duties:

[1] English translation of the Constitution taken from *Constitution of Bolivia 1967*, published by the General Secretariat of the Organization of American States, Washington, D.C., 1967.

(*a*) To obey and comply with the Constitution and the laws of the republic;
(*b*) To work, according to his capacity and capabilities, in some socially useful activity;
(*c*) To acquire at least an elementary education;
(*d*) To contribute, in proportion to his economic capacity, to the payment of the public services;
(*e*) To care for, nourish, and educate his minor children, and to protect and support his parents if they are in a state of illness, poverty, or need;
(*f*) To perform civic and military services which the nation requires for its development, defense, and preservation;
(*g*) To co-operate with the organs of the State and the community in social service and security;
(*h*) To safeguard and protect the property and interests of the community.

TITLE TWO

GUARANTEES OF THE PERSON

Article 9. No one may be arrested, detained, or imprisoned except in the cases and according to the forms established by law; for the execution of the respective order it is required that this be issued by competent authority and served in writing.

A person may not be held incommunicado except in obviously serious cases and never for more than twenty-four hours.

Article 10. Any offender caught in *flagrante delicto* may be arrested by any person, even without a warrant, for the sole purpose of taking him before an authority or competent judge, who must examine him within twenty-four hours at the most.

Article 11. Wardens of prisons shall not admit anyone as detained, arrested, or imprisoned without entering in his register a copy of the respective warrant. They can, nevertheless, retain within the prison limits those who have been arrested, for the purpose of bringing them before the competent judge within twenty-four hours.

Article 12. Any kind of torture, coercion, extortion or other form of physical or moral violence is prohibited, under penalty of immediate removal from office and without prejudice to sanctions that may be incurred by anyone who applies, orders, instigates, or consents to them.

Article 13. Attacks against personal safety render the immediate authors thereof responsible, and the fact that they obeyed superior orders in committing the offense shall not serve as an excuse.

Article 14. No one may be tried by special commissions nor turned over to judges other than those designated before the offense was committed nor shall he be compelled to testify against himself in a criminal trial or against blood relatives up to the fourth degree inclusive, or by affinity up to the second degree, as computed by civil law.

Article 15. Public officials who, without a state of siege having been declared, take measures for the molestation, confinement, or exile of citizens, and have these measures carried out, as well as those who close printing establishments or any other means of free expression of thought and resort to depredation or other form of abuse shall be subject to payment of compensation for damages, whenever it is proved by civil suit which may be independent of any corresponding criminal action, that such measures or steps were taken in violation of the rights and guarantees affirmed in this Constitution.

Article 16. An accused person is to be presumed innocent until his guilt has been proved.

The right of defense of a person in a trial is inviolable.

From the moment of his detention or imprisonment, a person held has the right to be assisted by a defender.

No one may be sentenced to any penalty without having first been heard and adjudged in a legal trial; and the penalty shall not be undergone unless it has been imposed by final sentence and by a competent authority. A criminal conviction must be based on a law in effect prior to the trial, and subsequent laws shall only be applied if they are more favorable to the person tried.

Article 17. There is no penalty of infamy or civil death. In cases of assassination, patricide, or treason, the punishment of thirty years' imprisonment shall be applied, without the right of pardon. Treason is defined as complicity with the enemy during a foreign war.

Article 18. Any person who believes that he is being unduly or illegally prosecuted, detained, tried, or imprisoned may appear, in person or through anyone acting in his name, with or without a notarized power of attorney, before the Superior Court of the District or before any *Juez de Partido,* at his choice, to demand that legal formalities be followed. At places where there is no *Juez de Partido,* this may be done before a *Juez Instructor.*

. . .

Article 19. In addition to the right of *habeas corpus,* to which the preceding article refers, there is the recourse of *amparo* against the illegal acts or undue omissions of officials or private individuals that restrict, deny or threaten to restrict or deny the rights and guarantees of the person recognized by his Constitution and the laws.

The recourse of *amparo* may be interposed by the person who considers himself aggrieved or by another person acting in his name with sufficient legal power, before the Superior Court in the capital of a department and before a *Juez de Partido* in the provinces, in the most summary form. The public ministry may also interpose this recourse directly whenever it is not done or cannot be done by the person affected.

The authority or person accused shall be summoned in the manner indicated in the preceding

article for the purpose of giving information and, if pertinent, of presenting the action taken concerning the act denounced, within a maximum period of forty-eight hours.

The final decision shall be rendered at a public hearing immediately upon recept of the testimony of the person accused and, in default thereof, it shall be made on the basis of the evidence offered by the petitioner. The judicial authority shall examine the competency of the official or acts of the private individual, and if the denunciation is found true and effective the requested *amparo* will be granted provided there is no other means or legal recourse for the immediate protection of the rights and guarantees restricted, suppressed, or threatened, and the decision is to be referred to the Supreme Court of Justice within twenty-four hours for review.

The prior rulings of the judicial authority and the final decision granting *amparo* are to be executed immediately and without objection, the provisions of the preceding article being applicable in case of resistance.

Article 20. Private papers and correspondence are inviolable and may not be seized except in cases prescribed by law and by written order of competent authority setting forth the reasons therefor. Seized or intercepted private documents shall have no legal effect.

No public authority nor any person or organization may intercept private conversations or communications by means of an installation which will control or centralize them.

Article 21. Every house is an inviolable asylum; at night it shall not be entered without the consent of the person who inhabits it, and in the daytime entrance thereto is only allowed on written order of a competent authority setting forth the reasons therefor, except in case of *flagrante delicto.*

Article 22. Private property is guaranteed, provided that the use made thereof is not prejudicial to the collective interest.

Expropriation is effected for reasons of public benefit or when property does not fulfil a social purpose, authorized by law and with just compensation.

Article 23. Confiscation of property shall never be applied as punishment for political offenses.

Article 24. Foreign subjects and enterprises are subject to Bolivian laws, and in no case may they invoke exceptional position or have recourse to diplomatic claims.

Article 25. Within fifty kilometers of the frontiers foreigners may not acquire or possess, under any title, soil or subsoil, directly or indirectly, individually or as a company, under penalty of forfeiture to the State of the property acquired, except in case of national necessity so declared by special law.

Article 26. No tax is obligatory unless it has been established in accordance with the provisions of this Constitution. Those prejudiced may bring proceedings before the Supreme Court of Justice against any illegal taxation. Municipal taxes are obligatory when levied in accordance with the principles established in this Constitution.

Article 27. Taxes and other public charges are equally obligatory on all. Their creation, distribution, and repeal shall be of a general character and must be determined on the basis of equal sacrifice for the taxpayers, proportionally or progressively, according to the circumstances.

Article 28. The property of the Church, of religious orders and congregations, and of institutions engaged in educational, welfare, and charitable pursuits shall enjoy the same rights and guarantees as private individuals.

Article 29. The legislative power alone has the right to alter or modify the codes or to enact rules or provisions concerning judicial procedures.

Article 30. The public powers may not delegate the powers conferred on them by this Constitution nor grant to the executive power any others than are expressly authorized herein.

Article 31. The acts of those who usurp functions not belonging to them are null and void, as are also the acts of those who exercise jurisdiction or power not emanating from a law.

Article 32. No one shall be compelled to do what the Constitution or the laws do not order, or to deprive himself or things which they do not prohibit.

Article 33. The law shall provide only for the future and has no retroactive effect, except in social matters when expressly so stated and in criminal matters when it benefits the offender.

Article 34. Those who violate constitutional rights and guarantees shall be subject to ordinary jurisdiction.

Article 35. The declarations, rights, and guarantees enumerated in this Constitution shall not be taken as denial of other rights and guarantees not proclaimed therein which emanate from the sovereignty of the people and from the republican form of government.

TITLE THREE

NATIONALITY AND CITIZENSHIP

Chapter I—Nationality

Article 36. The following are Bolivians by origin:

1. Those born in the territory of the republic, except for children of foreigners who are in Bolivia in the service of their government.
2. Those born in a foreign country of a Bolivian father or mother, by the sole act of taking up residence in the national territory or of registering in a consulate.

Article 37. The foffowing are Bolivians by naturalization:

1. Spaniards and Latin Americans who may acquire Bolivian nationality without renouncing that of their origin, whenever, by reci-

procity, there are conventions on plural nationality with their respective governments.

2. Foreigners who having resided two years in the republic declare their intention to acquire Bolivian nationality and who obtain a certificate of naturalization according to law.

The period of residence is reduced to one year in the case of foreigners who find themselves in the following circumstances:

(*a*) That they have a Bolivian spouse or children;

(*b*) That they are engaged in regular agricultural or industrial work;

(*c*) That they are engaged in educational, scientific, or technical activities;

3. Foreigners who perform military service at the legally required age.

4. Foreigners who for their services to the country obtain it from the Chamber of Senators.

Article 38. A Bolivian woman married to a foreigner does not lose her citizenship. A foreign woman married to a Bolivian acquires her husband's nationality, provided she resides in the country and indicates her consent; and she does not lose it in case of widowhood or divorce.

Article 39. Bolivian nationality is lost by acquiring foreign nationality, but it may be regained merely by becoming domiciled in Bolivia, with the exception of those who adopt the system of plural nationality by virtue of conventions that have been signed on this subject.

Chapter II—Citizenship

Article 40. Citizenship consists of:

1. Participating as a voter or as an elected official in the formation or exercise of the public powers;
2. The right to hold public office, with no other requirement than that of fitness, save for exceptions established by law.

Article 41. Citizens include all Bolivians, male and female over twenty-one years of age, or eighteen if married, regardless of their degree of education, their occupation, or their income.

Article 42. The rights of citizenship are suspended:

1. For taking up arms or rendering services in an enemy army in time of war.
2. For defalcation of public funds or declared fraudulent bankruptcy, with conviction and sentence to corporal punishment.
3. For accepting a foreign government position, without the permisson of the Senate except for posts and missions of international religions, university, and cultural organizations in general.

TITLE FOUR

PUBLIC OFFICIALS

Article 43. A special law shall enact the statute for public officials based on the fundamental principle that public officials and employees are exclusively servants of the interests of the community and not of partisanship or any political party.

. . .

PART TWO

The Bolivian State

TITLE ONE

LEGISLATIVE POWER

Chapter I—General provisions

Article 46. The legislative power is vested in the national Congress, composed of two chambers, one of deputies and one of senators.

. . .

Chapter II—Chamber of Deputies

Article 60. Deputies shall be elected by universal and direct voting, by a simple plurality of votes, and with proportional representation of minorities.

The law shall fix the number and the system of election of proprietary deputies and alternates, on the basis of the population density of the national territory.

Deputies shall hold office for four years and the chamber will be renewed in its entirety.

Articles 61. To be a deputy it is necessary:

1. To be a Bolivian by birth and have fulfilled military duties.
2. To be at least twenty-five years of age as of the date of the election.
3. To be inscribed in the civic register.
4. To be nominated by a political party or by a civic group representative of the live forces of the country, having recognized juridical personality, forming a bloc or front with a political party.
5. Not to have been condemned to corporal punishment, unless rehabilitated by the Senate; nor to have charges or writs of execution against him; nor to be included among the cases of exclusion or incompatibility established by law.

. . .

Chapter III—Chamber of Senators

Article 63. The Senate is composed of three senators for each department, elected by universal and direct suffrage: two for the majority and one for the minority, according to law.

Article 64. To be a senator it is necessary to be at least thirty-five years of age and to fulfil the conditions required of a deputy.

. . .

Title Two

THE EXECUTIVE POWER

Chapter I—President of the Republic

Article 85. The executive power is exercised by the president of the republic together with the ministers of state.

Article 86. The president of the republic shall be elected by direct suffrage. A vice-president shall be elected at the same time and in the same manner.

. . .

Article 88. To be elected president or vice-president of the republic the same qualifications are required as those of a senator.

. . .

Chapter IV—Preservation of public order

Article 111. In cases of grave danger caused by internal disorder or international war the chief of the executive power, with the approval of the Council of Ministers, may declare a state of siege in such portion of the territory as may be necessary.

If Congress should meet in regular or extraordinary session while the republic or a portion thereof is in a state of siege, the continuation of such state of siege must have legislative authorization. The same procedure shall apply if a decree of state of siege is issued by the executive power while the chambers are in session.

If the state of siege is not lifted within ninety days, at the end of such period it shall expire *ipso facto*, except in the case of civil or international war. Persons who have been subject to restriction shall be set free, unless they have been placed under the jurisdiction of competent courts.

The executive may not prolong a state of siege beyond ninety days nor declare another within the same year, except with the consent of Congress. For this purpose he must convoke an extraordinary session if it occurs while the chambers are adjourned.

Article 112. The declaration of a state of siege produces the following effects:

1. The executive may increase the armed forces and call into service such reserves as he deems necessary.
2. He may order such advance collections of taxes and national revenues as he deems necessary, as well as negotiate and demand loans, provided ordinary resources are insufficient. In the case of forced loans the executive shall fix the quotas and distribute them among the taxpayers in accordance with their economic capacity.
3. The rights and guarantees granted by this Constitution shall not be suspended *ipso facto* and in general by the mere declaration of a state of siege; but they may be with respect to specified persons charged upon good grounds with conspiring against the public order, in accordance with the provisions of the following paragraphs.
4. The legitimate authorities may issue orders for the summons or arrest of those accused, but within a maximum of forty-eight hours they shall be placed at the disposal of a competent judge, together with the documents on which the arrest was based.

   If the preservation of the public order necessitate the removal of the suspects elsewhere, they may be ordered confined to a departmental or provincial capital that is not unhealthful.

   Banishment for political reasons is prohibited; but a person confined, sought or under arrest on such grounds, who requests a passport to leave the country, may not be denied it for any reason whatever and the authorities must grant him the guarantees necessary for the purpose.

   Persons carrying out orders which violate these guarantees may be tried at any time, even if the state of siege has ended, as guilty of an offense against the constitutional guarantees, and the fact that they obeyed superior orders shall not serve as an excuse.

   In case of international war censorship of correspondence and all publication media may be established.

. . .

Title Three

JUDICIAL POWER

Chapter I—General provisions

. . .

Article 117. Judges are independent in the administration of justice and are subject only to the laws.

The law shall establish the judicial roster and the conditions for permanency of judicial officials, merit, qualifications, promotions, increases, pensions and retirement.

. . .

Article 120. Publicity in trials is an essential condition in the administration of justice except when public morals may be offended thereby.

The secrecy of evidence in criminal proceedings is abolished.

. . .

PART THREE

Special régimes

Title One

ECONOMIC AND FINANCIAL REGIME

Chapter I—General provisions

Article 132. The economic organization must respond essentially to principles of social justice

intended to ensure to all inhabitants a life worthy of the human being.

. . .

Chapter III—Economic policy of the State

Article 141. The State may regulate by law the exercise of commerce and industry whenever the public security or necessity urgently requires this. In such cases it may also assume the top-level direction of the national economy. This intervention shall be exercised in the form of control, stimulation, or direct management.

. . .

TITLE TWO

SOCIAL REGIME

Article 156. Labor is a duty and a right, and it constitutes the basis of the economic and social order.

Article 157. Labor and capital enjoy the protection of the State. The law shall regulate their relationship by establishing rules concerning individual and collective contracts, minimum wages, maximum working hours, work by women and minors, paid weekly and annual days of rest, holidays, bonuses, premiums, and other systems of sharing in the profits of an enterprise compensation for length of service, discharges, professional training, and other social and protective benefits for workers.

It is a function of the State to create conditions which will guarantee employment, stability of work, and fair remuneration to all.

Article 158. The State has the obligation to defend human capital by protecting the health of the population; it shall ensure the continuity of its means of livelihood and the rehabilitation of disabled persons; it shall also strive for the improvement of the living conditions of the family as a group.

The social security systems shall be based on principles of universal coverage, solidarity, uniformity of treatment, economy, timeliness and effectiveness, embracing the contingencies of illness, maternity, occupational hazards, disability, old age, forced shutdowns, family allotments, and housing of social interest.

Article 159. Freedom of employers to form associations is guaranteed. Unionization is recognized and guaranteed as a means of protection, representation, welfare, education, and culture for workers, as is union immunity as a guarantee to the directors of unions while carrying out the legal activities connected with their mandates, for which they may not be prosecuted or arrested.

The right to strike is likewise established, as the legal right of workers to suspend work in the defense of their rights, after complying with legal formalities.

Article 160. The State, through adequate legislation, shall promote the organization of co-operatives.

Article 161. The State, through courts or special agencies, shall settle disputes between employers and workers or employees, as well as those arising in connection with social security.

Article 162. Social provisions of law are matters of public order. They will be retroactive whenever the law expressly so indicates.

The rights and benefits granted in favor of workers cannot be waived, and any agreement to the contrary or intended to evade their effects is null and void.

Article 163. Persons declared meritorious (*los Beneméritos de la Patria*) deserve the gratitude and respect of the citizenry and of the public powers, for their persons and their legally acquired property. They shall be given preference for positions in the public administration or in independent and semi-independent entities, according to their capacities. In case of forced unemployment, or if they are lacking in means of livelihood, they shall receive a lifetime pension from the State according to law. They may not be removed from office except in case of a legal impediment established by a final judgement. Anyone who disregards this right shall be obligated to pay personal indemnity to the aggrieved meritorious person, as pecuniary and moral damages assessed by a court.

Article 164. Social service and welfare are functions of the State, and the conditions relating thereto shall be prescribed by law. The rules relating to public health are compulsory and obligatory.

TITLE THREE

AGRARIAN AND RURAL LABOR REGIME

Article 165. Lands are originally the domain of the nation and the State is responsible for the distribution, regrouping, and redistribution of agrarian property in accordance with the economic and social needs of rural development.

Article 166. Labor is the basic source for the acquisition and conservation of agrarian property and the right of the rural worker (*campesino*) to an allotment of lands is proclaimed.

Article 167. The State does not recognize the *latifundio*. The existence of communal, co-operative, and private ownership of land is guaranteed. The law shall establish the forms of ownership and regulate changes therein.

Article 168. The State shall plan and promote the economic and social development of rural workers' communities and agricultural co-operatives.

Article 169. The rural "homestead" (*solar campesino*) and the small holding are declared indivisible; they constitute the essential minimum and they are in the nature of an unattachable family patrimony according to law. Medium holdings and agricultural enterprises recognized by law are entitled in the protection of the State provided they fulfil an economic and social function, in accordance with development plans.

Article 170. The State shall regulate the system of exploitation of renewable natural resources, with provision for their conservation and increment.

Article 171. The State recognizes and guarantees the existence of organizations of rural workers.

Article 172. The State shall promote colonization plans in order to achieve a rational distribution of people and better exploitation of the land and the natural resources of the country, primarily in frontier areas.

Article 173. The State has the obligation to grant development loans to farmers to increase agricultural production. Their granting is to be regulated by law.

Article 174. The encouragement and supervision of literacy and education for rural workers is a function of the State in fundamental, technical, and vocational aspects, in accordance with rural development plans and programs, with the promotion of access to culture in all its forms.

Article 175. The National Agrarian Reform Servce has jurisdiction throughout the territory of the republic. Its legal titles are definitive, final, and without further appeal, establishing perfect and fully legal ownership for permanent recording in the register of real rights.

Article 176. The regular courts may not review, modify, and never annul the decisions of agrarian courts, whose decisions constitute legal, proven, irremovable, and definitive right.

Title Four

CULTURAL REGIME

Article 177. Education is the most important function of the State, and in performing this function it must promote the culture of the people.

Freedom of teaching is guaranteed under the tutelage of the State.

Public education is gratuitous and it shall be provided on a democratic, one-school-for-all basis. The elementary phase is compulsory.

Article 178. The State shall encourage vocational education and technical professional instruction, guided by the degree of economic development and the sovereignty of the country.

Article 179. Literacy is a social necessity to the attainment of which all inhabitants of the country must contribute.

Article 180. The State shall give assistance to students who lack the means for access to higher education, in order that ability and vocation shall be the conditions that prevail over social or economic position.

Article 181. Private schools shall be subject to the same authorities as public schools and shall be governed by officially approved plans, programs and regulations.

Article 182. Freedom of religious instruction is guaranteed.

Article 183. Schools supported by welfare institution shall have the co-operation of the State.

. . .

Title Five

FAMILY REGIME

Article 193. Matrimony, the family, and maternity are under the protection of the State.

Article 194. Matrimony rests on the equality of the rights and duties of the spouses.

Free or *de facto* unions that meet the conditions of stability and singularity, and that are maintained between persons having the legal capacity to marry, produce effects similar to marriage, both in the personal and property relations of the parties living together and with respect to the children born to them.

Article 195. All children, without distinction as to origin, have equal rights and duties in respect of their parents.

Filiation may be established by any means conducive to proof thereof, in accordance with the system specified by law.

Article 196. In cases of the separation of spouses, the situation of the children shall be determined by taking into account their best care and the moral and material interest in them. Agreements entered into or proposals made by the parents may be accepted by judicial authorities provided they conform to such interest.

Article 197. The authority of the father and of the mother, as well as of a guardian, is established in the interest of children, minors, and incompetents, in harmony with the interest of the family and of society. Adoption and institutions similar thereto shall likewise be organized to the benefit of minors.

A special code shall regulate family relations.

Article 198. The law shall determine what property shall comprise a family homestead (*patrimonio familiar*) which is unattachable and inalienable, and also family allotments under the social security system.

Article 199. The State shall protect the physical, mental, and moral health of children, and shall uphold the rights of children to a home and to an education.

A special code shall regulate the protection of minors in harmony with general legislation.

. . .

Title Nine

ELECTORAL REGIME

Chapter I—Suffrage

Article 219. Suffrage constitutes the foundation of the representative democratic régime and it is based on the universal, direct and equal, individual and secret, free and obligatory vote; on a public counting of votes, and on a system of proportional representation.

Article 220. All Bolivians who have reached twenty-one years of age, or eighteen if married, are voters, regardless of their degree of education, occupation, or income, with no further requirement than inscription in the civic register, upon presentation of documents of personal identification.

Foreigners may vote in municipal elections under conditions prescribed by law.

Article 221. Citizens who can read and write and who meet the requirements indicated in the Constitution and the laws may be elected to public office.

Chapter II—Political parties

Article 222. Citizens have the right to become organized in political parties in accordance with provisions of this Constitution and the Electoral Law.

Article 223. Representation of the people is exercised through the political parties or the fronts or coalitions formed by parties. Civic groups representative of the live forces of the country, with recognized juridical personality, may form a part of such fronts or coalitions and offer their candidates for president and vice-president of the republic, senators, deputies, and councilmen.

Article 224. Political parties shall be registered and their legal personality recognized by the National Electoral Court.

Chapter III—Electoral organs

. . .

Article 226. The autonomy, independence, and impartiality of the electoral organs is established and guaranteed.

. . .

PART FOUR

Primacy and amendment of the Constitution

TITLE ONE

PRIMACY OF THE CONSTITUTION

. . .

Article 229. The principles, guarantees, and rights affirmed by this Constitution may not be altered by laws which regulate their exercise and they need no previous regulations for their enforcement.

TITLE TWO

AMENDMENT OF THE CONSTITUTION

Article 230. This Constitution may be amended in part, if the need therefor is previously stated and is precisely specified in an ordinary law approved by two thirds of the members present in each of the chambers.

This law may be introduced in either chamber, in the manner prescribed by this Constitution.

The law declaring the amendment shall be sent to the executive for its promulgation and he may not veto it.

. . .

SUPREME DECREE No. 07885 [1]

Article 1. No minor under 21 years of age shall travel inside or outside the Republic unless so authorized by the Minors' Council.

Article 2. Authorization to travel outside shall be granted by affixing the "CONAME" stamp to the minor's passport. The migration and police authorities shall not grant an exit permit unless this requirement is complied with.

Article 3. Authorization to travel inside the Republic shall be granted on stamped paper, to which a photograph of the minor shall be attached and which shall include a personal description of the minor, a fingerprint of his right thumb, and the signature of his father or guardian.

Article 4. The migration, police and transit authorities shall check whether travelling minors are authorized to travel; if they are not, the carrier shall be required to return the minor to the point of departure at his own expense without detriment to any other penalties that may be applicable.

[1] *Gaceta Oficial de Bolivia*, No. 329 of 4 January 1967.

BOTSWANA

THE PUBLIC ORDER ACT, 1967

Act No. 6 of 1967, assented to and entered into force on 21 April 1967 [1]

POWERS FOR THE PRESERVATION OF PUBLIC ORDER ON THE OCCASION OF PUBLIC MEETINGS AND PUBLIC PROCESSIONS

3. If any police officer of or above the rank of Assistant Superintendent, having regard to the time or place at which and the circumstances in which any public meeting or any public procession is taking place or is intended to take place and in the case of a public procession to the route taken or proposed to be taken by the procession, has reasonable grounds for believing that the meeting or the procession, as the case may be, may occasion serious public disorder, be may give directions imposing on the persons organising or taking part in the meeting or procession such conditions as appear to him necessary for the preservation of public order, including, in the case of a procession, conditions prescribing the route to be taken by the procession and conditions prohibiting the procession from entering any public place specified in the directions:

Provided that no conditions restricting the display of flags, banners, or emblems shall be imposed under this section except such as are reasonably necessary to prevent a breach of the peace.

REGULATION OF CERTAIN PUBLIC MEETINGS AND PUBLIC PROCESSIONS

4. (1) The Minister may, by notice in the *Gazette,* declare any area of Botswana to be a controlled area for the purposes of this section.

(2) For the purposes of this section, the regulating officer for any controlled area—

(*a*) which forms part of any tribal territory, shall be the Chief of that tribal territory; and

(*b*) in any other case, shall be the District Commissioner of the district which includes such area.

(3) Any person who wishes to convene a public meeting or to form a public procession within a controlled area shall first make application in that behalf to the regulating officer of the area concerned, and, unless such officer is satisfied that such public meeting or public procession is likely to cause or lead to a breach of the peace, be shall issue a permit in writing authorising such public meeting or public procession and specifying the name of the person to whom it is issued and such conditions attaching to the holding of such public meeting or public procession as the regulating officer may deem necessary to impose for the preservation of public peace and order.

(4) It may be a condition of every permit issued under this section that the person to whom a permit has been issued shall be present at the public meeting or with the public procession from its first assembly to its final dispersal.

(5) Without prejudice to the generality of subsection (3) the conditions which may be imposed in issuing a permit under that subsection may relate to all or any of the following matters—

(*a*) the date upon which and the place and time at which the public meeting or public procession is authorised to take place;

(*b*) the maximum duration of the public meeting or public procession;

(*c*) the granting of adequate facilities for the recording of the proceedings of such public meeting in such manner and by such person or class of person as the regulating officer may specify:
Provided that such conditions may not require the convener of a public meeting to provide equipment;

[1] *Government Gazette,* No. 18 of 28 April 1967.

(*d*) any other matter designed to preserve public peace and order.

(6) Any police officer may stop any public procession withon a controlled area for which no permit has been issued under this section or which, if such permit has been issued, contravenes or fails to comply with any conditions specified therein, and may order any such public procession or any public meeting which has been convened in a public place without such a permit or which, if such a permit has been issued, contravenes or fails to comply with any conditions of such permit, to disperse.

(7) Any regulating officer may issue directions for the purpose of regulating within his controlled area the extent to which music may be played or to which music or human speech or any other sound may be amplified, broadcast, relayed or otherwise reproduced by artificial means—

(*a*) in public places; or

(*b*) in places other than public places if such playing, amplification, broadcasting, relaying or other reproduction is, in his opinion, likely to affect persons who are or may be in public places.

PENALTY FOR DISOBEYING A DIRECTION OR VIOLATING THE CONDITIONS OF A PERMIT

5. Any person who knowingly—

(*a*) opposes or disobeys any direction issued under section 3 or section 4(7); or

(*b*) violates any condition of a permit issued under section 4(3);

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

WHEN PUBLIC MEETINGS AND PUBLIC PROCESSIONS ARE UNLAWFUL

6. Any public meeting or public procession within a controlled area—

(*a*) which takes place without a permit issued under section 4(3); or

(*b*) in which three or more persons taking part neglect or refuse to obey any order given under section 4(6);

shall be unlawful, and all persons taking part in such public meeting or public procession and, in the case of a public meeting or public procession for which no permit has been issued, all persons taking part in convening or directing such public meeting or public procession shall be guilty of an offence and liable on conviction to a fine not exceeding R100 or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

EXEMPTIONS

7. Unless the Minister shall, by notice in the *Gazette* direct otherwise, the provision of sections 4, 5 and 6 shall not apply—

(*a*) to any public meeting convened—

(i) for any religious, educational, recreational, sporting, social or charitable purpose;

(ii) for the conduct of any agricultural or industrial show or for the sale of goods or cattle;

(iii) for the purpose of viewing or participating in any theatrical, cinematographic or musical event or any circus or firework display;

(iv) in kgotla;

(v) by a town council or district council;

(*b*) to any public procession formed for any religious, educational, recreational, sporting, social or charitable purpose.

POWERS FOR THE PRESERVATION OF PUBLIC ORDER IN RESPECT OF PUBLIC MEETINGS AND PROCESSIONS

8. (1) If at any time the Minister is of opinion that, by reason of particular circumstances existing in Botswana or in any part thereof, the powers conferred by this or any other written law will not be sufficient to enable the police to prevent serious public disorder being occasioned by the holding of public processions or public meetings in Botswana or any part thereof, he may by order published in the *Gazette* and in such manner as he may deem sufficient to bring the order to the knowledge of the general public in the area to which it relates, prohibit the holding within Botswana or any part thereof of all public processions or public meetings, or of any class of public processions or public meetings specified in the order, for such period not exceeding three months as may be so specified.

(2) An order made under subsection (1) shall have effect from the time when it is first published in any manner authorized by the provisions of that subsection or from such later time as may be specified in the order, and a certificate under the hand of the Minister specifying the time of publication other than a publication in the *Gazette* shall be conclusive evidence thereof in all legal proceedings.

(3) Any person who knowingly—

(*a*) organises or assists in organising any public procession or public meeting held or intended to be held in contravention of any order made under this section; or

(*b*) takes part in or attends, or incites any other person to take part in or attend, any such procession or meeting;

shall be guilty of an offence and liable on conviction to a fine not exceeding R200 or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

(4) A police officer may, without warrant, arrest any person reasonably suspected by him to be committing an offence against this section.

. . .

THE COURT OF APPEAL (AMENDMENT) ACT, 1967

Act No. 10 of 1967, assented to and entered into force on 21 April 1967 [2]

...

INSERTION OF SECTION 3A IN CAP. 3

2. The Court of Appeal Proclamation (Chapter 3) is amended by the insertion after section 3 of the following new section—

"*Right of the Attorney-General to appeal*

"3A. If the Attorney-General is dissatisfied with a decision of the High Court upon a point of law in the exercice of its original, revisionary, or appellate jurisdiction in a case which relates to an offence, the Attorney-General may appeal against such decision to the Court of Appeal:

"Provided that—

" (i) the decision of the Court of Appeal on such an appeal shall in no way affect the finality of the judgment of the High Court in the case so brought on appeal:

"(ii) the person who was the accused in the case shall have the right, should he so desire, at his own expense to be represented by his legal representative."

[2] *Ibid.*

THE IMMIGRATION (VISA) REGULATIONS, 1967 [3]

...

VISA REQUIRED IN THE CASE OF PERSONS ENTERING BOTSWANA

3. Subject to the provisions of regulation 5 no document shall be a travel document for the purposes of the Immigration (Consolidation) Law, 1966, unless it contains, or has annexed to it, a valid and current visa issued in accordance with these regulations.

TYPES OF VISAS

4. (1) A visa shall be either—

(*a*) a continuous visa; or

(*b*) a transit visa; or

(*c*) an ordinary visa.

(2) A continuous visa shall be a visa authorizing the holder to enter Botswana on an unlimited number of occasions within a period of twelve months from the date of the grant of the visa.

(3) A transit visa shall be a visa authorizing the holder to pass through Botswana in transit to some other country and shall be valid for the period endorsed on the visa by the authorized officer.

(4) An ordinary visa shall be a visa authorizing the holder to enter Botswana on such number of occasions, and for such periods, as may be endorsed on the visa by the authorized officer.

(5) A continuous, transit or ordinary visa may be granted—

(*a*) where the provisions of regulation 6 (3) are applicable; or

(*b*) on the direction of the Minister;

as a diplomatic, official or gratis visa.

EXEMPTIONS

5. (1) No visa shall be required by a national of a country listed in the First Schedule[4] who is the holder of a valid passport issued by that country:

[3] Published as Statutory Instrument No. 32 of 1967 in the *Government Gazette*, No. 30 of 7 July 1967, Supplement D.

[4] The countries listed in the First Schedule are: all Commonwealth countries, Belgium, Denmark, Finland, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands, Norway and Colonies, San Marino, South Africa, Sweden, Switzerland, United States of America and Uruguay.

Provided that nothing in this subregulation shall exempt any person from obtaining a visa who holds a travel document other than a full national passport.

(2) The following persons, shall not require a visa—

(*a*) travellers by air when the traveller holds a through ticket to a destination outside Botswana and passes through Botswana in direct transit; and

(*b*) persons travelling through Botswana by rail on an unbroken journey.

(3) No visa shall be required by members of the Diplomatic Service of foreign states or by foreign consular officers *de carrière* accredited to Botswana.

APPLICATION FOR VISAS

6. (1) A person wishing to obtain a visa shall make application to an authorized officer and shall produce to that officer—

(*a*) a valid national passport or other sufficient document establishing the nationality and identity of the applicant; and

(*b*) a re-entry permit to the country where he is ordinarily resident if such a permit is required by that country.

. . .

UNITED NATIONS " LAISSEZ-PASSER "

7. A United Nations *laissez-passer* shall be a sufficient document establishing the nationality and identity of the applicant for the purposes of regulation 6(1).

NO RIGHT OF ENTRY

8. A visa shall not confer upon any person a right to enter or remain in Botswana.

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BRAZIL

CONSTITUTION OF BRAZIL [1]

Title I

NATIONAL ORGANIZATION

Chapter I

Preliminary provisions

Article 1. Brazil is a federal republic, constituted, under the representative system, by the indissoluble union of the States, the Federal District and the Territories.

1. All power emanates from the people and is exercised in their name.

. . .

Article 6. The legislative, executive and judicial branches are independent and harmonious branches of the Union.

Sole paragraph. Except as otherwise provided in this Constitution, it is prohibited for any of the branches to delegate its powers; citizens performing functions in one of them may not exercise functions in another.

Article. 7. International disputes shall be settled by direct negotiations, arbitration, or other peaceful means, with the co-operation of the international agencies in which Brazil participates.

Sole paragraph. War of conquest is prohibited.

Chapter II

The competence of the Union

Article 8. The Union shall have the power to:

1. Maintain relations with foreign States and conclude treaties and conventions with them, and participate in international organizations;

. . .

VII. Organize and maintain the Federal police for the purpose of ensuring:

. . .

(*d*) Censorship of public entertainments;

. . .

Chapter VI

The Legislative Branch

Section I—General provisions

Article 29. The legislative power shall be exercised by the National Congress, which is composed of the Chamber of Deputies and the Federal Senate.

Article 30. The election for deputies and senators shall be held simultaneously throughout the country.

Sole paragraph. The following are conditions of eligibility for the National Congress:

I. To be Brazilian by birth;

II. To be in exercise of political rights;

III. To be over twenty-one years of age, for the Chamber of Deputies, and over thirty-five years of age, for the Federal Senate.

. . .

Article 34. Deputies and senators shall be inviolable, in the exercise of their functions, in respect of their opinions, words and votes.

1. From the time their credentials are issued until the inauguration of the subsequent legislature, members of the National Congress may not be arrested except in *flagrante delicto* for an unbailable offence, nor prosecuted in a criminal action without previous permission from their Chamber.
2. If, within ninety days from the receipt of a request for permission, the Chamber con-

[1] *Diário Oficial,* No. 17 of 24 January 1967.

cerned has not taken a decision thereon, it shall automatically be included in the agenda and shall remain there for fifteen consecutive regular meetings, and, if no decision is taken on the matter during that period, permission shall be deemed to be granted.

3. In the case of an unbailable offence committed in *flagrante delicto,* the file shall be transmitted within forty-eight hours to the Chamber concerned, in order that, by secret vote, it may decide upon the imprisonment and authorize, or not authorize, the establishment of guilt.

. . .

Section II—The Chamber of Deputies

Article 41. The Chamber of Deputies shall be composed of representatives of the people elected by direct and secret vote in each State and Territory.

. . .

Section III—The Federal Senate

Article 43. The Federal Senate shall be composed of representatives of the States, elected by direct and secret vote according to the majority principle.

. . .

Chapter VII

THE EXECUTIVE BRANCH

Section I—The President and Vice-President of the Republic

Article 74. The executive power shall be exercised by the President of the Republic, assisted by the Ministers of State.

Article 75. The following are conditions of eligibility for President and Vice-President.

I. To be Brazilian by birth;

II. To be in exercise of political rights;

III. To be over thirty-five years of age.

Article 76. The President shall be elected by the roll-call vote of an electoral college at a public meeting.

1. The electoral college shall be composed of the members of the National Congress and of delegates designated by the Legislative Assemblies of the States.

. . .

Section V—National security

Article 89. Every natural or juridical person shall be responsible for the national security, within the limits prescribed by law.

. . .

Section VII—Civil servants

Article 95. The civil service shall be open to all Brazilians, provided the requirements prescribed by law are met.

. . .

Chapter VIII

THE JUDICIAL BRANCH

Section I—Preliminary provisions

. . .

Article 109. Judges are forbidden, under pain of dismissal:

I. To exercise, even when available, any other public function, except teaching in the cases provided for in this Constitution;

II. To receive percentages, for any reason or on any pretext, in actions brought before them for their examination and judgement;

III. To engage in partisan politics.

. . .

TITLE II

DECLARATION OF RIGHTS

Chapter I

NATIONALITY

Article 140. The following are:

I. Native-born Brazilians:

(*a*) Persons born in Brazilian territory, even though of foreign parents provided the latter are not in the service of their country;

(*b*) Persons born outside the national territory to a Brazilian father or mother, if both parents or either parent is in the service of Brazil;

(*c*) Persons born in a foreign country to a Brazilian father or mother, neither parent being in the service of Brazil, provided that they are registered in the competent Brazilian office abroad, or not being registered, they come to reside in Brazil before reaching their majority. In the latter case, on reaching their majority, they must opt for Brazilian nationality within four years;

II. Naturalized Brazilians:

(*a*) Persons who acquired Brazilian nationality in accordance with article 69, IV and V, of the Constitution of 24 February 1891;

(*b*) As prescribed by law:

1. Persons born in a foreign country who have been admitted to Brazil during the first five years of life and who have settled definitively in the national territory. In order to retain Brazilian nationality, they must unequivocally opt for it within two years after reaching their majority;
2. Persons born in a foreign country who, having come to reside in the country before reaching their majority, attend a course of

higher education in a national institution and apply for Brazilian nationality within one year after graduation;

3. Persons who acquire Brazilian nationality in some other way, the requirement for Portuguese being merely that they are residents for one uninterrupted year and that they are of good character and in good health.

   1. Only a natural-born Brazilian may become President or Vice-President of the Republic, Minister of State, Justice of the Federal Supreme Court or of the Federal Court of Appeals, Senator, Federal Deputy, Governor or Vice-Governor of a State or Territory or their alternates.
   2. No restriction shall be placed on any Brazilian by virtue of his birth, other than those established in this Constitution.

Article 141. Brazilian nationality shall be forfeited by any Brazilian:

I. Who, by voluntary naturalization, acquires another nationality;

II. Who, without the permission of the President of the Republic, accepts a commission, employment, or pension from a foreign Government;

III. Who, by the decision of a court, has his naturalization annulled for engaging in an activity contrary to the national interest.

Chapter II

POLITICAL RIGHTS

Article 142. Brazilians of eighteen years of age and above who are registered as prescribed by law shall be voters.

1. Registration and voting shall be compulsory for Brazilians of both sexes, except as otherwise prescribed by law.
2. A member of the armed forces may register if he is an officer, officer-candidate, midshipman, warrant officer, sergeant, or student in a military school of higher education for officer training.
3. The following may not register as voters:
   (*a*) Illiterate persons;
   (*b*) Persons who cannot express themselves in the national language;
   (*c*) Persons deprived, temporarily or permanently, of political rights.

Article 143. Suffrage shall be universal and voting shall be direct and secret, except in the cases where it is otherwise provided in this Constitution; proportional representation of the political parties shall be ensured, in the manner prescribed by law.

Article 144. In addition to the cases specified in this Constitution, political rights:

I. Shall be suspended:
   (*a*) For absolute civil incapacity;
   (*b*) For criminal conviction, so long as its effects shall last;

II. Shall be forfeited:
   (*a*) In the cases specified in article 141;
   (*b*) For refusal, based on religious, philosophic, or political conviction, to perform a duty or service required of Brazilians in general;
   (*c*) For the acceptance of a title of nobility or foreign decoration that restricts the right of citizenship towards the Brazilian State.

Chapter III

POLITICAL PARTIES

Article 149. The organization, functioning and dissolution of political parties shall be governed by federal law and the following principles observed:

I. A representative and democratic system, based on the plurality of parties and the guarantee of the fundamental human rights;

II. Juridical personality, through the registration of statutes;

III. Continuing action, under a programme approved by the Superior Electoral Court, and without any connexion of any nature whatsoever with the action of foreign Governments, entities, or parties;

IV. Financial control;

V. Party discipline;

VI. National coverage, without prejudice to the deliberative functions of the local executive committees;

VII. The party must have ten per cent of the electorate that voted in the last general election for the Chamber of Deputies, distributed over two thirds of the States, with a minimum of seven per cent in each of them, and also ten per cent of the deputies, in at least one third of the States, and ten per cent of the senators;

VIII. There shall be no party coalition.

Chapter IV

INDIVIDUAL RIGHTS AND GUARANTEES

Article 150. The Constitution guarantees Brazilians and foreigners residing in the country inviolability of the rights concerning life, liberty, security and property, in the following terms:

1. All are equal before the law, without distinction as to sex, race, occupation, religious creed, or political convictions. Racial prejudice shall be punished by law.
2. No person shall be compelled to do or refrain from doing anything except by law.

3. The law shall not prejudice any vested right, any juridical act accomplished, or any *res judicata*.
4. The law shall not preclude any injury to individual rights from consideration by the judiciary.
5. There shall be full freedom of conscience, and believers shall be guaranteed the right to practice religious cults that are not contrary to public order or good morals.
6. No person shall be deprived of any of his rights by reason of religious belief or philosophic or political conviction, unless he invokes it in order to exempt himself from a legal obligation required of all, in which case the law may deprive him of any rights incompatible with his conscientious objection.
7. Without being compulsory, religious ministration shall be offered by Brazilians, under the law, to the armed and auxiliary forces and, when requested by the parties concerned or their legal representatives, in establishments of collective confinement.
8. The expression of thought or of political or philosophic conviction and the providing of information shall be free and shall not be subject to censorship, except as regards public performances and entertainments, and every person shall be responsible, under the law, for any abuses of which he may be guilty. The right of reply shall be guaranteed. The publication of books, newspapers and periodicals shall not be dependent upon licence from an authority. However, propaganda inciting to war, to subversion of law and order, or to racial or class prejudice, shall not be tolerated.
9. Correspondence and the secrecy of telegraphic and telephonic communications shall be inviolable.
10. The home is the inviolable refuge of the individual. No person may enter it at night without the consent of the dweller, except in the event of crime or disaster, or during the day, except in those cases and in the manner prescribed by law.
11. There shall be no penalty of death, life imprisonment, banishment, or confiscation. With respect to the death penalty, an exception shall be made in respect of the military law applicable in time of foreign war. The law shall make provision regarding the loss of assets due to injuries caused to the public treasury or in the case of unlawful enrichment in the exercise of public office.
12. No person shall be arrested except in *flagrante delicto* or by a written order issued by a competent authority. The law shall make provision regarding the furnishing of bail. The arrest or detention of any person shall be immediately communicated to the competent judge, who, if it is not legal, shall release the person.
13. No penalty shall extend beyond the person of the offender. Adaptation of the penalty to the circumstances of the offender shall be governed by law.
14. All authorities shall be required to respect the physical and moral integrity of persons under arrest and prisoners.
15. The law shall ensure accused persons full defense, with all the remedies inherent therein. There shall be no privileges at law and no special courts.
16. The preliminary investigation shall be open to both parties and the law in force at the time of commission of the crime shall be applied in respect of the crime and the penalty, except where it makes the situation of the defendant worse.
17. There shall be no civil imprisonment for debts, fines or costs, except in the case of a disloyal trustee or of a person who fails to fulfil an obligation to support, as prescribed by law.
18. The institution and the sovereignty of the jury shall be maintained, and the jury shall have competence in trials involving wilful crimes against life.
19. Extradition of a foreigner shall not be ordered for a political offence or an offence of opinion, nor extradition of a Brazilian in any case.
20. Habeas corpus shall be granted when a person is exposed to or threatened with violence or restraint of his freedom of movement unlawfully or through the abuse of power. In the case of disciplinary offences, habeas corpus shall not apply.
21. A writ of security shall be granted to protect the clear and certain right of an individual not protected by habeas corpus, regardless of the author responsible for the unlawful action or abuse of power.
22. The right to own property shall be guaranteed, except in the case of expropriation for public necessity or utility or in the public interest against previous and fair compensation in cash, except as provided in article 157.VI.1. In case of imminent public danger, the competent authorities may use private property, the owner being guaranteed compensation at a later date.
23. The exercise of any work, trade or profession shall be free, subject to such conditions regarding capacity as the law may prescribe.
24. The law shall guarantee to inventors of industrial devices a temporary privilege for their utilization and shall guarantee ownership of industrial and commercial trademarks, and exclusive use of the trade name.
25. Authors of literary, artistic or scientific works shall have the exclusive right to utilize them. This right shall be transmissible by inheritance, for such time as the law may determine.
26. In time of peace, any person may enter the national territory with his belongings, remain there, or depart therefrom, so long as the law is respected.
27. All may assemble without arms and the authorities shall not intervene except to maintain order. The law may determine the

cases in which it will be necessary for the authorities to be informed in advance of, or for them to designate, the place of assembly.

28. Freedom of association is guaranteed. No association may be dissolved except by a judicial order.
29. No tax shall be demanded or increased except as established by law; no tax shall be collected in each fiscal year without previous budgetary authorization, except for customs duties and war taxes.
30. Every person shall be guaranteed the right to make representation to and to petition the public authorities in defense of rights or against abuses of authority.
31. Every citizen shall be entitled under the law to propose popular action with a view to invalidating acts detrimental to the assets of public entities.
32. Legal aid shall be granted to the needy in such manner as the law prescribes.
33. The inheritance of property by foreigners, who are situated in Brazil, shall be regulated by Brazilian law for the benefit of the Brazilian spouse or children, except where the national law of the deceased is more favourable to them.
34. The law shall ensure the issuance of certificates requested from administrative departments for the defense of rights and the clarification of situations.
35. The specification of express rights and guarantees in this Constitution shall not exclude other rights and guarantees deriving from the régime and principles that it adopts.

Article 151. Any person who abuses the individual rights provided for in paragraphs 8, 27 and 28 of the preceding article, or political rights, in order to attack the democratic order or practice corruption, shall have the latter rights suspended for a period of two to ten years by order of the Federal Supreme Court, on the recommendation of the Chief State Council, without prejudice to any civil or criminal action that may apply, the offender being guaranteed full defence.

Sole paragraph. Where the offender holds a federal elective office, the proceedings shall depend upon permission from the relevant Chamber, in accordance with article 34, paragraph 3.

Chapter V

THE STATE OF SIEGE

Article 152. The President of the Republic may decree a state of siege in the event of:

I. A serious breach of the peace or a threat of such a breach;

II. War.

1. The decree proclaiming a state of siege shall specify the areas it is to cover, name the persons responsible for its execution, and indicate the instructions that are to be followed.
2. During a state of siege the following coercive measures shall be authorized:
   (*a*) Obligation to reside in a certain place;
   (*b*) Detention in buildings other than those intended for persons accused of common crimes;
   (*c*) Search of and arrest in the home;
   (*d*) Suspension of the freedom of assembly and of association;
   (*e*) Censorship of correspondence, the press, telecommunications and public entertainments;
   (*f*) Use or temporary occupation of the property of autonomous entities, public enterprises, mixed-capital companies or holders of concessions providing public services, and suspension from a post, function or employment in such bodies.
3. In order to preserve the integrity and independence of the country, the free functioning of the branches of Government and the operation of institutions, when these are seriously threatened by elements of subversion or corruption, the President of the Republic, having heard the National Security Council, may adopt other measures provided for by law.

Article 153. Except in the event of war, the duration of a state of siege shall not exceed sixty days, but it may be extended for an equal period.

. . .

Article 155. At the end of a state of siege, its effects shall cease, and the President of the Republic shall, within thirty days, send a message to the National Congress giving the reasons for the measures adopted.

Article 156. Failure to abide by any of the time-limits applicable to the state of siege shall render compulsion unlawful and shall entitle the victims to recourse to the judiciary.

TITLE III

THE ECONOMIC AND SOCIAL ORDER

Article 157. The purpose of the economic and social order is to ensure social justice on the basis of the following principles:

I. Freedom of enterprise;

II. Appreciation of labour as a condition of human dignity;

III. The social function of property;

IV. Harmony and solidarity among the factors of production;

V. Economic development;

VI. Prevention of the abuse of economic power, characterized by the domination of markets, the elimination of competition and the despotic accumulation of profits.

1. For the purposes of this article, the Union may adopt measures for the expropriation of rural land, through the payment in

advance of fair compensation by special public bonds, with a clause providing for exact monetary adjustment, redeemable within a maximum of twenty years, in successive annual instalments, the acceptance of which at any time is guaranteed as payment of up to fifty per cent of the rural land tax and as payment of the price of public lands.

...

6. In cases of expropriation in the manner indicated in paragraph 1 of this article, the owners shall be exempt from federal, State and municipal taxes on the transfer of the expropriated property.
7. Strikes shall not be permitted in public services or essential activities defined by law.

...

Article 158. The Constitution guarantees workers the following rights, in addition to others which, in accordance with the law, aim at improving their social condition:

I. A minimum wage which, in accordance with the conditions of each region, is sufficient to meet the normal needs of a worker and his family;

II. A family allowance for workers' dependants;

III. No discrimination in wages or in criteria for employment based on sex, colour or civil status;

IV. Higher wages for night work than for day work;

V. Integration of workers into the life and the development of enterprises, with a share in the profits and, exceptionally, in management, in the cases and conditions that may be established;

VI. A working day of not more than eight hours, with an interval for rest, except in cases especially provided for;

VII. Weekly rest with pay and rest on legal and religious holidays in accordance with local tradition;

VIII. Annual vacation with pay;

IX. Hygiene and safety in work;

X. No person under twelve years of age shall work; no night work shall be done by persons under eighteen years of age; and no work shall be done in insanitary industries by women or by persons under eighteen years of age;

XI. Maternity leave with pay before and after childbirth, without prejudice to employment or wages;

XII. A set percentage of the employees in public service concession and in establishments of specified branches of commerce and industry shall be Brazilians;

XIII. Security of tenure, with compensation or a fund providing an equivalent guarantee for workers terminated;

XIV. Recognition of collective labour contracts;

XV. Health assistance, including hospital care and preventive medicine;

XVI. Social security, through contributions by the Union, by employers and by employees, for unemployment insurance; maternity, sickness, old-age, disability and life insurance;

XVII. Compulsory insurance by employers against work accidents;

XVIII. No discrimination between manual, technical and intellectual forms of labour or between the persons performing them;

XIX. Holiday camps and clinics for rest, recuperation and convalescence, maintained by the Union, as the law may provide;

XX. Retirement for women after thirty years of work, at full salary;

XXI. The right to strike, except as provided for in article 157, 7.

...

Article 166. The ownership and management of journalistic enterprises of any kind, including those of television and radio broadcasting, shall be prohibited:

I. for foreigners;

II. for corporations with bearer securities;

III. for corporations in which foreigners or juridical persons other than political parties are shareholders or partners.

1. The responsibility for and the intellectual and administrative policy of the enterprises referred to in this article shall be the exclusive prerogative of native-born Brazilians.
2. Without prejudice to the freedom of thought and of information, the law may establish other conditions for the organization and operation of journalistic or television and radio broadcasting enterprises in the interest of the democratic system and of combating subversion and corruption.

Title IV

THE FAMILY, EDUCATION AND CULTURE

Article 167. The family is constituted by marriage and shall be entitled to the protection of the public authorities.

1. Marriage is indissoluble.
2. Marriage shall be civil and solemnized free of charge. Religious marriage shall be equivalent to civil marriage, if the prescriptions and provisions of the law are complied with and if requested by the celebrant or any interested party, provided that the act is recorded in the public register.
3. A religious marriage solemnized without the formalities referred to in this article shall have civil effects if, at the request of the married couple, it is recorded in the public

register after endorsement by the competent authority.

4. The law shall institute assistance for mothers, children and adolescents.

Article 168. Education is the right of everyone and shall be given at home and in school. Since the equality of opportunity is guaranteed, it should be based on the principle of national unity and the ideals of freedom and human solidarity.

1. Education at the various levels shall be provided by the public authorities.
2. Provided the pertinent legal provisions are complied with education shall be open to private initiative, which shall be entitled to technical and financial support from the public authorities, including fellowships.
3. The legislation on education shall adopt the following principles and standards:

I. Primary education shall be given only in the national language;

II. Education of children from seven to fourteen years of age shall be compulsory for all and free in the official primary institutions;

III. Official education subsequent to primary shall likewise be free to all those who have shown themselves to have made good use of it and prove that they have insufficient means. Whenever possible, the public authorities shall replace the system of free education by that of granting fellowships, against subsequent rembursement in the case of higher education;

IV. Religious instruction, which shall be optional, shall be part of the normal curricula of official primary and secondary schools;

V. The initial and final posts in teaching at the intermediate and higher levels shall always be filled on the basis of a capacity test, consisting of a public competitive examination and of diplomas in the case of official education;

VI. Freedom of teaching is guaranteed.

Article 169. The States and the Federal District shall organize their own educational systems, and the Union shall organize those of the Territories and also the federal system, which shall be of a supplementary character and shall extend throughout the country, within the strict limits of local deficiencies.

1. The Union shall provide technical and financial assistance for the development of the educational systems of the States and Federal District.
2. It shall be mandatory for each system of education to include educational assistance services to ensure conditions of efficient schooling for needy students.

Article 170. Commercial, industrial and agricultural enterprises shall have the obligation to maintain, in the manner prescribed by law, free primary education for their employees and their employees' children.

Sole paragraph. Commercial and industrial enterprises shall also have the obligation to provide, in co-operation, apprenticeship for minors in their employ.

Article 171. The sciences, literature and arts shall be free.

Sole paragraph. The public authorities shall encourage scientific and technological research.

Article 172. The protection of culture is a duty of the State.

Sole paragraph. Documents, works and places of historical or artistic value, important monuments and natural landscapes, and archeological deposits, shall be under the special protection of the public authorities.

. . .

BULGARIA

NOTE [1]

I. The right to work and to full employment

The Order of the Council of Ministers of 20 January 1967 setting certain questions connected with the rational utilization of labour resources (*Official Gazette,* No. 8, of 27 January 1967) lays down provisions guaranteeing employment for workers discharged owing to the introduction of new techniques and technology in production. A "Vocational Retraining" Fund has been established under the Labour and Wages Committee. This Committee has issued an Ordinance concerning the implementation of the above-mentioned Order (*Official Gazette,* No. 28, of 7 April 1967).

II. Labour safety

No. 86 of the *Official Gazette,* dated 31 October 1967, contains model regulations concerning the rights and obligations of the labour safety services in the ministries, committees and other central administrative bodies, central offices of co-operative organizations and social organizations, State economic unions, directorates, undertakings and co-operative and State farms. These Regulations are issued in pursuance of paragraph 3 of the Regulations of the Inspectorate responsible to the Council of Ministers for the supervision of labour safety.

III. Pensions and social insurance

1. Pursuant to the Decree of the Presidium of the National Assembly to settle certain questions connected with the social insurance and pension coverage of co-operative farmers (*Official Gazette,* No. 50, of 27 April 1967), the pensions of co-operative farmers have been increased and their social insurance coverage and that of members of their families in cases of temporary incapacity to work due to illness, an employment accident, etc., have been extended. The regulations governing the social insurance of co-operative farmers approved by Order No. 255 of the Council of Ministers, dated 19 August 1967, regulate the details of this matter (*Official Gazette,* No. 67, of 25 August 1967).

These instruments represent a new step forward in the effort to place agricultural workers on an equal footing with industrial workers in the matter of pensions and social security.

2. On the basis of Order No. 60 of the Central Committee of the Bulgarian Communist Party and the Council of Ministers, dated 28 December 1967, amending the legislation relating to pensions, the Presidium of the National Assembly has issued a Decree amending and supplementing the Pensions Act (*Official Gazette,* No. 102, of 29 December 1967). Small pensions and pensions in respect of disability, old age, illness, etc., have been increased.

IV. Social and legal aid and public health

1. Pursuant to the Regulations concerning the purposes and functions of the social and legal departments (*Official Gazette,* No. 17, of 28 February 1967), it is planned to expand the free social and legal aid given to pregnant women, mothers and children and to give greater attention to finding employment for pregnant wonen and mothers of families and guaranteeing legal aid for mothers and children.

2. No. 49 of the *Official Gazette,* dated 23 June 1967, contains an abstract of Order No. 27 of the Council of Minister concerning improvement of the level of rural public health.

V. Housing

1. The Decree amending and supplementing the Decree on encouragement and aid to the

[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.

construction of co-operative and individual housing (*Official Gazette*, No. 23, of 21 March 1967) provides for further assistance to persons intending to build their own housing.

2. In No. 6 of the *Official Gazette*, dated 20 January 1967, there appears an Ordinance on the sale of State Housing Fund apartments (amended and supplemented, *Official Gazette*, No. 58, of 25 July 1967), which provides for further assistance to citizens wishing to purchase such apartments; it reduces the initial down payment required or grants exemption from this requirement, and enables the purchaser to pay for his dwelling by instalments over a period of twenty to twenty-five years, with substantial reductions for workers earning low wages.

3. In No. 6 of the *Official Gazette*, dated 20 January 1967, there appears also the Ordinance on the Working Capital Housing Funds of the People's Councils.

4. The same issue also contains the Ordinance concerning the allocation by the People's Councils of State Housing Fund accommodations to citizens whose housing needs are considered extremely urgent.

(The Ordinances mentioned in paragraphs 2, 3 and 4 were issued on the basis of Order No. 39 of the Council of Ministers, dated 30 July 1967, aimed at accelerating the solution of the housing problem in Bulgaria.)

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

FULFILMENT OF STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SSR IN 1967 — REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR

(EXTRACTS)

V. Rise in the prosperity and cultural level of the people

The average annual number of manual and non-manual workers employed in the national economy was 2.7 million, an increase of 5 per cent over the previous year.

In 1967, the change-over to a five-day working week with two days off for manual and non-manual workers was carried out.

The average monthly cash wage for manual and non-manual workers in the national economy of the Republic was 4.4 per cent higher in 1967 than in 1966.

The earnings of collective farm workers calculated on the basis of one man-day increased by 11.6 per cent.

In addition to wages, the population of the Republic received out of social consumption funds in 1967 payments and benefits amounting to more than 1,500 million roubles, or 9 per cent more than in 1966, in pensions, allowances, students' grants, paid vacations, free education, free medical care and other services. This sum included pensions paid to manual and non-manual workers and collective farm workers amounting to 388 million roubles, representing an increase of more than 7 per cent.

Individual deposits in savings banks increased by 17 per cent during the year and at 1 January 1968 amounted to more than 755 million roubles; the number of depositors increased by 9 per cent and by the end of the year had reached 1,829,000.

The volume of State and co-operative retail trade in 1967 amounted to 3,927 million roubles, an increase of 13 per cent over 1966 in comparable prices. The retail trade turnover of consumer co-operative trading in rural areas amounted to 1,537 million roubles, representing an increase of 14 per cent.

The annual plan for retail trade turnover was fulfilled by 104 per cent; in particular, the plan for turnover for the retail trade network was fulfilled by 103 per cent and the plan for turnover for public catering was fulfilled by 107 per cent.

The Ministry of Trade fulfilled the annual plan for retail trade turnover by 104 per cent, while the Byelorussian Co-operative Union fulfilled it by 103 per cent.

The construction of housing and public amenities continued on a large scale. More than 80,000 new and well-equipped apartments, with a total floor space of approximately 4 million square metres, financed by State and co-operative undertakings and organizations, collective farms and individuals, were brought into occupancy in towns and rural localities. More than 370,000 persons moved into new housing or improved their living conditions in existing dwellings.

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

The annual plan for household services to the population as a whole was fulfilled by 106 per cent. The total volume of household services increased by 21 per cent over 1966; the increase in rural localities was 35 per cent.

The network of enterprises providing household services to the population increased during the year by nearly 500.

Steps were taken to provide improved amenities in towns and rural localities. The number of apartments supplied with gas during the year in

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

towns, urban-type settlements and rural settlements totalled more than 85,000.

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

Some 2,644,000 persons received education of one type or another, including 1,799,000 attending general education schools of all types, 125,000 attending higher educational establishments, and 138,000 attending technical and other specialized secondary educational establishments.

Approximately 167,000 persons completed eight-year courses of education and approximately 94,000 completed general secondary school education during the year under review.

Enrolment in extended-day schools and groups and in boarding schools totalled 157,600, representing an increase of 10 per cent over 1966.

The network of pre-school establishments for children was expanded and the number of children attending them was 10 per cent higher than in 1966.

During the year, more than 314,000 children and adolescents enjoyed recreation at pioneer and school camps and children's sanatoria or on excursions or tours, or spent the summer in the country at establishments for children.

During the year, about 43,000 specialist graduated from higher and specialized secondary educational establishments in the Republic, including more than 14,000 from the former, representing an increase of 10 per cent over 1966, and about 29,000 from the latter, representing an increase of about 34 per cent. More than 70,000 persons were admitted to higher and specialized secondary educational establishments in the Republic, 29,000 of them to the former and more than 41,000 to the latter.

During the past year, 42,000 young skilled workers were trained in vocational-technical colleges and schools. In addition, by means of individual and group apprenticeship and course instruction given directly at enterprises and collective farms, more than 500,000 persons improved their qualifications or learned new trades.

The number of scientific workers employed at scientific institutions, higher educational establishments and other organizations totalled more than 18,000 at the end of the year.

The network of cinema installations was expanded. The figure for cinema attendances during the year was approximately 130 million.

Medical services for the population were further improved. The number of doctors in all types increased in 1967 by about 1,000, bringing the total to 20,700. There was an increase in the number of beds in hospitals, sanatoria, preventive clinics and rest homes.

The population of the Byelorussian SSR on 1 January 1968 was 8.8 million.

ACT CONCERNING THE STATE BUDGET OF THE BYELORUSSIAN SSR FOR 1967

(EXTRACTS)

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

Article 1. To approve the State Budget of the Byelorussian SSR for 1967 submitted by the Council of Ministers of the Byelorussian SSR, together with the amendments adopted on the report of the Budget-Economic and Sectoral Committees of the Supreme Soviet of the Byelorussian SSR, providing for total revenue and expenditure of 2,068,362,000 roubles;

Article 2. To establish the revenue from State and co-operative undertakings and organizations—turnover tax, fee on fixed productive capital and circulating capital, profits tax, income tax and other revenue from the socialist economy—under the State budget of the Byelorussian SSR for 1967 at the sum of 1,925,528,000 roubles;

Article 3. To appropriate a total of 1,018,329,000 roubles under the State Budget of the Byelorussian SSR for 1967 for the financing of the national economy—continued development of heavy industry, construction, light industry, the food-stuffs industry, agriculture, transport, housing and municipal services and other branches of the national economy;

Article 4. To appropriate a total of 974,412,000 roubles under the State Budget of the Byelorussian SSR for 1967, including 182,118,000 roubles under the State social insurance budget, for social and cultural development—general education schools, specialized secondary schools, higher educational establishments; scientific research institutions, industrial trade schools, libraries, clubs, theatres, the press, broadcasting and other educational and cultural activities; hospitals, crèches, sanatoria and other health and physical culture establishments; pensions and allowances.

ORDER OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF BYELORUSSIA, THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR AND THE BYELORUSSIAN REPUBLICAN COUNCIL OF TRADE UNIONS CONCERNING THE CHANGE-OVER TO A FIVE-DAY WORKING WEEK WITH TWO DAYS OFF FOR MANUAL AND NON-MANUAL WORKERS IN UNDERTAKINGS, ESTABLISHMENTS AND ORGANIZATIONS, ADOPTED ON 8 APRIL 1967

(EXTRACTS)

In connexion with the Decree of the Presidium of the Supreme Soviet of the USSR of 14 March 1967 concerning the change-over to a five-day working week with two days off for manual and non-manual workers in undertakings, establishments and organizations, and in pursuance of Order No. 199 of 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 Trade Unions, dated 7 March 1967, the Central Committee of the Communist Party of Byelorussia, the Council of Ministers of the Byelorussian SSR and the Byelorussian Republican Council of Trade Unions resolve:

1. To require the executive committees of the Soviets of Working People's Deputies of the regions and the city of Minsk, together with the party organs, the ministries and departments of the Byelorussian SSR, the co-operative and public organizations of the Republic and the regional councils of trade unions, to prepare time-tables for the change-over to the five-day working week for manual and non-manual workers of State, co-operative and public undertakings, establishments and organizations, by regions and by major industrial centres, having in view the virtual completion of the change-over to a five-day working week for manual and non-manual workers by the fiftieth anniversary of the Great October Socialist Revolution, and to submit those plans with the necessary material and supporting data to the Council of Ministers of the Byelorussian SSR and the Gosplan of the Byelorussian SSR within one month;

. . .

3. The change-over to a five-day working week for manual and non-manual workers shall, as a general rule, be carried out simultaneously in all undertakings, establishments and organizations situated in the territory of a region, town or workers' settlement;

. . .

8. To formulate and put into effect measures to improve the cultural facilities available to manual and non-manual workers in the light of the fact that they will have two days off;

To provide for the necessary changes in the régime governing work in undertakings, establihments and organizations serving the public (undertakings and organizations engaged in municipal and suburban passenger transport, trade and public catering, cultural and artistic activities, and municipal and household services, institutions for children and medical institutions, etc.), in conformity with the new conditions of work and rest established for manual and non-manual workers.

ORDER OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR CONCERNING THE CHANGE-OVER TO A FIVE-DAY WORKING WEEK FOR WORKERS OF THE STAFFS OF MINISTRIES, DEPARTMENTS AND SOVIET AND ECONOMIC AGENCIES, ADOPTED ON 21 DECEMBER 1967

(EXTRACTS)

In conformity with Order No. 882, of 21 September 1967, of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR, and Order No. 1132, of 19 December1967, of the Council of Ministers of the USSR, the Council of Ministers of the Byelorussian SSR resolves:

1. To put into effect from 1 January 1968 the change-over to a five-day working week with two days off without affecting the existing total of working time per week, for workers on the staffs of ministries, departments and other central agencies of the Byelorussian SSR and regional, municipal and district Soviet and economic agencies.

ORDER OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR AND THE BYELORUSSIAN REPUBLICAN COUNCIL OF TRADE UNIONS CONCERNING MEASURES TO IMPROVE LABOUR PROTECTION IN AGRICULTURE, ADOPTED ON 18 SEPTEMBER 1967

(EXTRACTS)

In order to strengthen labour protection services and safety techniques in agriculture:

. . .

To establish in the Ministry of Agriculture of the Byelorussian SSR the post of senior engineer for safety techniques on the staffs of the regional directorates of agriculture and district agricultural production boards;

To organise a labour protection and safety techniques group as part of the central staff of the Republican combine "Belselkhoztekhnika";

To organize the above-mentioned group and establish the post of senior engineer without exceeding the number of workers and the amount of expenditure for their wages established for corresponding organs of the State administration and the Republican combine "Belselkhoztekhnika";

To recommend the management of collective farms and councils of inter-collective farm organizations:

(*a*) To adopt, together with trade union committees, measures to ensure health and safe working conditions for collective farm workers;

(*b*) To provide collective farm workers, in accordance with their conditions of work and particularly those working with chemical poisons and artificial fertilizers, with industrial clothing, industrial footwear and safety devices;

(*c*) To make specified individuals responsible for the condition of safety devices and industrial sanitary engineering equipment in collective farm production units;

(*d*) To provide repair shops and other production units with medical supplies, visual aids and cautionary posters relating to safety techniques and industrial sanitary engineering; to organize a safety techniques room or corner on every farm.

RULING OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR EXTENDING THE PERIOD OF VALIDITY OF PARAGRAPH 1, SUB-PARAGRAPH 3, OF RULING NO. 1556, DATED 25 NOVEMBER 1959, OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR, ADOPTED ON 1 APRIL 1967

The Council of Ministers of the Byelorussian SSR resolves:

to take note of and be guided by the fact that the Council of Ministers of the USSR, by its Order No. 248, of 25 March 1967, extended the period of validity of paragraph 3 of Order No. 1233, of the Council of Ministers of the USSR, dated 5 November 1959, concerning the establishment of a shorter working day or a shorter working week for persons who are successfully following courses without interruption of employment in schools for working and rural youth: evening (shift or seasonal) courses and correspondence courses offered by general education secondary school (paragraph 1, sub-paragraph 3, of Ruling No. 1556, dated 25 November 1959, of the Council of Ministers of the Byelorussian SSR) until the beginning of the 1970-1971academic year.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR ON AMENDMENTS AND ADDITIONS TO THE CODE OF ACTS ON MARRIAGE, THE FAMILY AND GUARDIANSHIP OF THE BYELORUSSIAN SSR, ADOPTED ON 11 JULY 1967

The Presidium of the Supreme Soviet of the Byelorussian SSR hereby adopts the following amendments and additions to the Code of Acts on Marriage, the Family and Guardianship of the Byelorussian SSR:

1. Article 32 shall be amended to read as follows:

"32. The right of a needy disabled spouse to receive support from the other spouse is retained after dissolution of the marriage. A

divorced spouse shall also have the right to support if he or she becomes disabled in the course of one year following the dissolution of the marriage.

"A divorced spouse may be relieved by a court of the obligation to support the other spouse or that obligation may be made subject to a time-limit if the other spouse is responsible for the divorce."

2. The following text should be added to the second part of article 48:

"If a parent who has custody of a child after divorce wishes the child to bear his or her surname, the matter shall be decided by the guardianship authorities in the interests of the child."

3. Article 82 shall be amended to read as follows:

"82. In the case of adoption, the adopted child may, at the request of the adoptive parent, be given the surname and the patronymic derived from the given name of the latter; the given name of the child may likewise be changed at the request of the adoptive parent.

"If the adopted child has reached the age of ten years, he may not be given the surname and the patronymic derived from the given name of the adoptive parent, and his given name may not be changed, without his consent."

CAMEROON

HUMAN RIGHTS IN THE CAMEROONIAN PENAL CODE [1]

The Cameroonian Penal Code entered into force on 1 October 1966 and includes provisions proclaiming respect for human rights as defined in the Universal Declaration of Human Rights of 10 December 1948.

1. For example, the principle of the non-retroactivity of penal law is embodied in article 3 of the Penal Code, which provides that:

"Acts committed prior to the entry into force of a penal law or subsequent to its abrogation, whether explicit or implied, shall not be punishable under that law."

The Cameroonian Penal Code introduces a logical minor variation of this principle: the abrogation of a law not only renders impossible all proceedings in respect of acts committed prior to its abrogation but, by a logical extension, also terminates the execution of any provisional sentence that may have been pronounced. As a result, those who have been proceeded against rapidly and those who have not yet been proceeded against, receive the same treatment.

For example, E and A have committed, at the same time and place and under the same circumstances, a breach of trust, one against society and the other to the prejudice of a private citizen. Society successfully prosecutes E, who receives a provisional sentence, deprivative of liberty or a fine.

The unfortunate private citizen is unable to initiate proceedings quickly. At this point, a new law is passed, abrogating the old one.

The proceedings against A will be dropped and, logically, E will not have to serve his sentence.

This principle derives from article 2 (2) of the Italian Penal Code and from article 5 of the French draft law of 1934, known as the Matter Draft.

2. The principle of the equality of all before the law has also been incorporated in the criminal law of Cameroon; in fact, the first article of the Penal Code provides that: "The Penal Code shall apply to all".

This principle needs no commentary.

3. The principle of individual liberty is also expressed in the following provisions:

Article 291 of the Penal Code protects citizens against arbitrary arrest and illegal restraint, and articles 292, 293 and 312 protect them against slavery and all other forms of servitude.

These articles are worded as follows:

"Article 291. Arrest and illegal restraint.

"(1) Any person who by any means whatsoever deprives another of his liberty shall be liable to imprisonment for a term of not less than 5 or more than 10 years, and a fine of not less than 20,000 or more than 1 million francs.

"(2) A sentence of imprisonment for a term of not less than 10 or more than 20 years shall be imposed in the following cases:

"(*a*) If the deprivation of liberty lasts more than one month;

"(*b*) If it is accompanied by physical or moral maltreatment;

"(*c*) If the arrest is effected by means of a false warrant from the civil authority, by the illegal wearing of a uniform or by other misrepresentation."

Within the meaning of article 291, arrest or illegal restraint in themselves constitute deprivation of liberty. Arrest does not necessarily have to be followed by illegal restraint and is punishable in itself; illegal restraint may be the consequence of an arrest (a person held in a place of detention or in prison) or it may be entirely independent of arrest (a child confined in his parents' home, etc.).

[1] Note transmitted by the Federal Republic of Cameroon. The first volume of the Penal Code was annexed to Act No. 65-LF-24 of 12 November 1965, and the second to Act No. 67-LF-1 of 12 June 1967. Extracts from Decree No. 66-DF-237 of 24 May 1966, containing the First Part of the Rules of the Penal Code, may be found in the *Yearbook on Human Rights for 1966*, p. 69

"Article 292. Forced labour.

"Any person who, for his own personal advantage, imposes on another work or service for which that other has not volunteered shall be liable to imprisonment for a term of not less than one or more than five years, or to a fine of not less than 10,000 or more than 500,000 francs, or both."

Article 292 implements the provisions on forced labour of the Geneva Convention of 1930, which was ratified by the Federal Republic of Cameroon on 29 January 1963.

However, the Geneva Convention does not exclude the possibility of a Government, in certain cases, imposing certain work or service on its citizens under certain conditions.

In any case, this power is vested in the Government alone and never in private citizens.

It rests with the courts to establish what constitutes forced labour; thus, it is perfectly clear that, if a member or friend of a family is domiciled in the home of someone who lodges, feeds and partially maintains him, the host is perfectly within his rights to demand help or a certain amount of work from the lodger, which cannot be equated with forced labour.

"Article 293. Slavery.

"(1) Any person who:

"(*a*) reduces another to slavery or keeps him in slavery;

"(*b*) engages in any traffic in persons, habitually or otherwise; shall be liable to emprisonment for a term of not less than 10 or more than 20 years.

"(2) Any person who gives or receives another in bondage shall be liable to imprisonment for a term of not less than one or more than 5 years and to a fine of not less than 10,000 or more than 1 million francs. Furthermore, the court may impose the forfeitures specified in article 30 of this Code."[2]

Paragraph (1) provides for punishment of both slavery and traffic in persons, i.e. the slave-trade. This paragraphs also incorporates provisions of an international convention that has been ratified by Cameroon.

Slavery is defined as the state or condition of a person over whom some or all of the rights of ownership are exercised.

Traffic in persons includes traffic in men, women or children, of any race or religion, whether for valuable consideration or not; this traffic is punishable even if its object is not to reduce the person to slavery, as is the case of traffic in women for the purposes of prostitution. However, article 342 (a) applies if the victim of the offence is under eighteen years of age.

It should be noted that, under article 11 of this Code, these offences are of an international character, and are subject to punishment under the penal law of Cameroon as laid down in article 11, paragraph 2.[3]

Paragraph 2 days down the penalties for the placing in bondage of any person, both for those who place others in bondage and for those who receive them.

The penalties prescribed in article 30 (1), which are mandatory in the cases specified in paragraph 1 (crime), may also be applied in the cases specified in paragraph 2.

If the victim is under eighteen years of age, the penalties are the more severe ones laid down in article 342 (b).

"Article 342. Slavery and bondage.

"Where the victim is under 18 years of age:

"(*a*) In the case of a crime as defined in article 293,[4] the offender shall be liable to imprisonment for a term of not less than 15 or more than 20 years;

"(*b*) In the case of an offence as defined in article 293 (2), the offender hall be liable to imprisonment for a term of not less than 5 or more than 10 years and to a fine of not less than 50,000 or more than 1 million francs, and the penalties prescribed in article 30 of this Code may be applied."

Article 342 provides for more severe punishment in the case of slavery or bondage where the victim is less than eighteen years of age.

4. The principle of the freedom of conscience, thought and opinion is established by the following articles:

"Article 241. Offences against races and religions.

"(1) Any person who commits an offence, as defined in article 152, against the race or religion to which some citizens or residents belong shall be liable to imprisonment for a term of not less than 6 days or more than 6 months, and to a fine of not less than 5,000 or more than 500,000 francs.

"(2) If the offence is committed by means of the press or radio, the maximum amount of the fine shall be raised to 20 million francs.

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[2] Provisions of article 30:
The forfeitures include:
(1) Removal and exclusion from all public functions, employment and offices;
(2) Incapacity to serve as juror, associate judge, expert or sworn expert;
(3) Incapacity to serve as guardian, deputy-guardian or court-appointed guardian except for his own children or as a member of a board of guardians;
(4) Debarment from wearing any decorations;
(5) Debarment from serving in the armed forces;
(6) Debarment from keeping school or teaching in an educational institution, and in general from any occupation bearing on the education or care of children.

[3] Provisions of article 11: The penal law of the Republic applies to piracy, traffic in persons, the slave-trade and traffic in drugs even where such traffic takes place outside the territory of the Republic. However, no foreigner may be tried within the territory of the Republic for acts specified in this article that have been committed abroad unless he has been arrested within the territory of the Republic and has not been extradited, and on condition that the proceedings are initiated by the *ministère public.*

[4] See article 293 on slavery.

"(3) The penalties provided for in the preceding paragraphs shall be doubled where the offence is committed for the purpose of inciting citizens to hatred or contempt."

The offence is punishable only if directed against a race or religion to which citizens or foreign residents of Cameroon belong. The legislator is of the opinion that the offence is not dangerous otherwise.

The moral aspects specified in article 74[5] must be established, but in most cases the actual commission of an offence is itself sufficient to establish the moral aspect.

If the publicity referred to in paragraph (2) is given through the press or radio, the maximum amount of the fine is increased; in fact, the greater the publicity the severer the penalty must be.

Paragraph (3) also provides for heavier penalties where the purpose of the offender is to incite citizens to hatred or suspicion. Prior to the enactment of the federal Code, the aim of inciting to hatred was always one of the factors constituting an offence; this provision was not included in paragraph (1) of article 241, but the legislator was of the opinion that, where the purpose of the offence is to incite to hatred or suspicion, it should be more severely punished; the incitement of citizens to hatred or suspicion is an offence against national solidarity and endangers the public peace, and a more severe penalty is therefore necessary.

"Article 242. Discrimination.

"Any person who refuses another access to a public place or to an occupation on grounds of race or religion shall be liable to imprisonment for a term of not less than one month or more than 2 years, and to a fine of not less than 5,000 or more than 500,000 francs."

Article 242 is complementary to article 241, but its provisions are entirely new in both Eastern and Western Cameroon. The legislator thought it advisable to include these provisions in a modern code.

Where access to a public place is refused, proof of the guilty intention of the offender is relatively easy to establish, but proof is, on the other hand, more difficult to establish where access to employment is concerned, the offender may use as a pretext objections which are apparently valid and difficult to refute.

[5] Relevant provisions of article 74 of the Penal Code:
(1) No penalty may be imposed on any person who is not criminally liable.
(2) Any person who wilfully commits an act or acts constituting an offence with the intention that these acts should result in the offence, shall be criminally liable.
(3) Except as otherwise provided by law, the consequence, even where deliberate, of an act of omission shall entail no criminal liability.
(4) Except as otherwise provided by law, no criminal liability shall exist unless the conditions specified in paragraph (2) have been fulfilled. However, in the case of petty offences, criminal liability shall exist even where the act of commission or omission was not intentional or where the consequence wes deliberate.

"Article 269. Freedom of conscience.

"Any person who, by violence or threats of violence, imposes or obstructs the practice of a religion not involving a breach of the law, shall be liable to imprisonment for a term of not less than one month or more than one year, and to a fine of not less than 5,000 or more than 50,000 francs."

Article 1 of the Constitution of the Federal Republic of Cameroon of 1 September 1961[6] affirms the Republic's adherence to the fundamental freedoms set out in the Universal Declaration of Human Rights, including the freedom of conscience. The purpose of article 269 is to punish acts prejudicial to this principle.

There must be an act or threat of violence, i.e., a material act or utterances capable of intimidating another person sufficiently to constitute interference with his freedom of conscience. On the other hand, criticism of a religion or polemics, however virulent, against a religion do not fall within the provisions of this article. In the absence of legislative limitations, the threats may be of a moral as well as a material nature, and they may be directed either against the other person or a third party.

The purpose of the acts or threats of violence must be to force another person to practise a religion, or, on the other hand, to prevent him from practising it; such would be the case, for example, of an employer who threatens to dismiss an employee for not going to mass.

This article applies only when the religion in question does not involve a breach of the law; a religion involving the murder of a human being would constitute such a breach and to prevent the practise of such a religion, even by violence or threats of violence would not be punishable under this article. The somewhat elliptical wording used implies that any person who forces another person to practise a religion involving a breach of the law would not be punishable under this article; however, in such a case, acts or threats of violence would constitute complicity or an attempted complicity to commit a crime or offence (article 97).[7]

"Article 270. Offences against a minister of religion.

"Any person who strikes or publicly injures a minister of religion in the exercise of his ministry, shall be liable to imprisonment for a term of not less than one month or more than 3 years."

Article 270 naturally applies without prejudice to the more severe penalties that the commission of the acts of violence may entail. The purpose

[6] For extracts from the Constitution, see the *Yearbook on Human Rights for 1961*, p. 45.

[7] Relevant provisions of article 97 of the Penal Code:
(1) Any person who:
(*a*) in any manner whatsoever causes a breach of the law, or gives instructions for its commission, or
(*b*) aids or abets preparations for the commission of a breach of the law, is an accessory to the crime or offence concerned.
(2) Attempted complicity shall be deemed to be complicity.

is to afford ministers of religion a very large measure of protection.

"Article 271. Interference with a religious ministry.

"Any person who by acts or threats of violence prevents a minister of religion from exercising his ministry, shall be liable to the penalties referred to in the preceding article."

Article 271 provides the same penalties as those specified in the preceding article for any person who by acts or threats of violence prevents a minister of religion from performing his religious duties.

"Article 272. Interference with worship.

"Any person who creates a nuisance or disorder that obstructs, delays or interrupts worship in the places where it customarily takes place, shall be liable to imprisonment for a term of not less then fifteen days or more than one year, or to a fine of not less than 5,000 or more than 100,000 francs, or both."

The purpose of article 272 is to protect worship against disturbances and disorders which would have the effect of obstructing, delaying or interrupting it; it is sufficient for the disturbance to be of a nature to impede the regular course of worship.

It must be recognized that this article is applicable to a minister of religion himself, who, by his attitude or utterances, may provoke disturbances or disorder among his congregation, causing, for example, all or a part of the congregation to leave.

5. Personal safety and tranquility is guaranteed by the following articles:

"Article 299. Breach of domicile.

"(1) Any person who enters or remains in the domicile of another person against the latter's wishes shall be liable to imprisonment for a term of not less than ten days or more than one year, or to a fine of not less than 5,000 or more than 50,000 francs, or both.

"(2) The penalties shall be doubled if the offence is committed at night, or by means of threats, force or acts of violence.

"(3) Proceedings may be instituted only on complaint of the injured party."

The domicile referred to in article 299 should not be confused with the legal domicile referred to in the Eastern Civil Code[8] which defines it as "the place of the principal establishment". Article 299 refers to any premises serving as a dwelling, even provisionally, or a place in which a trade or profession is practised.

There must be entry or insistence on remaining; the legislator added the latter point in order to punish any person who, having entered regularly another person's domicile, refuses to leave.

To enter or remain is punishable only to the extent that the other party gains entry or remains against the will of the occupier; neither force nor threats of force need be used; refusal when called upon to leave is sufficient to constitute the offence. A person who employs subterfuge to gain entry or remain in the domicile of another person is acting contrary to the will of the occupier and is liable under this article.

The provisions of article 74 should be specified here.

Paragraph 2 provides for heavier penalties Where the offence is committed in one of the following circumstances: at night, by threats, force or acts of violence, but force and acts of violence include both assault and battery and violence inflicted on objects (breach of close, housebreaking, etc.).

In all cases, proceedings under article 299 are contingent upon a complaint from the injured party, i.e., the occupier.

Finally, it should be noted that, where the offence is committed by an official as defined in article 131 (6), the penalties provided in article 299 (1) and (2) are doubled (article 132 (2)).

"Article 300. Breach of correspondence.

"(1) Any person who, without the authorisation of the addressee, withholds or opens correspondence belonging to another person, shall be liable to imprisonment for a term of not less than fifteen days or more than one year, or to a fine of not less than 5,000 or more than 100,000 francs, or both.

"(2) This article does not apply to spouses, or to the father, mother, guardian or those customarily responsible for non-emancipated minors under twenty-one years of age."

The correspondence must have been addressed to another person; the term "correspondence" obviously includes all letters, cards, printed matter and packages containing letters or communications.

The correspondence must have been withheld or opened; by withholding is meant not only permanent withholding by means of physical destruction, but also temporery withholding in bad faith, fraudulent or systematic delay, etc.; the term "opening" refers to the act of opening correspondence that has been enclosed in a sealed envelope.

If the offence described in this article is committed b yan official as defined in article 131,[9] the penalties are doubled in conformity with article 132.[10]

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[8] The Civil Law of Cameroon has not yet been codified, so that there are two civil codes, one for each federated State.

[9] Relevant provisions of article 131: An official is defined, for the purposes of the present Code, as any public official, any person entrusted, even occasionally, with a public service or mission, Any judge, any officer or non-commissioned officer of the armed forces, any policeman acting in the performance of his duties or on the occasion of the performance of this duties.

[10] Relevant provisions of article 132: Any official found guilty of violence against another person shall be liable to imprisonment for a term of not less than six months and not more than five years, without prejudice to any severer penalties to which he may be liable.

The penalties specified in articles 189 (copying of administrative documents); 206 (documents, etc.); 207 (Official certificates); 291 (1) (illegal arrest); 292 (forced labour); 299 (breach of domicile); 300 (breach of correspondence); 310 (professional secrets); 315 (forgery of certificates), are doubled when the guilty party is an official.

As regards the implementation of article 130, paragraph (2), the offence of breach of correspondence does not apply as between spouses, so that either of them may open the other's correspondence and even withhold it without incurring a penalty; the same applies in the case of certain persons, to correspondence addressed to non-emancipated minors under twenty-one years of age.

"Article 305. Defamation.

"(1) Any person who, by any of the means described in article 152, imputes to another person an act or acts prejudicial to his honour or reputation, and cannot furnish the relevant proof, shall be liable to imprisonment for a term of not less than six days or more than six months, or to a fine of not less than 5,000 or more than 2 million francs, or both.

"(2) Proof of the truth of the imputation may always be offered except in the following cases:

"(*a*) Where the imputation concerns the private life of the victim;

"(*b*) Where it refers to facts more than ten years old;

"(*c*) Where it refers to an act constituting an offence which is covered by amnesty, or which led to a conviction that was otherwise quashed.

"(3) Proceedings may be instituted only on a complaint from the victim or his legal or customary representative, and the proceedings shall be terminated if the complaint is withdrawn before final judgement has been passed.

"(4) Proceedings shall be subject to a statutory limitation of four months from the date of the commission of the offence, or from the date of the last action in the prosecution or preliminary investigation.

"(5) This article shall be applicable to defamation directed against the memory of a deceased person, if it was the intention of the author of the defamation to prejudice the honour or reputation of the living heirs, spouses, or general devisees and legatees.

"(6) The penalties shall be reduced by half if the defamation is not public.

"(7) The penalties shall be doubled where the defamation is anonymous."

Paragraph (1) of article 305 precribes the penalties for public defamation.

Article 152, to which article 305 refers, is very broad as to the means employed for public defamation, since it covers "all procedures destined to reach the public", including therefore gestures, words, or cries made or uttered in public places, written and printed material, posters, etc., publicly distributed or exposed. The court must be satisfied that the defamation was public.

To constitute public defamation, it must be prejudicial to a person's honour or reputation; an act is prejudicial to a person's honour when it casts aspersions on that person's integrity or honesty; it is prejudicial to his reputation when it destroys or diminishes the esteem in which he is held by third persons.

It is not necessary that the person be named: it is sufficient if he can be identified from the indications given. As soon as the person in question proves that he as been prejudiced in his person by the defamation, he may lodge a complaint under article 305.

The author of the defamation may, however, escape prosecution if he can prove the truth of his imputation; where the law forbids him to furnish proof of an imputation deemed to be defamatory, he cannot escape prosecution.

The purpose of article 305, paragraph (2), is to establish the principle that proof of a defamatory act may be offered except in the three limiting cases enumerated.

Paragraph (3) makes all proceedings contingent upon a complaint from the victim or his legal or customary representative. Thus, the *ministère public* can never institute proceedings on its own initiative.

Paragraph (4) establishes a short statutory limitation of four months, and any stay of proceedings has the effect of re-establishing a statutory limitation of four months, and not the three-year prescription o fordinary law.

Paragraph (5) covers a special type of defamation, that directed against the memory of a deceased person.

However, in order to constitute an offence, the author of the defamation, by attacking the memory of the deceased, must have intended to prejudice the honour or reputation of his living heirs, spouses or devisees and legatees.

The defamatory act must be directed against the memory of the deceased; and it is thus by reference to the person of the deceased that the defamatory act must be evaluated and the possibility or impossibility of furnishing proof established.

Article 305 as a whole is applicable to paragraph (5); hence, prosecution is contingent upon a complaint from the heirs, spouses or devisees and legatees whose honour or reputation the author of the defamation intended to prejudice.

Defamation that is not public no longer constitutes a simple summary offence; it remains an offence, but it is punished less heavily.

The penalties are doubled when the defamation is anonymous.

"Article 307. Insults.

"(1) Any person who publicly, within the meaning of article 152, and without provocation employs in regard to another person, an insulting utterance or gesture, or a term of contempt or invective, which does not include the imputation of a specific act, shall be liable to imprisonment for a term of not less than five days or more than three months, or to a fine of not less than 5,000 or more than 100,000 franc, or both.

"(2) Proceedings may not be instituted except on complaint from the victim or his legal or customary representative, and the proceedings shall be terminated if the complaint is withdrawn before final judgement has been passed.

"(3) Proceedings shall be subject to a statutory limitation of four months from the date of the commission of the offence, or from the date of the last action in the prosecution or preliminary investigation.

"(4) This article shall be applicable to insult to the memory of a deceased person under the same conditions as specified in article 305 (5)."

Article 307 lays down the penalties for the offence of public insult; a private insult is classified as a petty offence.

An insulting utterance or gesture, or a term of contempt or invective must have been employed; an insulting utterance is any utterance prejudicial to one's honour or reputation that does not allege a specific act; invective is any damaging and violent utterance.

The insult must not have been provoked; provocation eliminates responsibility before the law, but if this is claimed by the accused, the burden of proof rests with him.

An insult of the kind described in this article must have been public in order to constitute an offence.

Unlike the provisions applying to defamation (article 306), apart from provocation, there are no exceptions applying to insult.

6. With few exceptions, the articles dealing with the protection of the family do not call for any comment.

"Article 337. Abortion.

"(1) Any woman who procures or consents to an abortion upon herselt shall be liable to imprisonment for a term of not less than fifteen days or more than one year, or to a fine of not less than 5,000 francs or more than 200,000 francs, or both.

"(2) Any person who procures an abortion, with or without the woman's consent, shall be liable to imprisonment for a term of not less than one or more than five years, and to a fine of not less than 100,000 or more than 200,000 francs.

"(3) The penalties prescribed in paragraph (2) shall be doubled:

"(*a*) In the case of a person who regularly performs abortions;

"(*b*) In the case of a person practising a medical profession or an occupation connected with that profession.

"(4) Furthermore, under the conditions laid down in articles 34 and 36 of this Code, the guilty party may have his place of business closed and may be prohibited from practising his profession."

"Article 338. Violence inflicted on a pregnant woman.

"Any person who, whether intentionally or not, by inflicting violence on a pregnant woman or on a child in the process of being born, causes the death or permanent disability of the child, shall be liable to imprisonment for a term of not less than five years, or more than ten years, and to a fine of not less than 100,000 or more than 2 million francs."

"Article 340. Infanticide.

"A mother who is the principal in or accessory to the murder of her child within one month of his birth shall be liable only to imprisonment for a term of not less than five or more than ten years; this provision shall not apply to other principals or accessories."

"Article 344. Corruption of morals.

"(1) Any person who, to satisfy the passions of another person, habitually induces, promotes or facilitates the debauchery or corruption of a person under eighteen years of age, shall be liable to imprisonment for a term of not less than one or more than five years, and to a fine of not less than 20,000 or more than 1 million francs.

"(2) Furthermore, the court may apply the penalties prescribed in article 30 of this Code, and may for the same period of time prohibit the condemned person from exercising paternal authority or guardianship."

"Article 350. Violence inflicted on children.

"(1) The penalties prescribed in articles 275, 277 and 278 of this Code are, respectively, death and life imprisonment if the offences dealt with in these articles are committed against a minor under fifteen years of age, and the penalties prescribed in articles 279 (1), 280 and 281 shall be in this case doubled.

"(2) The court may impose the penalties prescribed in article 30 of this Code for the offences enumerated in the present article."

"Article 351. Violence inflicted on ascendants.

"Article 275 prescribes the death penalty and articles 277 and 278 prescribe life imprisonment if the offences specified in the said articles are committed against the offender's legitimate, natural or adopted parents or upon any other legitimate ascendant, and the penalties prescribed in articles 279 (1), 280 and 281 shall be doubled."

"Article 352. Abduction of minors.

"Any person who, without fraud or violence, abducts, kidnaps or entices away a minor under eighteen years of age against the will of those responsible for his legal or customary custody, shall be liable to imprisonment for a term of not less than one or more than five years, and to a fine of not less than 20,000 or more than 200,000 francs.

"However, the present paragraph shall not be applicable to any person who proves that he had been misled as to the age of the victim.

"(2) Where an infant so abducted, kidnapped or enticed away marries his or her abductor, the present article shall not apply unless the marriage has been annulled."

"Article 355. Non-surrender of a child.

"Any person who, being entrusted with a child, does not surrender him to the persons entitled to claim him shall be liable to imprisonment for a term of not less than one or more than five years, and to a fine of not less than 20,000 or more than 200,000 francs."

"Article 356. Forced marriage.

"(1) Any person who forces another person to marry shall be liable to imprisonment for a term of not less than five or more than ten years, and to a fine of not less than 25,000 or more than 1 million francs.

"(2) Where the victim is a minor under eighteen years of age, and where extenuating circumstances apply, the term of imprisonment shall not be less than two years.

"(3) Any person who gives in marriage a girl under fourteen years of age or a boy under sixteen years of age, shall be liable to the penalties prescribed in the foregoing paragraphs.

"(4) Furthermore, the court may forbid the condemned person to exercise parental authority or guardianship during the period specified in article 31 (4) of this Code."

Since the civil law requires the consent of both parties to a marriage, the purpose of article 356 is to punish any person who forces another person to marry, thus vitiating his consent, or who gives in marriage a minor who has not reached the age of consent.

These provisions, especially those in paragraphs (1) and (3), are based on the Eastern Decree of 13 November 1945, which equates marriage without consent or marriage between non-nubile persons with enslavement or the slave-trade.

"Article 358. Abandonment of the home.

"(1) A spouse or father or mother of a family who, by abandoning the household, without just cause, evades all or part of his or her moral or material obligations to the spouse or children, shall be liable to imprisonment for a term of not less than three months or more than one year or to a fine of not less than 5,000 or more than 500,000 francs.

"(2) If the offence is committed to the prejudice of a spouse only, preceedings may not be instituted unless a complaint has first been made by the abandoned spouse.

"(3) A guardian, or anyone customarily responsible, who evades his legal or customary obligations to the children in his charge, shall be liable to the same penalties.

"(4) Furthermore, the court may impose the penalties specified in article 30 of this Code, and may forbid the condemned person to exercise guardianship or curatorship for the period specified in article 31 (4) of this Code, and may likewise prohibit him from exercising parental authority over one or more of his own children for the same period.

"(5) Where the accessory has received all or part of the dowry, he shall be liable to imprisonment for a term of not less than three months or more than one year, and to a fine of not less than 50,000 or more than 500,000 francs."

Article 358 prescribed the penalties for any person who abandons his home or who evades his moral or material obligations to his spouse or children.

This article should not be confused with article 180, which prescribes the penalties for non-support resulting from a default in the alimony payments ordered by the court in execution of a family obligation.

Article 358 refers not only to the father or mother of a family but also the spouse of a childless marriage who evades his or her obligations to the other spouse.

As the legislator has not been precise on this point, it may be asked whether this provision applies to natural children; this seems unlikely, for then there would be no question of a household; on the other hand, the provision does apply to adopted children who are an integral part of the household.

The legislator is aware that it has frequently happened that the recipient of a dowry incites his wife to leave the household so that he can receive a second dowry; he is in this case accessory to his wife, but is punished more severely than an ordinary accessory, being liable to a minimum fine of 50,000 rather than 5,000 francs.

The foregoing are the principles involving human rights that have been incorporated in the Cameroonian Penal Code.

LAW NO. 67-LF-6 OF 12 JUNE 1967 TO INSTITUTE THE LABOUR CODE OF CAMEROON [11]

TITLE ONE

GENERAL PROVISIONS

Section 1.—(1) This Act shall govern labour relations between wage earning workers and employers and also between the latter and apprentices under their authority.

(2) 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, whether an individual or a public or private corporation, who is styled the "employer". For the purpose of determining whether

[11] *Official Gazette of the Federal Republic of Cameroon*, No. 3 (supplementary) of 1 September 1967.

a person is a worker, no account shall be taken of the legal position of employer or employee.

(3) This Act shall not apply to persons covered by the Public Service Rules and Regulations, auxiliary administrative employees subject to special rules and regulations or members of the armed forces and persons considered as such.

(4) This Act shall further not apply to any person who is subject to customary law and works within the traditional framework of the family.

Section 2.—(1) The right to work shall be recognised as a sacred right belonging to each citizen. The State shall therefore make every effort to help citizens to find and to remain in employment.

(2) Work shall also be a national duty incumbent on every able-bodied adult citizen; the State shall accordingly be entitled to place upon citizens certain civic obligations in the general interest, under the conditions and within the limits defined in this Section.

(3) With the above reservations, forced or compulsory labour shall be absolutely forbidden.

(4) "Forced or compulsory labour" shall mean any labour or service demanded of an individual under threat of penalty, being a labour or service which the indivdual has not freely offered to perform.

(5) The term "forced or compulsory labour" shall not include:

1. Any work or service exacted in virtue of compulsory military service laws for work of a purely military character;

2. Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

3. Any work or service exacted in cases of emergency, that is to say, in the event of war, rebellion against legal authority or a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animals, insects or plant pests, and in general any circumstances that would endanger or threaten to endanger the existence or the well-being of the whole or part of the population;

4. Minor communal services in the general interest, defined by municipal councils and trustee authorities and therefore to be considered as normal civic obligations incumbent upon the members of the community, provided the population concerned or its direct representatives have been consulted on the need for such services.

Title Two

TRADE UNIONS AND EMPLOYERS' ASSOCIATIONS

Chapter I

Purposes of trade unions and employers' associations. Their establishment

Section 3. — The law recognises the right of workers and employers, without distinction whatsoever, to establish freely and without prior authorisation organisations (trade unions or employers associations) for the study, defence, promotion and protection of their interests, particularly those of an economic, industrial, commercial or agricultural character, and for the social, economic, cultural and moral progress of the members. All political activity by such unions and associations which is not connected with the furtherance of the above objects shall be prohibited.

Section 4. — (1) Every worker and employer without distinction whatsoever shall have the right to join a trade union or employers' association of his own choosing, in his occupation or kind of business, subject only to the rules of the said union or association.

(2) However, the exercise of the above right may be restricted, in conformity with the provisions of the international conventions on the subject, by decree of the President of the Federal Republic of Cameroon.

(3) Workers belonging to trade unions shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

(4) They shall also be protected against any practice tending to make their employment subject to the condition that they shall not join a trade union or shall relinquish union membership, or causing their dismissal or other prejudice by reason of union membership or participation in union activities if the said activities be lawful having regard to the relevant provisions.

Section 5.—(1) Worker's and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives freely and to organise their administration, provided they respect the law.

(2) Organisations of workers and employers shall enjoy adequate protection against any acts of interference by each other.

Section 6. — (1) A trade union or employers' association shall not have legal existence until the day following that on which it has been registered by a registrar of trade unions and employers' associations in conformity with the provisions of this Act.

. . .

LAW NO. 67-LF-7 OF 12 JUNE 1967 TO ESTABLISH A FAMILY ALLOWANCES CODE [12]

PART I

FIELD OF APPLICATION

Section 1. — A system of family allowances shall be established for the benefit of all the workers referred to in section 1 of the Labour Code who work in Cameroon under the direction and authority of another person, natural or corporate, public or private, considered as their employer, in consideration of remuneration from which they draw their normal means of existence, and who, at the same time, have as dependents one or more children residing in Cameroon.

Chapter 1

RECIPIENTS

Section 2. — 1. For the purposes of this law, the term "recipients" shall mean the natural persons to whom in their own right the allowances are due.

2. The recipient must satisfy the conditions prescribed in this chapter.

Section 3. — 1. The recipient must be a wage-earner as defined in section 1 of the Labour Code and he must have the qualifications prescribed in section 1 of this law.

2. His remuneration must be at least equal to the guaranted minimum wage for all occupations which is in force at the place of employment.

3. He must be actually working at least eighteen days or one hundred and twenty hours per month.

4. The following shall be considered as periods during which a person is actually working:

(*a*) Absences for regular leave;

(*b*) Absences due to industrial injuries and occupational diseases;

(*c*) Absences, up to a maximum of six months, for illness duly certified by a doctor or by an authorized official of the Public Health Services;

(*d*) For female employees, the periods of rest provided for in the Labour Code as maternity leave;

(*e*) Absences, up to a maximum of three months, due to "force majeure", duly attested by the competent Inspector of Labour and Social Legislation at the place of execution of the contract.

Section 4. — The recipient must reside in Cameroon, provided that a recipient whose work is interrupted for one of the reasons specified in section 3 and who transfers his place of residence outside Cameroon shall continue to receive family allowances under the conditions and in accordance with the terms specified in the conventions provided for in section 78 of the law organizing a system of Social Insurance.

Section 5. — 1. The right to family allowances shall be acquired in priority by the father, by virtue of his employment, or in his absence by the mother.

2. In the latter case, if the mother is married she shall have the onus of proving that her husband cannot in any way have the benefit of the allowances established by this law or granted by virtue of a special system.

Section 6. — Where the husband and the wife are both wage-earners, the family allowances shall be made out and settled in the name of the one who has the benefit of the most advantageous system.

Section 7. — Workers receiving a special category of family allowances paid from the budget of a public collectivity and workers whose wives have the benefit of such allowances shall not have the benefit of this law.

Section 8. — The living partner of a beneficiary, even if he/she does not work, shall continue to receive family allowances provided that he/she keeps and entertains the children who were dependents of the deceased recipient.

Chapter 2

CHILDREN GIVING THE RIGHT TO RECEIVE FAMILY ALLOWANCES

Section 9. — 1. Within the meaning of this law, children who are actually dependents of the recipients and who come within one of the following categories shall give the right to receive family allowances;

(1) Those born of the worker and his wife, provided that their marriage has been registered in the Civil Status Registry Office;

(2) Those whom the wife of the beneficiary has from a previous marriage, where there has been a properly declared death or a legally pronounced divorce, except where the children remain dependents of the first husband.

(3) Those in respect of whom a married worker has completed an adoption or an adoptive legitimation in accordance with the legislation in force;

(4) Those of a female employee under the conditions prescribed in section 5;

(5) Children born without legal marriage but recognised.

2. For the purpose of this section, a person having a child as a dependent shall mean a

[12] *Ibid.*, No. 4 (supplementary) of 15 September 1967.

person who provides accommodation, food and education for the child on a regular basis.

Section 10. — Except in the particular case considered in paragraph 2 of subsection 1 of the preceding section, the children referred to in the preceding section must reside in Cameroon.

Section 11. — It shall not be permitted to receive, for the same child, the benefit of the allowances established by this law and that of another system of family allowances or of benefits considered as such existing in Cameroon or any other country whether the said system be established by law, regulations or a convention.

Part II

ALLOWANCES

Section 12. — Family allowances shall consist of:

(1) Aid to mothers and infants in the form of prenatal allowances, maternity allowances, grants of medical fees for pregnancy and maternity and any allowances in kind;

(2) Family allowances properly so called;

(3) A daily allowance paid to female employees who are on maternity leave.

Chapter 1

Prenatal allowances

Section 13. — Prenatal allowances shall be granted to every female employee and to the wife of every wage-earning worker at the time of each pregnancy properly declared to the Social Insurance Fund. These allowances shall be calculated on the basis of nine times the monthly rate of the family allowance granted for one child.

Section 14. — The granting of prenatal allowances shall be subject to medical examinations the number and frequency of which shall be prescribed by an order of the Minister of Labour and Social Legislation.

Section 15. — If the doctor attests that the orders issued for the protection of the health of the mother and child are not being followed, the Social Insurance Fund may, after an investigation, discontinue the payment of all or part of the fraction of the allowance which has become due.

Section 16. — Subject to the preceding provisions, the terms for the granting and the payment of prenatal allowances shall be prescribed by an order of the Minister of Labour and Social Legislation.

Chapter 2

Maternity allowances

Section 17. — 1. A maternity allowance shall be granted to every female employee and to every woman who is the wife of a wage-earning worker where the said female employee or woman gives birth, under medical supervision, to a viable child.

2. In the event of a multiple birth, each birth shall be considered as a separate maternity case.

Section 18. — In the event that an allowance is liable not to be used for the benefit of the child, the National Social Insurance Fund may, after an investigation, discontinue the payment of all or part of the allowance or pay it over to a charitable organisation or a qualified person who shall be required to use it exclusively for the care of the child.

Section 19. — 1. Subject to the preceding provisions, the terms for the granting and the payment of maternity allowances shall be prescribed by an order of the Minister of Labour and Social Legislation.

2. The terms shall include in particular the requirement that there be a medical attestation of the birth of the child.

Chapter 3

Family allowances properly so called

Section 20. — 1. Family allowances shall be granted to a worker for each child of less than fourteen years of age who is his dependent.

2. The age limit shall be raised to eighteen years for persons who have been placed in apprenticeship and to twenty-one years for persons who are continuing their studies or who, because of an incapacity or an incurable illness, are not able to undertake remunerative employment.

3. Family allowances shall be maintained during periods of interruption of studies or apprenticeship caused by illness, up to a maximum of one year from the date of the interruption.

4. The award of scholarships shall be no bar to the granting of family allowances. Neither shall apprenticeship unless the apprentice receives remuneration equal to or greater than the amount of the guaranteed minimum wage for all occupations.

Section 21. — The amount of family allowances shall be calculated by the month. Where a child begins or ceases, in the course of a month, to give the right to receive a family allowance, the latter shall be due for the whole month.

Section 22. — Family allowances shall be paid at regular intervals not exceeding three months and shall be paid at the due date.

Section 23. — 1. The payment of family allowances shall be subject in particular to:

(1) Regular attendance by children of school age at a school or other educational establishment or at a vocational training establishment, except where this is impossible and a certificate to that effect has been made out by the appropriate authority.

(2) A medical examination of the child every six months during his first year and annually thereafter, up to the age at which the child is normally covered by the school health service.

2. The payment of the allowances may be suspended if the orders concerning the protection of the health of the mother and child are not followed or if the allowances are not used in the interest of the children.

Section 24. — The terms for the granting and payment of family allowances and the conditions under which payment may be suspended as provided for in the preceding section shall be prescribed by an order of the Minister of Labour and Social Legislation.

Chapter 4

DAILY ALLOWANCE PAID TO FEMALE EMPLOYEES ON MATERNITY LEAVE

Section 25. — 1. In addition to the prenatal and maternity allowances provided for in chapters I and II of this Part, female employees shall receive a daily allowance during the period of suspension of work provided for at the time of child-birth by the Labour Code.

2. This allowance shall be paid to female employees who, at the time of the suspension of the contract, have worked six consecutive months for one or more employers. The absences provided for in section 3 shall be considered as time during which the woman concerned was working.

3. The said allowance shall be equal to half the wage actually paid at the time of suspension of the contract of employment or to half the maximum prescribed by the regulations in force for the calculation of the contributions to be paid by employers to the National Social Insurance Fund, if the wage received exceeds the said maximum.

4. The said allowance shall be increased to two-thirds of the remuneration thus calculated where the female employee who is the beneficiary has already given birth to two children giving the right, at the time of the suspension of the contract, to receive the family allowances provided for in this law.

Section 26. — The terms of the granting and the payment of this allowance shall be prescribed by an order of the Minister of Labour and Social Legislation.

Chapter 5

GRANTS OF MEDICAL FEES FOR PREGNANCY AND MATERNITY

Section 27. — In addition to the allowances provided for in the preceding chapters, the National Social Insurance Fund may assume responsibility for part of the medical expenses resulting from pregnancy and delivery examinations and the medical examination of the child at the age of six months, in the case of families of workers properly registered under conditions which shall be prescribed by an order of the Minister of Labour and Social Legislation.

Chapter 6

HEALTH SERVICES AND SOCIAL WELFARE SERVICES

Section 28. — Allowances in kind may also be granted to the family of a worker and to any other qualified person. The said family or person shall be required to use these allowances exclusively for the care of the child. These allowances shall be chargeable to a special heading in the budget of the National Social Insurance Fund for health and social welfare services.

Section 29. — In addition to the allowances provided for in the preceding Section, the budgetary heading for health and social welfare services of the National Social Insurance Fund shall cover, where applicable, the following operations:

(1) The intitution, management and maintenance of the health and social welfare services of the Fund, which shall be responsible in particular for the management of the allowances in kind provided for in the preceding section;

(2) Where applicable:

— The granting of subsidies or loans to institutions, establishments and charitable organisations concerned with the health and social wellbeing of the families of recipients;

— The acquisition, construction, leasing, repair, improvement and management of any establishment concerned with health and social welfare that may be set up for the benefit of the families of workers;

— Encouragement and aid for the construction and improvement of housing for the families of workers.

Section 30. — 1. The annual programme in the field of health and social welfare shall be drawn up by the Health and Social Welfare Committee established by section 25 of the law organizing a system of Social Insurance.

2. This programme shall be carried out in accordance with the provisions of the said law.

. . .

CENTRAL AFRICAN REPUBLIC

ORDINANCE NO. 67/01 OF 13 JANUARY 1967 ESTABLISHING A CERTIFICATE FOR CINEMATOGRAPHIC FILMS [1]

Article 1. No film may be shown in the territory of the Central African Republic unless it has been examined by a commission and has received a certificate.

Article 2. A Commission shall be established, under the chairmanship of the Minister of Information or his representative, for the supervision of cinematographic films.

The Commission shall meet once a week to examine all films to be shown in the territory of the Republic.

Article 3. The Minister of Information shall transmit to the President of the Republic for the Council of Ministers the minutes prepared by the Commission as a record of the proceedings after each meeting.

Article 4. Any infringement of this Ordinance shall be punishable by a fine of 50,001 to 1 million francs.

Furthermore, in the case of a first infringement, the theatre may be temporarily closed, and in the case of a repeated infringement, it may be closed permanently.

[1] *Journal officiel de la République centrafricaine*, No. 3 of 1 February 1967.

ORDINANCE No. 67/06 OF 24 JANUARY 1967 RATIFYING A CONVENTION ON LEGAL MATTERS BETWEEN THE CENTRAL AFRICAN REPUBLIC AND THE FRENCH REPUBLIC [2]

Article 1. The *Convention de cooperation en matière de justice* (Convention on Co-operation in Legal Matters), between the Government of the Central African Republic and the Government of the French Republic, signed at Bangui on 18 January 1965, is hereby ratified.

...

[2] *Ibid.*, No. 4 of 15 February 1967.

ORDINANCE No. 67/08 OF 1 FEBRUARY 1967 AMENDING AND SUPPLEMENTING VARIOUS ARTICLES OF THE PENAL CODE [3]

...

Article 231. Persons guilty of theft shall be liable to the death penalty if any or all of them use or threaten to use a weapon.

Article 232. Any person guilty of theft committed in three of the following circumstances shall be liable to a penalty of imprisonment with hard labour for life:

(1) If the theft is committed at night;

(2) If it is committed by two or more persons;

(3) If the crime is committed either by means of housebreaking from without or within, scaling or false keys in an inhabited or habitable house, apartment, room or lodging or in a building or warehouse, or by impersonating or wearing the uniform of an officer of the civil or military authorities or using a false warrant of the civil or military authorities;

(4) If the theft is committed with violence.

The same penalty shall apply in cases of robbery with violence if the incapacity to work caused by such violence equals or exceeds twenty days.

Article 232 bis. Any person who is guilty of theft committed by one of the means enumerated in paragraph 3 of the preceding article, or who has used a motor vehicle to facilitate commission of the theft or escape, shall be liable to the same penalty of imprisonment with hard labour for a limited time.

The same penalty shall be applicable to any person guilty of robbery with violence if no incapacity to work is caused by such violence or if such incapacity is of less than twenty days' duration.

Article 233. Any person guilty of theft committed at night, or in a house, building or warehouse, or theft committed in day-time in one of the following circumstances, shall be liable to a penalty of imprisonment for five to ten years:

(1) If the theft is committed in conjunction with others;

(2) If the thief is a servant or paid employee, even though the victim is a person other than his master but is in his master's house or in the house to which he accompanies his master, or if he is a workman, journeyman or apprentice in the house, workshop or shop of his master, or a person ordinarily working in the building in which he commits the theft.

[3] *Ibid.*, No. 5, 1 March 1967.

ORDINANCE No. 67/27 OF 19 APRIL 1967 CONCERNING THE SEQUESTRATION OF THE PROPERTY OF FORMER MEMBERS OF THE GOVERNMENT AND OTHER PERSONS ARRESTED FOLLOWING THE POLITICAL EVENTS OF 1 JANUARY 1966 [4]

...

Having regard to Ordinance No. 66-27 of 31 March 1966 concerning the property of former members of the Government;

...

Article 1. The above-mentioned Ordinance No. 66-27 of 31 March 1966 is hereby rescinded and replaced by the following provisions:

Article 2. All the movable and immovable property belonging to former members of the Government and other persons arrested following the events of 1 January 1966 is hereby sequestrated.

Article 3. The National Development Bank is appointed sequestrator. It shall be responsible for the management of the property and is authorized to realize it, if it thinks fit.

Article 4. The sequestion may be discharged and the fixed property restored to the persons referred to in Article 2 on payment in full of the loan granted to them by the National Development Bank.

...

[4] *Ibid.*, No. 10, 15 May 1967.

CHAD

DECREE No. 33/PR-MTJS-DTPS OF 31 JANUARY 1967, TO PRESCRIBE CONDITIONS FOR THE GIVING NOTICE OF AND TO FIX THE PERIOD TO BE OBSERVED [1]

(EXTRACTS)

1. The period of notice shall be fixed as follows:

(1) one week for labourers and wage earners remunerated on an hourly, daily or weekly basis and for domestic servants, attendants and caretakers, irrespective of how their wages are determined;

(2) one month for labourers and wage earners remunerated on a monthly basis and for salaried employees in commerce and offices, chargehands, foremen and supervisors, irrespective of how their wages are determined;

(3) in the case of persons holding a written contract or employment the minimum shall not be less than—

(*a*) one month for shaff whose duties or skills place them in an occupation or class for which a period of probation of less than two months is provided for by custom or collective agreement;

(*b*) two months for staff whose duties or skills place them in an occupation or class for which a period of probation of between two and three months is provided for by custom or collective agreement;

(*c*) three months in all other cases.

2. The right to notice may be claimed only on the expiry of the period of probation, if any.

If there is no period of probation, the right to notice may be claimed only on the expiry of a period equal to the period of notice, as specified above.

3. The period of notice in terms of section 1 shall run from the day of the week to the corresponding day of the next week, or the day of the month to the corresponding day of the next month, or the appropriate month, as the case may be. It shall be reckoned from the date on which notice is given by the party terminating the contract. Notice of termination shall be given in writing.

4. A worker engaged for a specified period or task may be dismissed without notice on its completion, on condition that evidence can be produced that the period or task was fixed by agreement between the parties on the worker's engagement and that the time taken to complete the task does not exceed three months.

[1] *Journal officiel*, No. 3 of 1 February 1967. The text of the Decree in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series*, 1967—Chad. 1.

CHILE

NOTE [1]

LEGISLATION

I. Acts

Act No. 16,615 of 18 January 1967 (*Diario Oficial,* No. 26,647 of 20 January 1967), amends the Political Constitution of the State.[2] Replaces article 10 which refers to property rights.

The text of the Act is given below.

Act No. 16,610 of 11 January 1967 (*Diario Oficial,* No. 2,661 of 6 February 1967), extends family allowances to mothers of illegitimate children, adopted children or those legitimized by adoption, provided that they bear the maintenance costs.

Act No. 16,618 of 3 February 1967 (*Diario Oficial,* No. 26,687 of 8 March 1967), establishes the definitive text of the Minors Act (Ley de Menores). Extracts from that Act appear below.

Act No. 16,662 of 5 April 1967 (*Diario Oficial,* No. 26,722 of 20 April 1967), amends article 376 of the Labour Code (*Código del Trabaja*) and the statues of the trade union councils.

Act No. 16,625 of 26 April 1967 (*Diario Oficial,* No. 26,730 of 29 April 1967), Rural workers' Trade Unions. Establishes the agricultural trade union system and the right of workers and employees to belong to trade unions.

Act No. 16,636 of 11 July 1967 (*Diario Oficial,* No. 26,790 of 13 August 1967), introduces amendments to Act 15,576 of 1964 on abuses in advertising. Extracts from the Act appear below.

Act No. 16,639 (*Diario Oficial,* No. 26,798 of 21 July 1967), amends the Code of Military Justice (*Código de Justicia Militar*), the text of which was established by Decree No. 2,226 of 19 December 1944 by the Ministry of Justice.

Act No. 16,640 of 16 July 1967 (*Diario Oficial,* No. 26,804 of 28 July 1967), agrarian reform. A summary of the Act appears below.

Act No. 16,643 (*Diario Oficial,* No. 26,835 of 4 September 1967), establishes the definitive text of Act No. 15,576 of 1964 on abuses in advertising.

Act No. 16,672 of 13 September 1967 (*Diario Oficial,* No. 26,837 of 2 October 1967), amends the Political Constitution of the State and establishes new provincial districts and electoral procedures.

Act No. 16,677 of 27 September 1967 (*Diario Oficial,* No. 26,861 of 6 October 1967), replacing, in the single article of Act No. 15,395 of 1963, the words "Appeals Court of Santiago" (*Corte de Apelaciones de Santiago*) by "Military Court" (*Corte Marcial*).

Act No. 16,676 of 27 September 1967 (*Diario Oficial,* No. 26,868 of 16 October 1967), amends article No. 125 of the Labour Code (*Código del Trabajo*) in respect of the working hours of wireless operators, telephone operators and telephone testers.

II. Supreme decrees

Decree No. 700 of 8 November 1966 of the Ministry of Foreign Affairs (*Diario Oficial,* No. 26,634 of 5 January 1967), promulgates the International Convention for the Safety of Life at Sea, concluded in London on 17 June 1960.

Decree No. 1,413 of 13 March 1967 of the Ministry of Education (*Diario Oficial,* No. 26,707

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

[2] For extracts from the Political Constitution of the State, see *Yearbook on Human Rights, 1946,* pp. 58-60.

of 3 April 1967), rescinds Decree No. 4,665 of 9 May 1966 on Religious Education.

Decree No. 140 of 21 March 1967 of the Ministry of Public Health (*Diario Oficial,* No. 26,743 of 17 May 1967), ratifies the Organic Statute of the Chilean Medical School (*Colégio Médico de Chile*).

Decree No. 209 of 18 April 1967 of the Ministry of Public Health (*Diario Oficial,* No. 26,752 of 29 May 1967), ratifies the Statute of the Chilean Midwifery School (*Colégio de Matronas de Chile*).

Decree No. 2,289 of 18 April 1967 of the Ministry of Education (*Diario Oficial,* No. 26,755 of 1 June 1967), establishes the new text of the General Statute of the Inspectorate of Public Education (*Superintendencia de Educación Publica*).

Decree No. 217 of 21 April 1967 of the Ministry of Public Health (*Diario Oficial,* No. 26,757 of 3 June 1967), establishes the Advisory Council (*Consejo Consultativo*) of the Ministry of Public Health to advise the Ministry on the orientation, promotion, programming, co-ordination and integration of public health activities at the national level.

Decree No. 40 of 24 October 1967 of the Ministry of Justice (*Diario Oficial,* No. 26,897 of 20 November 1967), regulations concerning minimum obligations to be observed in implementing a policy of protection and treatment for juvenile offenders. Extracts from the Decree appear below.

Decree No. 1,130 of 21 July 1967 of the Ministry of the Justice (*Diario Oficial,* No. 26,821 of 18 August 1967), regulating accident insurance for passengers and pedestrians in public transport.

ACT No. 16,615 OF 18 JANUARY 1967 AMENDING THE POLITICAL CONSTITUTION OF THE STATE [3]

Single article. The following amendment is made to the Political Constitution of the State of 25 May 1833, the final text of which was established by resolution of 18 September 1925, and amended by Acts Nos. 7,727 of 23 November 1943, 12,548 of 30 September 1057, 13,296 of 2 May 1959 and 15,295 of 8 October 1963:

Article 10

Article 10 (10) shall be replaced by the following text:

"(10) *The right of property in its various forms.*

"The mode of acquiring, using, enjoying and disposing of property shall be laid down by the law; the law shall also establish the limitations and obligations guaranteeing the social purpose of property and making it accessible to all. The social purpose of property shall include all the requirements inherent in the over-all interest of the State, in the public interest, in public health, in the optimum use of sources of production and of power supplies for service to the community, and in the improvement of the living conditions of the mass of the population.

"When the interests of the national community so require, the law may reserve to the State the exclusive ownership of natural resources, and of productive or other property which it declares to be of outstanding importance for the economic, social or cultural life of the country. The State shall also promote the proper distribution of property and the building up of family property.

"Nobody may be deprived of this property save by virtue of a general or special legislative provision authorizing expropriation in the public or social interest as laid down by the legislator. The expropriated person shall always be entitled to compensation the amount and conditions of payment of which shall be fairly established taking into account the interests of the community and of the expropriated persons. The law shall determine the rules for fixing compensation, shall specify the court which shall hear complaints regarding the amount thereof, the court giving its decision always in conformity with the law, shall establish the manner of paying compensation and shall fix the period and manner in which the expropriator shall take physical possession of the expropriated property.

"In the event of the expropriation of rural holdings, compensation shall be equivalent to the assessment in force for land tax purposes, plus the value of any improvements not included in the said assessment; the said compensation may be paid partly in cash and the remainder in instalments over a period not exceding thirty (30) years, the whole procedure being carried through in the manner and conditions laid down by the law.

"The law may reserve all waters throughout the country as national property for public use and may provide for the expropriation of privately owned waters with a view to their incorporation into national property. In such circumstances, the owners of the expropriated waters shall

[3] *Diario Oficial,* No. 26,647 of 20 January 1967.

continue to use them as the holders of a usage right and shall be entitled to compensation only when, upon the total or partial extinction of the said usage right, they are in fact deprived of the waters which are necessary to meet, by rational and advantageous use, the needs satisfied prior to the extinction of the right.

"Small rural property holdings worked by their owners, and housing occupied by the owner thereof, may not be expropriated without preliminary payment of compensation.

"Whereas the observation of the President of the Republic has not been accepted and the Controller-General of the Republic in Decree No. 3633 dated the 14th day of the present month, endorsing the opinion of the Executive, concludes that the foregoing text should be promulgated, it shall be promulgated and implemented as a law of the Republic and its provisions shall be regarded as incorporated in the Political Constitution of the State, as authorized by article 110 of the Constitution."

MINORS ACT

Promulgated by Act No. 16,618 of 3 February 1967 [4]

Preliminary title

Article 1. This Act shall apply to children and young persons under statutory age, without prejudice to any special provisions establishing a different age for specific purposes.

Where there is any doubt regarding the age of a person who appears to be a minor, he shall be considered provisionally as such while his age is being determined.

Title I

NATIONAL YOUTH COUNCH

Article 2. A body corporate under public law, known as the National Youth Council, is hereby established. It shall be responsible for planning, supervising, co-ordinating and promoting the organization and operation of public or private institutions and services designed to assist and protect children and young persons living in irregular circumstances.

In accordance with the above provision, it shall have special responsibility for:

(*a*) Action to prevent children and young persons from leading irregular lives;

(*b*) Measures to assist and protect children and young persons in the various types of irregular situations in which they may be living and, principally, measures to change the situation when their families have little or no means;

(*c*) Measures to eliminate vagrancy and begging by children and young persons; and

(*d*) Measures to standardize legislation concerning children and youth whether or not they are leading irregular lives.

This body corporate shall constitute a functionally decentralized public service, shall report to the Government through the Ministry of Justice and shall be subject to financial supervision by the Comptroller General of the Republic.

Article 3. Without prejudice to the provisions of the preceding article, the National Youth Council shall have the following functions:

(*a*) To plan measures for the protection of children and young persons living in irregular circumstances, except in matters relating to their physical or mental health, which shall be governed by the standards laid down by the Ministry of Public Health;

(*b*) To co-ordinate welfare measures taken for the benefit of children and young persons living in irregular circumstances by official, semi-official, autonomous, municipal or private institutions;

(*c*) To prepare minimal programmes to be carried out by the institutions referred to in section (*b*) above within their specific fields of competence and in conformity with their statutes, and to supervise the implementation of those programmes;

(*d*) To promote the establishment, maintenance and development of the welfare services and institutions necessary to fulfil the purposes of this Act;

(*e*) To acquire and dispose of property of any kind, administer such property and conclude contracts or legal agreements;

Funds obtained by the National Youth Council from national or foreign organizations must be authorized by the President of the Republic and shall be guaranteed by the State.

(*f*) To allocate funds to institutions mentioned in section (*b*) of this article which are

[4] *Ibid*, No. 26,687 of 8 March 1967.

helping to achieve the Council's objectives. The beneficiary institution or service shall submit a statement to the Comptroller General of the Republic showing how those funds are invested;

(*g*) To grant associate status to private bodies corporate which co-operate in achieving the aims mentioned in article 2 of this Act provided, as a minimum requirement, that they carry out the programmes referred to in section (*c*) of this article, and to withdraw such associate status.

Private institutions shall not receive subsidies unless they are granted the status referred to in the preceding paragraph.

Suspension or denial of associate status, when it affects the right to receive a subsidy under the Budget Act or under special legislation, shall require the vote of two thirds of the Governing Board including the votes of the Ministers present, who shall not be less than two in number.

In any event, suspension or denial of associate status shall be decided by a substantive decision which shall be notified to the institution concerned by registered letter.

A decision suspending or denying the associate status referred to in the third paragraph of this section may be appealed to the competent Appeals Court within twenty days from the date of the notification mentioned in the preceding paragraph.

Appeals shall be heard by the competent Appeals Court, and the intervention of the Court shall not entail suspension of the effects of the Council's decision.

(*h*) To keep a register of children and young persons living in irregular circumstances, and of the institutions which may be called upon to help them;

(*i*) To report to the Ministry of Justice at its behest, what institutions concerned with assistance to and protection of children and young persons living in irregular circumstances have applied for incorporation or amended their statutes, and to request that they be deprived of legal status in the event that they fail to fulfil the purposes for which they were established, or in compliance with decisions adopted by the Council in the exercise of its powers;

(*j*) To sponsor and finance regular or temporary training courses for heads of families and persons engaged in the re-education of children aand young persons living in irregular circumstances, and the organization of seminars congresses and research projects by universities or other institutions.

A supreme decree of the President of the Republic specifying the beneficiary, the amount and the purposes of the funds allocated by the National Youth Council as indicated in the preceding paragraph, shall be required.

(*k*) To establish or dissolve advisory Provincial Councils, consisting of honorary members, and to regulate their activities, and

(*l*) To appoint a State official for the purposes indicated in articles 28, 29 and 30 each year in localities which have no Reformatory (*Casa de Menores*), after a report from the local juvenile court.

TITLE II

THE YOUTH POLICE AND ITS DUTIES

Article 15. A department known as the "Youth Police", staffed by people specializing in working with young persons, is hereby established within the Police Department. The Department shall establish Youth Police Stations or Auxiliary Youth Police Stations in the chief city of each province and in localities which have a juvenile court.

The Youth Police shall:

(*a*) Take into custody children and young persons living in irregular circumstances who need care or protection;

(*b*) On instructions from the National Youth Council, exercise supervision over places regarded as centres for the corruption of children and young persons;

(*c*) Inspect public performances, entertainment centres or places where the public congregates in order to ensure the exclusion of children and young persons when those places are unsuitable; and

(*d*) Report any act punishable under article 62 to the juvenile court.

Article 16. Young persons under eighteen years of age may only be detained at Youth Police Stations or Auxiliary Youth Police Stations or in establishments specified by the President of the Republic in the regulations.

If a person who is obviously a minor is detained in an establishment other than those referred to in the preceding paragraph, the head of that institution, where there is one, shall be suspended from his duties for thirty days as a disciplinary measure. If the offence is repeated, the suspension shall be for three months. These penalties shall be without prejudice to any other liability he may incur for that offence.

The Youth Police shall hand young persons over to the local Reformatory (*Casa de Menores*) or to the establishment indicated in the regulations within twenty-four hours, except when they have committed a misdemeanor and they are found to be living in regularly constituted homes, in which case they shall be returned to their parents or guardians, who shall be notified of the offence committed.

Young persons detained by the Investigation Unit shall be transferred immediately to the establishments indicated in the first paragraph of this article.

Article 17. The heads of detention centres shall be prohibited from allowing persons under eighteen years of age to communicate with other detainees or offenders over that age.

Any official who fails to comply with this provision shall be disciplined by being suspended from his duties for a period of up to one month.

TITLE III

THE JUVENILE COURTS, THEIR ORGANISATION AND POWERS

Article 18. The Juvenile Courts shall hear the cases dealt with under this title and shall have the power to enforce any decisions relating thereto.

These courts shall form part of the Judiciary and shall be governed by the provisions relating to the higher courts set forth in the code governing the organization of courts and related laws in so far as those provisions are not incompatible with the provisions of this Act and of the Act concerning desertion of the family and payment of maintenance.

. . .

Article 20. The President of the Republic may establish one or more Juvenile Courts within the limits of Government resources, in communes, groups of communes, departments and groups of departments where the large population, difficulties of communication or the slow processing of cases involving young persons make it imperative to assign special officials to administer justice in cases involving minors.

The Juvenile Courts shall have jurisdiction over the territory of the departments in which they are situated, or of the commune, group of communes or departments determined by the President of the Republic, on receipt of a report from the local Appeals Court.

Once a Juvenile Court has been established, it may be abolished only by legislation.

. . .

Article 26. Juvenile Court judges shall:

(1) Determine who is to have custody of minors, order the suspension or loss of parental authority and authorize emancipation;

(2) Hear pleas for maintenance, filed by minors, or by the spouse, whether or not divorced, of the person responsible for maintenance, when the plea includes maintenance for children who are minors;

(3) Order payment to mothers of minors or to persons having custody of minors, of up to 50 per cent of the wages, salary, pension or any other form of monetary remuneration received by the father from his occupation or profession in cases where he has been declared unfit (*vicioso*) by the Juvenile Court.

For the purposes of the preceding paragraph, the father shall be judged legally unfit when he has been convicted of drunkenness more than once in a year.

The Court shall also order payment in cash of the same percentage to mothers of minors who are in the situation described in the preceding paragraphs;

(4) Hear cases of refusal to enter into marriage;

(5) Authorize adoption of minors and appoint a special guardian to give consent in the event that the adoptive child has no legal representative;

(6) Appoint a trustee for a minor who has no property or whose property consists only of entitlement to insurance, pension funds, allowances, compensation or other similar benefits; and hear suits for removal of that property, or authorize such removal automatically where the trustee is legally incapacitated;

(7) Rule on the future life of the minor in cases governed by the second paragraph or article 233 of the Civil Code, and when the minor is in physical or moral danger;

(8) Hear all cases involving minors charged with crimes, correctional or petty offences in accordance with the provisions of article 28, and issue a preliminary ruling as to whether a person over sixteen but under eighteen years of age was capable of distinguishing between right and wrong;

(9) Apply the measures specified in article 29 to persons under sixteen years of age and to those over sixteen but under eighteen years of age who were not capable of distinguishing between right and wrong and committed an act which would have constituted a correctional offence if it had been committed by a person over that age.

(10) Hear cases brought under article 107 of the Act on Alcohol and Alcoholic Beverages; and

(11) Hear cases of correctional offences punishable under article 62 of this Act and of the petty offences specified in article 494, section 13, and article 495, sections 5 and 6 of the Penal Code, When the offence or breach of the peace was witnessed by or affected minors.

Article 27. The court order to make payment envisaged in article 15 of the Act concerning desertion of the family and payment of maintenance shall be applied to persons who have been declared unfit by the Juvenile Court, if there is evidence that they have given up their employment in order to evade direct payment of their earnings to their wives or children.

Article 28. Minors under sixteen years of age and those between sixteen and eighteen years of age who have been charged with a crime, a correctional or a petty offence and were not capable of distinguishing between right and wrong, shall be judged by the competent Juvenile Court, which may not prescribe any measures other than those laid down in this Act.

The Juvenile Court shall issue a preliminary ruling as to whether a minor was capable of distinguishing between right and wrong after consultation with the Technical Council of the Reformatory or any of its members as prescribed in the regulations. If there is no Reformatory, the official referred to in article 3 (1) shall be consulted.

A ruling that a minor was incapable of distinguishing between right and wrong shall be referred to the Appeals Court, when the offence is punishable by more than three years and one day's imprisonment (*pena aflictiva*). The Court shall hand down its decision without further formalities other than notification of the case to the State Counsel, except when requests are made to enter pleas.

Article 29. In cases covered by this Act, the Juvenile Court may apply one or more of the following measures:

1. Remand the minor in the custody of his parents, guardian or the person in whose care he has been placed, after issuing a warning;

2. Place him on probation as prescribed in the regulations;

3. Place him, for the length of time deemed necessary, in the special educational establishments referred to in this Act or in any suitable establishment decided upon by the judge; and

4. Place him in the care of a person who is willing to take him to live with his own family, and whom the judge considers competent to supervise his education.

Under the fourth alternative, the minor shall continue to be subject to the system of probation referred to in section 2.

These measures shall be applicable for the period determined by the Juvenile Court, which may revoke or modify them in the event of a change in circumstances, after consulting the Technical Council of the Reformatory or any of its members as prescribed in the regulations. If there is no Reformatory, the official referred to in article 3 (1) shall be consulted.

Article 30. When a minor is taken into custody for acts which do not constitute a crime, a correctional or a petty offence, the Juvenile Court, without having the minor brought before it, may impose any of the measures set forth in the preceding article, depending on the seriousness of the act.

In certain cases, the judge may authorize the Technical Council of the Reformatory to apply the appropriate measures within the period he specifies, which shall in no case exceed twenty days.

These measures may be revoked or modified in accordance with the procedure established in the last paragraph of article 29.

. . .

Title IV

REFORMATORIES AND WELFARE INSTITUTION

Article 51. There shall be where the Juvenile Court has its seat, an establishment, to be known as a Reformatory (*Casa de Menores*), which shall receive children or young persons when they are detained or have to appear before the judge. These establishments shall also serve as observation, transit and distribution centres.

Reformatories shall consist of two completely separate sections. One shall be used to receive minors who have committed acts which constitute a crime, a correctional or a petty offence, and they shall remain there until the judge decides whether or not they were capable of dinstinguishing between right and wrong or until he issues a ruling on the case. The other section, which shall be known as the Observation, Transit and Distribution Centre shall be used only for minors in need of care and protection, who shall have to remain there until such time as measures are taken to determine their future.

Article 52. Each Reformatory shall have a Technical Council.

. . .

Article 53. The Technical Councils shall:

(*a*) Evaluate the type of irregular situation in which a minor is involved;

(*b*) Apply the measures provided in article 29 in the cases referred to in the second paragraph of article 30; and

(*c*) Advise the Juvenile Court at its request.

. . .

Title V

PENAL PROVISIONS

Article 62. The following persons shall be punisable by imprisonment in any degree or at least by medium-term imprisonment with compulsory labour (*presidio menor*) or by a fine or not less than ten and not more than 100 escudos:

1. Anyone who employs persons under twenty-one years of age in work or an occupation which compels them to be present in taverns, houses of prostitution or gambling establishments;

2. Anyone who promotes, owns or acts as an agent for public entertainment at which persons under sixteen years of age perform acrobatic feats, exhibit physical prowess or display other similar accomplishments for profit;

3. Anyone who employs persons under sixteen years of age in night work, i.e., work which is performed between 10 p.m. and 5 a.m.;

4. Any father, mother, guardian or person having custody of a minor who:

(*a*) Habitually or gratuitously ill-treats him;

(*b*) Abandons him without providing for his upbringing aand education;

(*c*) Corrupts him.

Article 63. The procedure established in the Code of Criminal Procedure, Book III, Title I, shall be followed in cases involving offences committed by adults and heard by the Juvenile Courts.

Article 64. Facts uncovered in any court proceedings, which require action by a Juvenile Court, shall be brought to the attention of the Juvenile Court by the other court dealing with the case.

Article 65. If the preliminary investigation discloses that a case involves a minor who is not responsible under law either as the perpetrator, accomplice or accessory to an offence, the court must place him at the disposal of the Juvenile Court, without prejudice to the provisions of the paragraph which follows.

The provisions of this Act shall not prevent the ordinary courts of law from conducting investigations or taking other measures privative of liberty.

. . .

Article 67. If the preliminary investigation discloses that a case involves adults and minors, a confession by the latter shall not be admissible

for purposes of evading or attenuating responsibility on the part of the former.

TITLE VI

GENERAL PROVISIONS

...

Article 70. Chaplaincies, classes in religion and morality or religious and spiritual guidance centres which may be established in Homes, Reformatories or Welfare or Rehabilitation Centres belonging to the State and those already in existence in those institutions, may be conducted and requested by churches or organizations engaged in religious or spiritual activities, jointly or severally, free of charge.

AMENDMENTS TO ACT No. 15,576 (1964) CONCERNING THE ABUSE OF PUBLICITY

Promulgated by Act No. 16,636 of 11 July 1967 [5]

Article 1

Act No. 15,576 of 11 June 1964 concerning the abuse of publicity shall be amended as follows:

The following new article shall be inserted after article 1: "*Article 1 A.* It shall be prohibited to discriminate arbitrarily between undertakings owning daily newspapers, periodicals, magazines, radio or television stations with regard to the sale of paper, ink, machinery or other working materials, or with regard to authorizations or permits that may be necessary to obtain such materials in Chile or abroad. An offence against this prohibition shall be punished by medium-term imprisonment in a penitentiary for the minimum period and a fine of not less than three nor more than ten times the statutory minimum wage."

...

Article 4

"*Article 4.* The owner of every daily newspaper, magazine or periodical the editorial management of which is situated in Chile, the owner of every national news agency and the concessionary of every radio or television station shall be Chilean nationals and shall have their domicile and residence in Chile.

"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 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.

"Daily newspapers, magazines, periodicals, news agencies, and radio and television stations shall have a responsible editor and at least one deputy editor.

"The editor and his deputies shall be Chilean nationals, shall have their domicile and residence in Chile, 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, they must not have again been convicted of such an offence within the last two years. A married woman may be an editor or deputy editor. The editor of every daily newspaper, magazine or periodical shall also be required, to comply with article 23 of Act No. 12,045. When such publications are intended solely for students, it shall suffice that the editor is a student over the age of sixteen years.

"In the case of publications of an informative nature published by foreign missions accredited in Chile, the requirements of Chilean nationality and the non-possession of immunity shall not apply; nor shall it be necessary to comply with the requirements of the following article. In any event, Heads of Missions shall be required to send four copies of each publication to the Ministry of Foreign Affairs.

"The requirement of Chilean nationality to which this article refers shall not apply in the case of technical or scientific magazines, publications published in foreign languages, or magazines of an international character which are printed in Chile and distributed in Chile and abroad, even if their editorial management is situated in Chile."

Article 5

The second paragraph shall be worded as follows:

"Within forty-eight hours of submitting his declaration to the Head of the Department concerned, the owner shall hand over personally or send by registered post a copy thereof to the Director of the National Library or to the Office of Information and Broadcasting of the Presi-

[5] *Ibid.*, No. 26,790 of 13 July 1967. For extracts from Act No. 15,576 of 1964, see *Yearbook on Human Rights for 1964*, pp. 64-69.

dency of the Republic, as the case may be, In any event, the Head of the Department shall forward a copy to the said officials within two days of receipt thereof."

In the third paragraph, the word "Librairies" shall be replaced by the words "the National Library".

Article 6

Article 6 shall be replaced by the following:

"*Article 6*. Failure to comply with the requirement of the second paragraph of article 1 A shall be punishable by a fine of two to four times the statutory minimum wage.

"Failure to comply with the requirement of the first and second paragraph of article 2 shall be punishable by a fine of not less than one half of or more than an amount equal to the statutory minimum wage.

"The alteration in a publication of the serial number, or the place or date of printing shall be punishable by a fine equal to the statutory minimum wage.

"Failure to comply with the requirements of the first paragraph of article 3 and any other violation apart from those penalized in the fourth paragraph of article 3, shall be punishable by a fine of one half of the statutory minimum wage.

"Failure to comply with the requirement of Chilean nationality prescribed in article 4, and failure to make the declaration stipulated in article 5 shall be punishable by a fine or one to four times the statutory minimum wage. If the publication continues to be issued or broadcasted after notification of the offence, the same fine shall be applicable 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.

"The owner or concessionary shall be equally responsible for the payment of fines incurred by the editor."

The following new articles shall be inserted after article 6:

"*Article 6 A*. Save as provided in the first paragraph of article 1 A, in the fourth paragraph of article 3 and in the sixth paragraph of article 5, cognizance of the offences and the imposition of the fines referred to in the foregoing articles shall be the responsibility of the Director of the National Library, who shall act either in his official capacity or on information laid by the Director of the Office of Information and Broadcasting of the Presidency of the Republic by the Mayor, by the Head of Department concerned or by private individuals.

"The information shall be communicated in writing to the Director of the National Library, who, having made the necessary verifications, shall order compliance with the provision infringed and shall impose the appropriate fine.

"Within fifteen working days of being notified of the administrative decision, the defendant may appeal before the high court judge sitting in the civil division of the appropriate court of appeal.

"Notification of the decision shall be by registered letter sent by the Secretary of the appropriate Department at the request of the Director of the National Library, who shall also communicate his decision to the Council for the Defence of the State.

"The appeal shall be brought in accordance with the procedure for the preliminary investigation, the respondent being the State Counsel (*Fisco*) represented by the President of the Council for the Defense of the State or by his offices, as the case may be.

"An appeal shall be deemed to have lapsed if the appellant fails to notify the representative of the State Counsel, personally or in writing, within fifteen days of his being granted leave to appeal or if he fails to appear at the hearing as provided under article 683 of the Code of Civil Procedure.

"The Council for the Defence of the State shall be responsible for collecting fines imposed by the Director of the National Library, which shall become payable at the expiry of the period stipulated in the third paragraph for lodging an appeal or, in the event of an appeal having been lodged, from the time of the dismissal thereof. In the executive decision, no allowance shall be made for any exceptions other than those of payment and limitation."

"*Article 6 B*. Any person who falsely makes himself out to be an editor and who, in such a case, exercises the functions of editor shall be subject to the penalty of medium-term imprisonment in a penitentiary for the minimum to intermediate period. The responsibility for assessing such circumstances shall lie with the appropriate court."

"*Article 6 C*. Liability for the administrative offences specified in his title shall lapse six months after the date of the commission thereof."

Article 8. In the third paragraph, delete the phrase "in the case of natural persons or twice the length in the case of officials or bodies corporate" and the comma following.

Article 9. In the fourth paragraph, replace the words "under article 265 of the Penal Code" with the words "with medium-term imprisonment in a penitentiary for the minimum to intermediate period".

After article 9, add the following new article:

"*Article 9 A*. When, in pursuance of the provisions of the foregoing article, a daily newspaper, magazine, periodical, radio or television station shall temporarily suspended, the employees thereof shall, during the period of suspension, receive the full remuneration to which they are legally or contractually entitled in the same conditions as though they were working.

"When, in accordance with the last paragraph of the foregoing article, the suspension becomes final, the owner shall pay his staff compensation equivalent to one month in the case of employees and thirty days in the case of manual workers of the salary or wages they were receiving at the time of the final suspension, periods of longer than six months being treated as a complete year.

"This compensation shall be payable to the staff without prejudice to any other indemnities, gratuities, allowances or benefits to which they are legally or contractually entitled at the termination of their contract.

"Owners or employers shall have a period of thirty days in which to pay this compensation, which shall rank as a privileged credit in the category of those referred to in article 2472 (4) of the Civil Code.

"This compensation shall not be payable if the owner or employer, notwithstanding the suspension, continues to employ the staff on the same terms and conditions which they enjoyed while working for the organ subject to final suspension, both as to the nature of the work and their remuneration."

Article 13

Article 13 shall be replaced by the following:

"Article 13. Persons who, by using any for the dissemination media referred to in the foregoing article, directly incite others to commit the crimes of homicide, theft, arson or any of those referred to in article 480 of the Penal Code, shall be punished, even if the crime is not actually committed, with medium-term rigorous imprisonment in any of its degrees and by a fine of not less than once the statutory minimum wage nor more than three times that wage.

"The same punishment shall be imposed on any persons who, by using any of the dissemination media referred to in the foregoing article, shall defend the crimes of homicide, theft, arson or any of those referred to in article 480 of the Penal Code."

The following new article shall be inserted after article 13:

"Article 13 A. Persons who, by using any of the dissemination media referred to in article 12, issue publications or make broadcasts which stir up hatred, hostility or felings of contempt against individuals or communities by reason of their race or religion, shall be punished by a fine of not less than six nor more than ten times the statutory minimum wage."

Article 14

Article 14 shall be replaced by the following:

"Article 14. The malicious dissemination, by any of the media referred to in article 12, of news which is essentially false or of documents which are suppositions, which have been substantially altered or which have been wrongly attributed to a person, shall be punished by a fine of not less than ten nor more than twenty times the statutory minimum wage, when it is of such a nature as to cause serious harm to the security, the good order, the administration, the health or the economy of the nation or to damage the dignity, standing, reputation or interests of natural persons, or bodies corporate.

"The same penalty shall apply to persons who, by using the same dissemination media, will fully publish official arrangements, agreements or documents, which are designated as secret or confidential under a provision of the law or by reason of an act of authority based on law, or documents, or evidence which form part of legal proceedings or investigations that have been designated as confidential or secret.

"With reference to the first paragraph, a complete and timely correction shall be grounds for the cessation of criminal liability. A correction shall be deemed to be complete and timely if, without reservations, it admits that the news published was false, and provided that it is made before the hearing referred to in articles 554 and 574 of the Code of Civil Procedure, as the case may be, or if it is made within five days of a written request for such a correction by the injured party. The correction shall have the same characteristics as the false publication or broadcast, and the provisions of the last paragraph of article 8 shall be applicable to it."

Article 16

Article 16 shall be replaced by the following:

"Article 16. The offences of calumny and insult committed by any of the media enumerated in article 12 shall be subject, as the case may be, to the physical penalties laid down in articles 413, 418, first paragraph and 419 of the Penal Code, and to a fine of not less than twice nor more than fifteen times the statutory minimum wage in the case of article 413 (1) and article 418, to a fine of not less than once nor more than seven times the statutory minimum wage in the case of article 413 (2), and to a fine of not less than once nor more than three times the statutory minimum wage in the case of article 419.

"Persons who solicit any service whatsoever by threatening to publish documents or proceedings which might affect the good name, position, honour or reputation of another person shall be punished by a fine of not less than ten nor more than thirty times the statutory minimum wage. If the threat is carried out, the fine may be up to double the amount stipulated above, without prejudice to the physical penalties applicable under the foregoing paragraph. Furthermore, the court may impose the penalty of medium-term rigorous imprisonment for a period between the minimum and intermediate periods if it considers such a penalty appropriate having regard to the degree of pressure exerted or to the moral damage caused to the victim or to members of his family."

Article 17

Article 17 shall be replaced by the following:

"*Article 17.* A person who is accused of having caused injury through any 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 relates to determined acts and in the following cases:

"1. If the matter is imputed for the purpose of protecting the public interest;

"2. If the person concerned holds public office, and the matter relates to the exercise of that office, and

"3. If the matter is imputed against a witness in respect of any deposition he has made; a minister of a religion permitted in the Republic in connexion with acts relating to the discharge of his functions, and a director or manager of an industrial, commercial of financial undertaking that publicly solicits capital or funds.

"If the truth of the matter imputed is established, the accused person shall not be liable.

"In no circumstances shall evidence be admitted with respect to allegations concerning family or conjugal life."

Article 18

Article 18 shall be deleted.

Article 19

Article 19 and the heading above it shall be deleted.

Article 20

Article 20 shall be replaced by the following:

"*Article 20.* Dissemination of news or information concerning trials, legal proceedings or judicial actions whether *sub judice* or *res judicata* shall constitute grounds for liability in the cases covered in articles 15 and 16, without prejudice to the provisions of article 17."

Article 21

Article 21 shall be redrafted as follows:

"*Article 21.* It shall be prohibited 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. However, if a trial is pending, publication may take place with the permission of the judge in the case. Violation of this article shall be punishable by a fine of not less than five but not more than ten times the statutory minimum wage."

Article 22

The words "*su grado*" in the first paragraph of the Spanish text shall be written in the plural. (This amendment does not affect the English text.)

The second and third paragraphs shall be redrafted as follows:

"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 order, and 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 be punished as contempt of court with medium-term rigorous imprisonment for the minimum period."

Article 23

Article 23 shall be deleted.

Article 24

Article 24 shall be replaced by the following:

"*Article 24.* Offences against the reputation of individuals, against public decency and against the internal or external security of the State committed by any of the dissemination media referred to article 12, shall be punishable in accordance with the provisions of the Penal Code, the National Internal Security Act and the present Act.

"If reports, illustrations or comments about crimes, offences, suicides, accidents and natural disasters disseminated by any of the media referred to in article 12 gravely offend natural feelings of piety and respect for the dead, injured or victims of such crimes, suicides, accidents or disasters, the persons responsible shall be punished by fines of not less than six nor more than twelve times the statutory minimum wage."

Article 25

In the first paragraph, the phrase "a fine of not less than one third of not more than four times the statutory minimum wage" shall be replaced by the phrase "a fine of not less than two nor more than ten time the statutory minimum wage".

In the second paragraph, the figure "49" shall be replaced by the figure "44".

Article 26

The last paragraph of article 26 shall be deleted.

Article 27

Article 27 shall be replaced by the following:

"*Article 27.* Liability for the offences punishable under Title III of this Act shall be determined in accordance with the general rules of the Penal Code and of the second paragraph of article 39 of the Code of Penal Procedure.

"The following shall also be considered liable:

"(*a*) The editor or the person legally replacing him when publication is effected, in the case of a daily newspaper, magazine or periodical; in the

case to which article 6 B refers, the person who performs the functions of editor;

"(*b*) In the case of other publications, and if the author is unknown, the publisher, and in his default, the printer;

"(*c*) In the case of transmissions by radio, television or another similar medium, the director of the news programmes, if any, and in default thereof, the director of the broadcasting station or his legal deputy, and

"(*d*) In the case of exhibitions of cinematographic films not authorized by the Censorship Council, the owner of the film, the distributor thereof and the operator of the cinema in which the film is shown.

"The persons referred to in sub-paragraphs (*a*) and (*c*) above shall not be liable when they can establish incontrovertibly that they were not to blame for the unlawful broadcast or publication."

The following new articles shall be added after article 27:

"*Article 27 A.* If the provisions of sub-paragraphs (*a*) and (*c*) of the foregoing article cannot be applied, because the provisions of articles 4 and 5 of this Act have been infringed, the owner of the daily newspaper or periodical or the concessionary of the broadcasting station shall be liable, and if these are bodies corporate, the managers in the case of partnerships, the managing director in the case of limited liability companies and the chairmen in the case of corporations or foundations shall be liable."

"*Article 27 B.* The owner or concessionary, as the case may be, and in default thereof, the printer or publisher, if any, shall be equally liable for the payment of the fines imposed and for any civil indemnities that may become payable."

"*Article 27 C.* If any of the persons liable for the offences referred to in this Act, do not pay to the fiscal authorities the amount of the fine within five days of the promulgation of the sentence, he shall undergo, as an alternative penalty and upon issuance of a detention order, one day of rigorous imprisonment for each twentieth part of the statutory minimum wage of the fine, the maximum period of detention being 200 days. The detention shall be ordered by the judge merely on the submission of a certificate to the effect that the fine has not been paid, issued at the request of one of the parties or by an official."

...

ACT No. 16,640 OF 16 JULY 1967 ON LAND REFORM

SUMMARY

The text of this Act was published in *Diario Oficial*, No. 26, 804 of 28 July 1967.

Article 2 of the Act provides that with a view to ensuring that landed property shall fulfil its social function, the total or partial expropriation of rural holdings is authorized and declared to be in the public interest.

As stated in article 15, rural holdings belonging to an individual who has been owning an area of 80 basic hectares of irrigated land or less since before the 4th November 1964, shall not be subject to expropriation. Article 15 also stipulates that for the purpose of this article, any number of holdings belonging to a single owner, as also holdings belonging to any one of two spouses jointly or individually, even if they hold the property separately, shall be considered as a single unit, unless the married couple is finally divorced.

Article 42 deals with compensation and reads as follows:

"Compensation to the owner of the expropriated holding shall be equivalent to the current assesed land tax value plus the value of any improvements not included in the land tax assessment. These improvements shall be assesed by the Land Reform Corporation at their value at the time the expropriation decision is issued.

"Appeals against the assessment made by the Land Reform Corporation under the foregoing paragraph may be brought before the Provincial Land Tribunal within 30 days of the date of notification of the decision of the Council of the Corporation approving the assessment."

Under article 71, beneficiaries of allocations of land must:

(*a*) be Chilean. Foreigners may, however, be allocated land if the Council of the Land Reform Corporation so decides by a vote of at least two thirds of the members present including the favourable vote of the Minister of Agriculture;

(*b*) be small farmers;

(*c*) be 18 years of age;

(*d*) be suitable for working the land;

(*e*) not be landowners or, if they own land, this must be of an area less than a family farm unit; and

(*f*) be married and provide on a permanent basis for the needs of their family of which they must be the head.

Article 71 further provides that persons who do not meet any of these conditions may, however, be allocated land if the Council of the Land Reform Corporation so decides by a favourable vote of at least two thirds of its members present.

A translation of the Act into English has been published by the United Nations Food and Agriculture Organization in *Food and Agricultural Legislation*, vol. XVI, No. 3, V/1b.

REGULATIONS CONCERNING MINIMUM OBLIGATIONS TO BE OBSERVED IN IMPLEMENTING A POLICY OF PROTECTION AND TREATMENT FOR JUVENILE OFFENDERS [6]

Article 1. Institutions responsible for the care of juvenile offenders shall comply with the minimum obligations specified in these Regulations.

Article 2. All measures relating to the social rehabilitation of juvenile offenders shall be taken without any distinction or discrimination on grounds of the race, colour, sex, religion, social origin or marital status of the juvenile offenders themselves, or of their parents, guardians or persons on whom they are dependent, or who are responsible for them.

Article 3. Institutions for the treatment of juvenile offenders shall keep a book or register in which they shall enter personal information relating to each offender, together with a general description and assessment of the treatment which he is receiving.

Article 4. Persons responsible for the treatment of juvenile offenders shall be required to have the necessary training and ability, and also the necessary physical, psychological and moral qualities, to enable them to perform efficiently the work entrusted to them.

Article 5. Every juvenile offender shall be provided with his own bed, with sufficient coverings to ensure his health and confort.

Article 6. Juvenile offenders shall at the customary times be given meals whose quantity, quality and nutritional value are sufficient to satisfy their normal needs. They shall also be provided with any dietary items they may require for reasons of age or health. Meals shall be served to them in suitable and commodious rooms, in order to safeguard their health and promote habits of good manners and behaviour.

Article 7. Appropriate measures shall be taken to provide them with an education conducive to the acquisition of general knowledge and the formation of habits, and to the development of their abilities, judgement and sense of responsibility. Local educational institutions shall be used wherever possible for their education, and efforts shall be made to obtain scholarships to enable them to continue their studies.

Article 8. Juvenile offenders shall be trained to acquire a better understanding of moral, cultural and social values, to enable them to participate to the best of their abilities in the development of the community.

Article 9. Efforts shall be made to develop in them a respectful and responsible attitude to work, but they shall not in any circumstances be permitted to engage in any occupation or employment which may have a detrimental effect upon their education or normal development.

Juvenile offenders may engage in everyday domestic tasks, but emphasis shall be placed on the educational benefits to be derived from this work rather than on its usefulness as such.

Article 10. Appropriate steps shall be taken to provide all conditions necessary for ensuring that juvenile offenders have a reasonable proportion of rest, exercise, fresh air and sunshine, and, especially that they take part in supervised games or games of their own choice, or in properly organized physical education courses.

Article 11. The chief purpose of discipline shall be to maintain, on the basis of good judgement, a genuine spirit of respect for one's fellows and reasonable control of individual impulses, with the object of promoting the common good and the all-round development of the personality, and strengthening the feeling of self-confidence.

Article 12. Measures adopted to maintain discipline must not constitute a personal affront to the juvenile offenders, or reduce their sense of responsibility. They must be designed in all cases to develop self-control by a humane understanding correctional process.

. . .

Article 40. The National Youth Council shall make inspection visits to institutions or persons having juvenile offenders in their care, in order to determine whether the minimum obligations laid down in these Regulations are being complied with.

Article 41. The National Youth Council may request institutions to furnish any documents, information and records it may require for discharging the responsibilities assigned to it by law.

[6] *Ibid.*, No. 26,897 of 20 November 1967.

CHINA

NOTE [1]

REVISION OF THE CODE OF CRIMINAL PROCEDURE

The Code of Criminal Procedure was revised and promulgated on 28 January 1967. The revised text contains a number of measures designed to strengthen the protection of human rights. Mr. Ch'eng Yuan-fan has made the following detailed analysis of the major differences between the old and new codes in an article which was published in Nos. 279 (3 February 1967) and 280 (17 February 1967) of the *Juridical Newsletter:*

AN ANALYSIS OF THE MAJOR DIFFERENCES BETWEEN THE NEW AND OLD CODES OF CRIMINAL PROCEDURE

by Ch'eng Yuan-fan

Rules of application

The old code provided no remedies in cases of criminal proceedings which had originally been instituted under the provisions of special laws and which are still pending, but the reasons for instituting which have since ceased to exist owing to lapse of time or change of locale. In the new code, however, a new paragraph 3 has been added to article 1 which provides that in such cases, criminal proceedings shall be instituted in accordance with the provisions of the Code of Criminal Procedure. The argument is that military trials were conducted in wartime as a result of the existence of special circumstances, and that when the special circumstances cease to exist due to lapse of time or change of locale, such cases, if still pending, should not be judged in accordance with the provisions of special laws. Hence, the new paragraph is added as a measure for the protection of human rights.

[1] Note furnished by the Government of the Republic of China.

Jurisdiction of courts

Article 10 of the old code provided that where necessary, a case could be transferred by a court ruling to another court. However, there was no provision as to which court was competent to make such a ruling. In the new code, a separate paragraph has been added to article 10 on the basis of the Executive Yuan's suggestions for revision of the code. The new paragraph 2 provides: "If the immediately superior court cannot exercise jurisdiction in the case, the next higher court shall make the ruling referred to in the preceding paragraph". The reason for this addition is that while article 10, paragraph 1, provides that in special circumstances, the immediately superior court shall, by a ruling, transfer a case to another court within its district and of the same grade as the original court, there is no provision as to which court is competent to make such a ruling if the immediately superior court cannot exercise jurisdiction in the case. Thus, the new code incorporates the substance of article 2, paragraph 2, of the Supplementary Regulations for the Institution of Criminal Proceedings after Termination of the War as a measure to remedy the deficiency of the old code.

Withdrawal of court officers

Under the provisions of article 17 of the old code, a judge who was or had been a blood relative within the seventh degree of the accused or the injured party, in a case before the court, had to withdraw on his own motion and could not exercise his functions. The new code additionally provides for the withdrawal of a blood relative within the eighth degree. In addition, the judge must also qithdraw if he is or has been a complainant or an informant in a case. The reason for this revision is that if the judge is or has been a complainant or an informant in a case, it will be difficult for him to be impartial and above criticism. The added provision in respect of informants is based on the Executive Yuan's suggestion. As to the provision concerning the

withdrawal of blood relatives, the old code provides that a relative within the seventh degree must withdraw. It is argued that according to the provisions concerning marriage prohibitions specified in article 983 of the Civil Code and the provisions concerning marriages considered void specified in article 988 of that code, collateral relatives by blood within the eighth degree are prohibited from marrying each other, and that in the event of their doing so, the marriage is considered void. It is evident, therefore, that collateral relatives within the eighth degree should be considered as close relatives, and under the Civil Code, such relatives are prohibited from marrying each other. By the same token, a judge must withdraw from a case in which one of his close relatives is involved, and in the new code, therefore, the seventh degree is changed to the eighth so as to conform with the Civil Code provisions.

Advocates

Under the provisions of article 31 of the old code, the presiding judge in a criminal case involving a minimum penalty of not less than five years' imprisonment, was required to assign a court-appointed counsel to defend the accused. The new code adopts the Executive Yuan's suggestion for revision of the code, and specifies three years instead of five years. Under the provisions of article 61, paragraph 1, of the Criminal Code, offences for which the maximum penalty is imprisonment for not more than three years, or detention, or a fine only, are regarded as minor offences the penalties for which may be remitted in cases where the offence was committed in extenuating circumstances. It follows that offences for which the maximum penalty is more than three years' imprisonment, are regarded as serious offences and that that penalty is regarded as a severe one. Hence, the application of the provision regarding a court-appointed counsel should not be confined to offences the maximum penalty for which is not more than five years' imprisonment and it should also apply to offences for which the maximum penalty is three years' imprisonment. The revision in the new code is designed to provide added protection for human rights.

Documents

In articles 41, 42, 54 and 176 of the old code, there were provisions concerning the adding of a mark to the court document by the accused. The practice of adding a mark to the court document to take the place of a signature or a seal, is an old one, but this practice is not in common use in modern times. The word "mark" has therefore been deleted in these articles. In addition, a new provision has been added to article 41 to the effect that in making notes during the examination of an accused, a private complainant or a witness, the notes should be made in the presence of the person examined. That practice has been to a large extent currently ignored in courts. Hence this explicit provision.

The old code had no provision regarding the loss of documents, and no remedy was provided for such an occasion. Although it rarely happens that documents are lost, that possibility cannot be ruled out. The new code, accordingly, adopts the Executive Yuan's suggestion and incorporates the provisions contained in articles 18 to 33 of the Supplementary Regulations for the Institution of Criminal Proceedings following Demobilization. To remedy the present deficiency, a new paragraph 2 has been added to article 54 to provide that a new law shall be promulgated to govern the institution of proceedings in respect of which the documents have been lost.

Service

Article 58 of the old code provided that service of documents on a procurator should be effected by delivering it to his office. It may happen that the person or the clerk receiving the document on behalf of the procurator fails to forward it to the procurator immediately either on purpose or through negligence, and the procurator's right to appeal or make interlocutory appeal is consequently impaired. In order to preclude this possibility, the new code adopts the Executive Yuan's suggestion that service of documents on a procurator shall be effected by delivering it to the Chief Procurator in person if the procurator is not in his office at the time.

Article 61 of the old code specified only that documents should be served by a judicial policeman. These documents include written judgements, written rulings and orders of exemption from prosecution. Since the right of the accused to appeal, to make interlocutory appeal or to request a retrial expires after a certain period from the date of receipt of the written judgement, any discrepancy between the actual date of receipt of the document and that recorded by the court could prejudice the accused's right to appeal, to make interlocutory appeal or to request a retrial. Article 61, paragraph 2, of the new code accordingly provides that the person served with a document must sign a dated receipt thereof.

Summons and arrest of accused

Article 76, paragraphs 2 and 3, of the old code provided that an accused could be arrested with a warrant without first being served with a summons if he had absconded or there was apprehension that he might destroy, forge or alter evidence, or conspire with a co-offender or a witness. The new code provides that in making that decision, the judicial personnel must have concrete evidence, and that their decisions must be based on objective judgement so as to preclude abusive practice.

The provision regarding the warrant for arrest as specified in article 79 of the old code was often abused. The new article 79 provides that a warrant must be issued in duplicate and that one copy shall be given to the accused or to members of his family so that the authority making the arrest is clearly identified in the document and the whereabouts of the accused can be traced. It is a procedure designed for the protection of human rights.

Article 87 of the old code concerning the issuance of a circular order for the arrest of a

wanted person was often regarded as a formality. A new paragraph has been added to this article to provide that any interested party may arrest the person wanted in a circular order. The new code also adopts the Executive Yuan's suggestion and adds new paragraphs 3 and 4 to this article to provide for measures to be taken for rescinding a circular order for arrest.

Examination of accused

Article 97 of the old code provided that the court had the authority to order the confrontation of the accused with other witnesses in order to ascertain the truth. The new code conforms with the universal trend that parties concerned should be given a certain measure of freedom to take initiative in the proceedings and provides that an accused may request confrontation with other witnesses on his own initiative.

Detention of accused

Article 108 of the old code provided that if the maximum principal penalty for an offence did not exceed imprisonment for three years, the detention of an accused could be extended three times during trial. The new code adopts the Executive Yuan's suggestion that if the principal maximum penalty for an offence is less than ten years, the detention of an accused may be extended three times during the first and second trials and once during the third trial. Furthermore, if a case is returned to the original court, the number of extensions shall be reckoned anew. If a case is appealed to a higher court, the number of extensions shall be decided by the court of appeal. However, if the documents and exhibits are still in the original court, the number of extensions shall be decided by the original court.

Article 109 of the old code specified: "If a case is appealed and the period during which the accused has been detained exceeds the term of imprisonment imposed by the original judgement, the detention shall be immediately cancelled and the accused released unless the procurator appeals against the interests of the accused; if the procurator makes such an appeal, the accused may be released on bond or to the custody of another or with a limitation on his residence." The new code provides: "If a case is appealed and the period during which the accused has been detained exceeds the term of imprisonment imposed by the original judgement, the detention shall be immediately cancelled and the accused released. However, if the procurator appeals against the interests of the accused, the accused may be released on bond, or to the custody of another, or with a limitation on his residence." This revision was based on the argument that when a criminal proceeding is instituted, the accused is detained in order to prevent him from altering evidence and to facilitate the investigation. But when a case is appealed to a higher court, the investigation should have been completed; hence the accused should be released and the order of detention rescinded, except, of course, when the procurator appeals against the interests of the accused. In that case, the accused may be released on bond, or to the custody of another, or with a limitation on his residence.

Article 114 of the old code provided that application for suspension of detention by an accused under detention who had provided a bond, should not be refused if the maximum principal penalty for the offence was imprisonment for a period of less than six months, detention, or a fine. The new code adopts the Executive Yuan's suggestion that the maximum principal penalty in the above provision should be one year's imprisonment, instead of less than six months. Article 114, paragraph 2, of the old code provided that if the accused had been pregnant for seven months or more, or had given birth to a child during the preceding month, her application for suspension of detention should not be refused. The new code replaces the words "seven months" by "five months" and "the preceding month" by "the preceding two months". These changes are made to protect the accused's interests and to bring these provisions into line with those of article 11 of the Prison Penal Law.

Search and attachment

Article 129 of the old code provided that a procurator or a judge could personally conduct a search without a search warrant. The new code provides that in conducting a search, a procurator or a judge must show his identification, so as to ensure that no would-be law-breaker can impersonate a judge or a procurator in order to commit fraud.

Article 131 of the old code provided that a judicial policeman or a judicial police officer could search a dwelling house or other premises without a search warrant in certain circumstances. However, there was no provision as to the time-limit for the police to report to the court after the search had been made. In the new code, a new paragraph has been added to this article to provide that the police making the search must report to the court or the procurator within twenty-four hours after the search has been made.

Evidence

The old code had no separate chapter on evidence. For the purpose of protecting human rights, a new chapter has been added to the code by rearranging the articles concerning evidence in the old code and adding several new ones. The new chapter is divided into four sections and consists of articles 154 to 219 inclusive. Some of the salient features of the chapter may be summarised as follows:

1. No facts of a crime may be presumed without the presentation of evidence (article 154, paragraph 2, addition).

2. Under the provisions of article 269 of the old code, a court was free to determine the probative force of the evidence. This article placed no limitation on evidence which had no probative force. A new paragraph has been added to this article to provide that evidence which has no probative force, has not been investigated or is obviously contrary to reason or to the established

facts, may not be taken as evidence in making decisions.

3. The confession of an accused not substantiated by an investigation of the other necessary evidence shall not be taken as sole evidence for conviction of a crime. If the accused has made no confession and there is no evidence against him, neither his refusal to testify nor his maintenance of silence shall imply that he has committed a crime (article 156, paragraphs 2 and 3).

. . .

5. Statements made by a witness other than the testimony he made in the court during trial shall not be taken as evidence failing explicit provision to the contrary by law (article 159, addition).

6. A personal opinion or an inference of guilt expressed by a witness shall not be taken as evidence (article 161, addition).

7. The procurator shall be responsible for presenting the evidence concerning the alleged offence committed by the accused (article 161, addition).

8. A party concerned, his advocate, agent *ad litem* or assistant shall have an appropriate opportunity to present arguments concerning the probative force of the evidence (article 162, addition).

9. The court shall investigate the evidence after the procurator presents it in order to ascertain the facts of the case. At the same time, the party concerned, his advocate, agent *ad litem* or assistant may request to conduct an investigation of the evidence, and may examine the witness, the expert or the accused (article 163, addition).

10. After a witness or an expert has been examined by the presiding judge, the party concerned and his advocate have the right to cross-examine him (article 166, revised). This revision in the new code shows that it endorses the principle that the party concerned should be allowed to take the initiative in the proceedings.

11. In summoning a witness, the summons shall specify the facts of the case so that the witness may know the reason for his being summoned (addition).

12. Article 171 of the old code provided that witnesses could be ordered to confront each other or the accused if that was necessary in order to determine the truth. But this provision has been sometimes overlooked by judges, and the parties concerned are thus prevented from presenting effective evidence. Hence, the new code explicity provides that the parties concerned may request confrontation with witnesses so that their rights may be properly protected (article 184, paragraph 2).

13. Article 173 of the old code provided that in certain circumstances witnesses could not be ordered to sign bonds to tell the truth when testifying. This is perplexing, since if a witness is not required to sign a bond to tell the truth, his testimony cannot be used as evidence. In that case, further examination may be necessary, with consequent additional trouble for the witness. The new code adopts the Executive Yuan's suggestion, and this provision has been deleted in the new code (article 186, paragraph 2, and article 116, provisory clause).

14. As a general practice, the bond to tell the truth should be read aloud by the witness who signs it, so as to ensure that he fully understands the meaning. If the witness for one reason or another cannot read aloud, the bond should be read aloud by the clerk. The old code simply provided that the bond to tell the truth should be read aloud by the clerk. This provision is insufficient, and the new code accordingly adopts the Executive Yuan's suggestion that this provision be revised.

15. The old code provided that an expert witness must make a report of his findings and results verbally or in writing. The new code adopts the Executive Yuan's suggestion and provides that the written report of an expert may be made in any form and does not have to be prepared on the stationery supplied by the court (article 206).

Decisions

Article 204 of the old code provided only that judgements should be pronounced by reading aloud the syllabus, explaining its meaning, and stating the principal parts of the reasons; there was no provision in it which required that a written judgement or a written ruling be handed to the party concerned. Article 225 of the new code, however, provides that a judgement or a ruling that is to be pronounced shall be published within one day after its pronouncement, and that the parties concerned shall be informed of the syllabus of the judgement or the ruling so as to enable them to comprehend the substance of the judgement or the ruling. The parties concerned will thus be able to decide to appeal or to make interlocutory appeal without waiting for the true copy of the judgement or the ruling.

Investigation

Article 215 of the old code provided that if the case is one which could be instituted only upon complaint of the injured party and there was no person to make such complaint, the competent procurator could, upon the application of any person concerned, appoint a person to act in lieu of a complainant. But the old code provided no remedy where persons entitled to complain could not exercise the right on account of mental disability or because they were under the physical control of others. The new code accordingly provides in article 236 that if a complainant is unable to exercise his right to complain, the competent procurator may, upon the application of any person concerned, appoint a person to act in lieu of the complainant. However, this provision is subject to the limitations contained in the provisory clause of article 234.

Under the provisions of article 232 of the old cdoe, the court could rule in certain circumstances that the injured party would be awarded a certain sum of money as consolation, and give a ruling not to prosecute. But it frequently happens that the defendant may agree to the payment in

court and later repudiate it. In such circumstances, the procurator can only order the injured party to file another complaint. Not anly is the dignity of the court thus impaired but the parties concerned are burdened with further litigation. Article 253, paragraph 2, sub-paragraph 3, of the new code incorporates the principle of compulsory execution of the Civil Code and provides that such rulings require acceptance by the injured party.

Article 233 of the old code provided that if an accused had committed several offences for one of which he had received or might receive a severe sentence, the procurator could give a ruling not to prosecute for the other offences, if he considered that such prosecution would not seriously affect the execution of such sentence. However, where a ruling not to prosecute for the other offences becomes final and the accused is acquitted of the offence involving severe punishment and if none of the conditions specified in article 239 of the old code exists, no prosecution in respect of the other offences can be instituted. This is highly unfair, and no remedy was provided for such cases in the old code. In order to uphold the judicial authority of the State, article 254 of the new code provides that only when the sentence for a serious offence has become final, may the procurator decide not to prosecute for other less serious offences which the accused has also committed. This provision is added in order to remedy the deficiency of the old code.

Trial

Article 251 of the old code provided that the summons for the first hearing should be served at least three days prior thereto, unless the case was one specified in article 61 of the Criminal Code. But article 61 of the Criminal Code has no explicit provisions concerning the time-limit for serving a summons. Article 272 of the new code adopts the Executive Yuan's suggestion and provides that the summons shall be served at least seven days prior to the hearing in the former case and five days prior to the hearing in the latter case. These changes are made so as to enable the accused to have ample time to prepare his arguments.

In the old code, there was no provision for the resumption of trial after it has been suspended for one or more of the several reasons enumerated in the code. However, it often happens that the court fails to resume the trial when the reason for suspension ceases to exist. The new code adopts the Executive Yuan's suggestion and includes a new article (article 298) providing that the party concerned may request the court to resume the trial when the reason for its suspension has ceased to exist.

Article 291 of the old code referred to the pronouncement of a judgement remitting punishment in any of the cases coming under article 61 of the Criminal Code. When such a judgement is made, there is, of course, no punishment for the offence committed. In order to help the injured party to get fair treatment and give the offender a chance to repent, the new code incorporates the provisions of article 232 of the old code and requires the offender to perform the following acts: (1) apologize to the injured person; (2) make a written statement of repentance; and (3) pay the injured party a suitable sum as consolation. These measures are subject to compulsory execution as provided in the Civil Code. Paragraphs 2, 3 and 4 have accordingly been added to article 299 of the new code.

Article 294, paragraph 5, of the old code provided that if a judgement sentencing an accused to a severe sentence for another offence had become final and that it was considered unnecessary to impose a sentence for the current offence because the sentence for the other offence would not be seriously influenced, a judgement of "exempt from prosecution" should be pronounced. Although this provision enabled the judge to exercise discretion in pronouncing judgement of "exemption from prosecution", it was not intended to limit the power of the State to punish offenders. In such cases however, the procurator can still prosecute if he chooses to do so, but the court cannot institute another trial after the pronouncement of that judgement. This situation can easily give rise to contradictions, apart from which the expression "the sentence for the other offnce will not be seriously influenced" is somewhat vague and gives the judge too much latitude in making decisions. This provision has therefore been deleted in the new code.

Article 300 of the old code provided that a written judgement must contain a syllabus of the decision, and a written judgement of "guilty" set forth the facts and reasons. Hence, a written judgement of "not guilty" was not required to contain facts and reasons. This is highly inappropriate, and in article 308 of the new code the word "guilty" has accordingly been deleted. In other words, a written judgement, whether a judgement of "guilty", "not guilty", "exempt from prosecution" or "case dismissed" must set forth facts and reasons.

Article 302 of the old code listed a number of reasons for rendering a judgement of "guilty" which had to be included in the written judgement, but reasons for not admitting evidence favourable to the accused were not among those listed. To remedy that deficiency, a new paragraph has been added to article 310 of the new code specifying that the reasons for not admitting evidence favourable to the accused must be set forth in a written judgement of "guilty". This provision is designed to protect the accused's interests.

Private prosecution

Article 311 of the old code provided that a person injured by the commission of an offence could institute a private prosecution if he had legal capacity. There were no provisions concerning persons having no legal capacity or limited capacity, or deceased persons. Article 319 of the new code applies the principle that the right to institute private prosecution should be expanded, and specifies that the agent *ad litem* of a person having no legal capacity or limited capacity and

the spouse or the lineal blood relative of a deceased injured party may also institute private prosecutions. However, in cases where the injured party is deceased and his spouse or a lineal blood relative institutes a private prosecution, the proceedings should not run counter to the deceased's declared intention.

Article 325 of the old code provided that if no civil action had been instituted in a criminal proceeding which depended on a determination under civil law, the court could suspend the trial and order a private complainant to institute a civil case. But there was no provision as to the time-limit within which a civil case must be instituted. Article 333 of the new code adopts the Executive Yuan's suggestion and provides that if no civil action is initiated in such a case, the court may suspend the trial and order the private complainant to initiate a civil case within a prescribed period of time. If the civil case is not instituted within that time, the court may order that the private prosecution be withdrawn. This provision is added for the purpose of preventing persons from using the institution of private prosecution to obtain certain advantages.

Appeal

Article 336 of the old code defined the conditions for appeal but contained no special provisions for cases in which sentences of death or life imprisonment had been imposed. Thus, the interests and human rights of the accused were not adequately protected. The new code adopts the Executive Yuan's suggestion and incorporates the substance of the provisory clause of article 9 of the Regulations for the Institution of Special Criminal Procedure. Article 344 of the new code provides that the original court shall transfer cases in which sentences of death or life imprisonment have been imposed to a higher court for adjudication without waiting for the accused to appeal. The original court shall inform the accused of the transfer which is tantamount to an appeal.

Article 375 of the old code provided that after the accused had appealed for a third trial, the opposing party could file a reply with the original court within seven days after the receipt of a copy of the written appeal petition or a copy of the amended written appeal petition. In article 383 of the new code, the words "seven days" have been changed to "ten days" so that the opposing party can have more time to prepare his reply.

Article 378 of the old code provided that the appellant and the appellee could file a written appeal petition, reply, opinion or additional reasons in the court of third instance, before that court gave judgement, but contained no provision specifying that a copy of the written appeal petition or reply should be addressed to the opposing party. Article 386 of the new code provides that a copy of the above-mentioned documents should be delivered to the opposing party by the clerk of the court of third instance so that the opposing party can be aware of the contents of the documents and make proper preparations.

Interlocutory appeal

Article 402 of the old code provided that an original court, if it considered it necessary, would transmit the records and exhibits to the interlocutory appeal court. But there was no provision as to when the interlocutory appeal court should make a ruling after receipt of the records and exhibits. Article 410 of the new code provides that the interlocutory appeal court should make a ruling within ten days after receipt of the documents so as to expedite the proceedings.

Article 396, paragraph 2, of the old code provided that a party who disagreed with a court ruling could make an interlocutory appeal if the ruling related to certain specified matters therein. Article 408, paragraph 1, of the old code provided that a party who disagreed with certain measures could apply to the court to have such measures altered or set aside. The court rulings and court measures mentioned therein are sometimes indistinguishable from each other, especially if they are ordered by a single presiding judge. Hence, if a party disagrees with a ruling or measure, he does not know whether he should petition for an interlocutory appeal or apply to the court to have the measure altered or set aside. Mistakes are easy to make, and they often occur. The new code adopts the Executive Yuan's suggestion, and article 418 provides that if a party mistakenly files a petition to set aside or alter a court measure instead of a petition for an interlocutory appeal, such action would be regarded as an application for an interlocutory appeal. Similarly, if a party mistakenly files a petition for an interlocutory appeal instead of a petition to set aside or alter a court measure, such action would be considered as an application to set aside or alter a court measure.

Summary procedure

Under the provisions of articles 67, 68 and 442-448 inclusive of the old code, an accused could file an application for formal trial within a prescribed period of time after receipt of a court order passing sentence of summary judgement. This provision concerning the application for sentence to be passed by an order has been eliminated in articles 67, 68 and 449-455 of the new code. The reason for this change is that the application of summary procedure under the old code has proved unsatisfactory from the outset. Summary procedure is a combination of the process of passing sentences by court order and the process of rendering judgements by simplified procedures. However, it is now explicitly provided that a summary judgement passed by an order shall be limited to punishment by detention or a fine. In the new code, the provisions concerning the application for formal trial and the preparation of formal written judgements after sentencing have been eliminated so as to make the summary procedure a truly simplified one.

Execution

Article 465 of the old code provided for the execution of a death sentence within three days

after receipt of confirmation from the highest judicial administrative office. But for cases where reasons existed for retrial or extraordinary appeal, no remedy was provided in the old code. The new code adopts the Executive Yuan's suggestion, and article 461 provides that the accused may appeal to the highest judicial administrative organ for a review within three days after receipt of the order. This provision demonstrates the high regard had for human life.

Article 471 of the old code specified that pregnancy of seven months or more and childbirth within the preceding month were conditions for suspension of a sentence of imprisonment or detention. Article 467 of the new code adopts Executive Yuan's suggestion and conforms with the spirit of article 59, paragraph 4, of the Prison Penal Law. The provision concerning seven months' pregnancy has been changed to five months, and that concerning childbirth within the preceding month to the preceding two months.

Article 474 of the old code specified that a sentence of a fine, pecuniary penalty, confiscation, forfeiture, or recovery of money was to be executed in accordance with the order of the procurator. There was no provision that the execution of the sentence could be entrusted to other organs. Article 471 of the new code provides that the procurator may entrust the execution of such sentence to the execution authority of civil decisions of the district court. No execution fee is to be levied in such cases.

Article 481 of the old code provided that where the sentence to be executed was to be determined in accordance with certain articles of the Criminal Code, the procurator of the court which gave the last judgement determining the facts of the offence should make an application to the said court for a ruling. Article 477 of the new code provides that the person sentenced, his agent *ad litem* or his spouse may ask the procurator to make such application.

Article 485 of the old code provided that where the execution of a sentence should be remitted under article 86, paragraph 1, and article 87, paragraph 1, of the Criminal Code on the grounds that the accused had not completed his fourteenth year or age or he was insame, the court should deal with the accused in accordance with peace preservation measures. But article 231 of the old code provided that when the act was not punishable, a ruling not to prosecute should be made. In such cases, if the court gives a ruling not to prosecute, then it cannot apply article 96 of the Criminal Code and deal with the accused in accordance with peace preservation measures. There is a clear contradiction between these provisions. The new code adopts the Executive Yuan's suggestion and new paragraphs 2 and 3 have been added to article 481 of the new code to provide that the procurator may request the court to make a ruling if such a situation occurs. In other words, if the court has not invoked peace preservation measures at the time of making a decision, the procurator may petition the court to make such a ruling within three months after the decision if he deems it necessary to do so.

Supplementary civil action

Article 499 of the old code contained no provision for a written record to be served on the accused in the event of a plantiff verbally instituting a supplementary civil action at a time when the accused is not present in court, or when he is present in court but requests a copy of the written record. Article 495 of the new code adopts the Executive Yuan's suggestion, and paragraph 4 provides that a copy of the written record shall be served on the opposing party in such circumstances so that he may make complete and adequate preparation of his case.

Article 503 of the old code provided that if the evidence was investigated during a criminal action, the evidence in a supplementary civil action could be considered as having also been investigated. There was no provision regarding the right of a party who instituted a supplementary civil action or his agent *ad litem* to request a hearing. Article 499 of the new code contains a new paragraph 2 which provides that a party who initiates a supplementary civil action or his agent *ad litem* may request a hearing so that he can have an opportunity to present facts and to have his interests protected.

Article 505 of the old code provided that judgement in a supplementary civil action should be rendered either simultaneously with the judgement in a criminal action or within ten days after judgement in a criminal action. Article 501 of the new code provides that other than in exceptionally complicated cases where the trials cannot be completed within a short period of time, judgement in a supplementary civil action be rendered simultaneously with the judgement of the criminal case so as to lessen the burden of litigants.

Article 510 of the old code provided that if, in the criminal action, an appeal could not be made to the court of third instance against a judgement of a court of second instance, an appeal could not be made in the supplementary civil action to the court of third instance against a judgement of a court of second instance. The new code takes the line that a criminal case in which an appeal may not be made to the court of third instance against a judgement of a court of second instance may involve only relatively minor offences, but the sum of money involved in the supplementary civil action may be quite substantial. The limitation placed on the right to appeal is therefore inappropriate. Article 506 of the new code provides that in such circumstances an appeal may be made in the supplementary civil action to the court of third instance, subject to the limitations specified in article 463 of the Code of Civil Procedure.

CONGO (BRAZZAVILLE)

DECREE No. 67-135 OF 5 JUNE 1967 CONCERNING THE CONGOLESE RADIO AND TELEVISION BROADCASTING SERVICE [1]

Article 1. The Congolese Radio and Television Broadcasting Service is a State public service placed under the authority of the Minister of Information for the purpose of satisfying the public's needs for information, stimulation, culture and entertainment.

Article 2. Subject to such exceptions as may arise from the implementation of international conventions, the Congolese Radio and Television Broadcasting Service shall be the only service in the territory of the Republic authorized to:

(1) Organize, install or effect the installation of, maintain, modify and operate the network of broadcasting facilities;

(2) Co-operate with the administrations and relevent professional bodies in setting standards for broadcasting equipment and in supervising the application of those standards;

(3) Transmit to the public, either directly by wireless, or, in conjunction with the national post and telecommunications office, by wire—in the latter case without derogating from the office's monopoly—the programmes referred to in paragraph 2 above or any other suitable programmes, irrespective of origin, which may be similar in content and importance to those of the Congolese Radio and Television Broadcasting Service and which have been approved by the Minister of Information.

In this Decree, the term "broadcasting" shall have the meaning given to it in international conventions and shall apply to sound and visual broadcasts.

. . .

Article 7. All rights and obligations pertaining to the Congolese Radio and Television Broadcasting Service shall be transferred to the State.

. . .

[1] *Journal officiel de la République du Congo,* No. 13 of 15 June 1967.

CONGO (DEMOCRATIC REPUBLIC OF)

CONSTITUTION OF THE DEMOCRATIC REPUBLIC OF THE CONGO OF 24 JUNE 1967 [1]

PREAMBLE

We, the Congolese People,

Proclaiming our adherence to the Universal Declaration of Human Rights;

Believing that there is no greatness in servitude and dependence;

Believing that only by mobilizing the masses under the leadership of a revolutionary government can we guarantee our economic independence, promote our own values and strengthen the unity and integrity of the nation;

Prompted by the desire to ensure that everyone enjoys a fair share of the national wealth and material well-being and to create conditions favourable to the moral and spiritual development of all citizens;

Convinced that the peoples of Africa cannot free themselves completely from foreign domination except through African unity;

Conscious of our responsibilities before God, the Nation and Africa;

Solemnly declare that we adopt this Constitution.

TITLE I

THE TERRITORY AND SOVEREIGNTY OF THE REPUBLIC

Article 1

The Democratic Republic of the Congo is a unitary, democratic and social State.

. . .

Article 2

All power emanates from the people, which exercise it through its representatives or by referendum.

No section of the people or individual person may assume the right to exercise it.

Article 3

All acts of racial, ethnic or religious discrimination and all regionalist propaganda which might jeopardize the internal security of the State or the territorial integrity of the Republic are prohibited.

It is the duty of all Congolese public authorities to safeguard the unity of the Republic and the integrity of its territory.

Article 4

Political parties shall collaborate in the expression of the public will.

No more than two parties may be formed in the Republic. These parties may be organized and may carry on their activities freely. They shall respect the principles of national sovereignty and democracy and the laws of the Republic.

TITLE II

FUNDAMENTAL RIGHTS

Article 5

All Congolese, both men and women, are equal before the law and are entitled to equal protection of the law.

No Congolese may in the matter of education or of access to public service 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.

Article 6

Every person has the right to life and to physical inviolability.

[1] *Moniteur congolais*, No. 14 of 15 July 1967.

No one may be subjected to torture or to inhuman or degrading treatment.

No one may be put to death except in the cases specified and in the manner prescribed by law.

Article 7

Every person has the right to the free development of his personality, provided that he does not violate the rights of others or disturb the legal order.

No one may be held in slavery or servitude or in conditions analogous thereto.

No one may be compelled to perform forced or compulsory labour except in the cases prescribed by law.

All Congolese shall be liable to military service; they may perform civic service in lieu thereof in the conditions prescribed by law.

Article 8

Individual freedom is guaranteed.

No one may be prosecuted, arrested or detained except in accordance with the 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.

Every person 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 assigned to him by the law.

Article 9

Every person charged with an offence shall be presumed innocent until proved guilty by a final judgement.

Every judgement shall state the grounds on which it is based. It shall be given in open court.

No heavier penalty may be imposed than the one which was applicable when the offence was committed.

Article 10

Every person has the right to freedom of thought, conscience and religion.

There is no State religion in the Republic.

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.

Article 11

Every Congolese has the right to freedom of expression.

This right implies freedom to express opinions and feelings, in particular by words, writing and illustration. It is limited by the provisions of the law and the regulations by which the law is enforced.

Article 12

The family, which is the natural basis of the human community, shall enjoy the protection of the State.

It shall be organized in such a manner as to ensure its unity and stability.

Every person has the right to marry the person of his choice and to found a family.

The care and education of children constitute a right and a duty of parents which they shall exercise under the supervision and with the aid of the public authorities.

Article 13

The national system of schools shall provide for the education of young people.

The national system of schools shall comprise the public schools and approved, supervised private schools which are administered by the public authorities and are subject to rules established by law.

All Congolese shall have access to national educational establishments without distinction as to origin, religion, race or political or philosophical opinions.

In co-operation with the religious authorities concerned, national educational establishments shall provide an education compatible with their religious convictions for minors whose parents request it, and for students of full age who so request.

Private schools may be opened when they comply with the conditions prescribed by law.

Article 14

Individual or collective property rights are guaranteed, whether acquired by virtue of customary or written law.

The exercise of these rights may not be interfered with, except in the general interest and by virtue of a law, and such interference shall be subject to the payment of equitable compensation to the person whose rights have been infringed.

The ownership of private enterprises which are regarded as of essential national interet may be transferred to the Republic, the community or a public corporate body by virtue of a law, subject to the payment of equitable compensation to the owners.

Article 15

No Congolese may be expelled from the territory of the Republic.

Every Congolese has the right 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 this Constitution. This right may be restricted only by law.

Article 16

Every person has the right to the inviolability of his domicile.

The public authorities may not interfere with the exercise of this right, except by virtue of the law and in accordance with the procedures prescribed thereby.

Article 17

Every Congolese has the right and duty to work. No one may be discriminated against in his work on grounds of his birth, opinions or beliefs.

Workers may defend their rights by trade union action.

The right to strike is recognized. It shall be exercised in conformity with the laws.

The public authorities shall establish the conditions in which the State shall assist and protect its members.

Article 18

All Congolese have the right to form associations and societies.

Groups whose aims or activities are contrary to the law and directed against public order are prohibited.

TITLE III

POWERS

. . .

Section I

THE EXECUTIVE AUTHORITY

1. THE PRESIDENT OF THE REPUBLIC

. . .

Article 21

The President of the Republic shall be elected for a term of seven years, by direct universal suffrage.

Every native-born Congolese citizen over forty years of age who is eligible for election to the National Assembly is qualified to be elected President of the Republic.

Election shall be by an absolute majority of the votes cast.

The only contenders in the second ballot shall be the two candidates who received the largest number of votes on the first ballot.

An organic law shall establish the conditions for the declaration of candidature, the conduct of the voting, the counting of the votes and the announcement of the results.

. . .

Article 28

The President of the Republic may, after having informed the National Assembly by a message, and ascertained the opinion of the officers of the Assembly, submit to a referendum any bill which in his view, calls for direct consultation with the people.

When the referendum has resulted in the adoption of the bill, the President of the Republic shall promulgate it within the time-limit specified in article 51.

The law thus adopted may not be amended during the term of office of the legislature during which the referendum was held, except with the agreement of the President of the Republic.

. . .

Article 34

3. *Common provisions relating to the President of the Republic and members of the Government.*

The President of the Republic shall not be criminally liable for acts performed in the exercise of his functions except in the case of high treason or wilful violation of this Constitution.

The President of the Republic may not be prosecuted for the offences referred to in the preceding paragraph or for any other offence under penal law committed outside his presidential functions unless charges have been brought against him by the National Assembly in a decision taken by a two-thirds majority of its members in an open vote.

He shall then be arraigned before the Constitutional Court.

If he is convicted of high treason or wilful violation of this Constitution or given a sentence which deprives him under the electoral law of the right to be elected deputy, the Constitutional Court shall declare that he is removed from office.

Legislation shall define the crime of high treason, determine the penalties applicable to the crimes of high treason and wilful violation of the Constitution and the procedure to be followed in the Constitutional Court.

. . .

Section II

THE LEGISLATIVE AUTHORITY

1. THE COMPOSITION AND FUNCTIONING OF THE PARLIAMENT

Article 36

The Parliament shall consist of a single Chamber to be called the National Assembly.

Deputies to the National Assembly represent the nation.

They shall be elected by direct and secret universal suffrage, at the rate of one deputy per 50,000 inhabitants. Each fraction of the population consisting of 25,000 inhabitants or over shall be entitled to an additional deputy.

. . .

Article 39

When a deputy who stood for office on the list of a particular political party ceases to belong to that party, he shall lose his seat in the National Assembly and shall be replaced by his alternate.

Article 40

The term of office of a member of Parliament shall be terminated by death, resignation, permanent disablement, unjustified and unauthorized absence from more than one quarter of the meetings of a regular session or when the member of Parliament is barred on one of the grounds specified in the electoral law.

. . .

Article 51

Laws shall be promulgated by the President of the Republic not more than twenty days after they have been transmitted to the Government by the President of the National Assembly.

The State seal shall be affixed to the laws, and they shall be published in the *Journal Officiel* of the Republic.

Unless they provide otherwise, laws shall enter into force thirty days after their publication in the *Journal Officiel.*

. . .

Section III

THE JUDICIAL AUTHORITY

1. General

Article 56

The judicial authority is independent of the legislative and executive authorities.

It is vested in the courts and tribunals.

No special commissions or tribunals may be established, irrespective of how they are designated.

Judgements, awards and orders of the courts and tribunals shall be executed in the name of the President of the Republic.

Article 57

The courts and tribunals shall apply the law; they shall also apply custom in so far as it is in conformity with the law and with public order.

Administrative regulations shall be applied by the courts and tribunals only in so far as they are in conformity with the law.

Article 58

When a state of siege or a state of emergency has been proclaimed, the President of the Republic may suspend the punitive action of the courts and tribunals in all or part of the territory of the Republic for the period which he shall establish and substitute that of the military courts for the offences which he shall determine.

When the action of the courts and tribunals of the general law is replaced by that of the military courts, the rights of defence and appeal may not be abolished.

2. The courts and tribunals

Article 59

The system of courts and tribunals shall consist of a Supreme Court of Justice, courts of appeal, military courts and tribunals.

The organization, competence and procedures of the courts and tribunals shall be regulated by law.

. . .

Title VI

TREATIES AND INTERNATIONAL AGREEMENTS

Article 68

The President of the Republic shall negotiate and ratify treaties and international agreements.

Peace treaties, trade treaties, treaties and agreements concerning international organizations and the settlement of international disputes, those which commit public finances, those which amend legislative provisions, those concerning the status of individuals, and those involving the exchange or annexation of territory may be ratified only by virtue of a law.

No exchange or annexation of territory shall be valid without the consent of the people concerned, who shall be consulted by means of a referendum.

If the Constitutional Court, when consulted by the President of the Republic or the National Assembly declares that a treaty or international agreement includes a provision contrary to the Constitution, the treaty or agreement may not be ratified and the Constitution has been amended.

Treaties or international agreements which have been 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.

Article 69

With a view to promoting African unity, the Republic may conclude treaties and association

agreements under which it relinquishes part of its sovereignty.

TITLE VII

THE CONSTITUTIONAL COURT AND THE VERIFICATION OF CONSTITUTIONALITY

. . .

Article 71

The Constitutional Court shall have jurisdiction to adjudicate in respect of:

1. Proceedings instituted to determine the constitutionality of laws and of acts having the force of law;
2. Proceedings relating to the interpretation of this Constitution, instituted in connexion with disputes bearing on the extent of the powers conferred and the obligations imposed by this Constitution on the President of the Republic, the National Assembly and the courts and tribunals respectively.
3. All matters over which it has been given jurisdiction by this Constitution or by law.

The Constitutional Court shall have Jurisdiction to try the President of the Republic in the cases specified in article 34 of this Constitution.

The Court shall ensure the regularity of elections for President of the Republic. It shall examine complaints and rule on them; it shall announce the results of the voting.

In the event that they are contested, the Court shall rule on the regularity of elections for members of the National Assembly. It shall also pronounce judgement on the act of the National Assembly recording the forced resignation of one of its members pursuant to article 39, or the termination of the term of office of one of its members for one of the reasons specified in article 40.

. . .

TITLE VIII

AMENDMENT OF THE CONSTITUTION

Article 74

The initiative for amendment of the Constitution shall be taken jointly by the President of the Republic and half of the members of the National Assembly.

A proposal for amendment shall be adopted by the National Assembly by a majority of two-thirds of its members.

The President of the Republic shall promulgate the adopted text as provided in article 51. It shall enter into force in the conditions specified in that article.

Article 75

The Constitution may also be amended in accordance with the procedure described in article 28.

. . .

LABOUR CODE

Established by Legislative Ordinance No. 67/310 of 9 August 1967 [2]

(EXTRACTS)

PART I

GENERAL

Chapter I

GENERAL PROVISIONS: SCOPE

1. The provisions of this Code shall apply to all workers and all employers carrying on their occupational activities in the territory of the Democratic Republic of the Congo, irrespective of the race, sex or nationality of the parties, the nature of the work performed, the amount of the remuneration, or the place where the contract is made, on condition that it is executed in the Congo.

It shall apply to seafarers and the crews of vessels plying on inland waterways only in the absence of provisions in the special regulations concerning them or where the said regulations refer to it expressly.

The provisions of this Code shall not apply to—

(*a*) members of the judiciary;

[2] *Ibid.*, No. 16 of 15 August 1968. The text of the Labour Code in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series* 1967—Congo (Kin.) 1.

(*b*) established state officials covered by special regulations;

(*c*) members of the police and armed forces covered by special legislation.

2. Work is a right and a duty for everyone. It shall constitute a moral obligation for every person who is not prevented from working by age or physical handicap.

Forced or compulsory labour is absolutely forbidden.

The above prohibition shall apply to all work or services demanded of any individual under the threat of any penalty whatsoever and which the said individual has not freely volunteered to perform.

The last two preceding paragraphs shall not apply in the following cases:

(*a*) any work or service required under the legislation respecting compulsory military service for tasks of a purely military nature;

(*b*) any work or service forming part of the lawful civic obligations in the public interest or decided freely by the community concerned, such as the making or upkeep of ways of communication, the disinfecting and sanitation or clearing of dwelling places, water supply, land distribution or building for social, cultural or economic purposes.

Provided that the forms of compulsory labour referred to in this clause shall be carried out only for objectives of public concern and as an exceptional and provisional measure, in the manner and subject to the conditions and guarantees laid down in an ordinance of the President of the Republic made on the advice of the National Labour Council;

(*c*) work and services required in the case of *force majeure,* i.e. in the case of war, calamity, threatened catastrophe, prevention of famine, national disaster, epidemic or any other circumstances endangering or capable of endangering human life or the normal conditions of existence of the entire population or any part thereof;

(*d*) work or services required of an individual as the result of a sentence pronounced by a court of law, on condition that such work or service is carried out under the supervision and control of the public authorities and that the said individual is not made to work for any private employer or private corporation.

Chapter II

CAPACITY TO CONTRACT

3. A person's capacity to contract shall be determined by the law of his own country or, if his nationality is unknown, by Congolese law, subject to the following provisions:

(*a*) It is unlawful to engage or keep in employment any person under 14 years of age. A person over 14 but under 16 years of age may be engaged or kept in service only for the purpose of carrying out light healthy work as prescribed by ministerial order for the administration of section 27 of this Code.

(*b*) It is unlawful to engage or maintain in service a person over 14 but under 18 years of age if the person exercising paternal authority or guardianship over the said person objects.

(*c*) A married woman may legally enter into a contract of service if her husband does not expressly object.

(*d*) The objections referred to in clauses (*b*) and (*c*) above may be over-ruled by the court if this is justified by circumstances or by equity.

(*e*) Any kind of forced recruitment is prohibited in the territory of the Republic.

(*f*) Employers are bound to observe the provisions respecting the protection of the national manpower laid down by ordinance of the President of the Republic on a recommandation from the Minister of Labour and Social Welfare on the advice of the National Labour Council, and the administrative regulations thereunder.

(*g*) Where no documentary evidence is available, the age of workers referred to in clauses (*a*) and (*b*) above shall be assessed in a manner to be prescribed by order of the Minister of Labour and Social Welfare.

[Other provisions of the Labour Code deal with occupational training and advanced training; contracts of apprenticeship; contracts of employment; subcontractors; wages; general conditions of work; health and safety; industrial medical services; limitation by prescription; labour administrative service; the National Labour Council; the National Vocational Education Guidance and Training Institution; modes of control; individual and collective labour disputes; and industrial relations.]

ORDINANCE No. 67-249 OF 5 JUNE 1967 ESTABLISHING AND ORGANIZING THE NATIONAL COMMISSION FOR UNESCO [3]

TITLE I

TITLE, PURPOSE

Article 1

A National Commission for Education, Science and Culture shall be established within the Ministry of National Education.

Article 2

This Commission shall be responsible for promoting, in the Democratic Republic of the Congo, mutual understanding among peoples, encouraging intellectual and educational activities to that end and developing public interest in the purposes, programme and work of the United Nations Educational, Scientific and Cultural Organization.

. . .

[3] *Ibid.*, No. 17 1 September 1967.

COSTA RICA

NOTE [1]

I. Executive Decrees

. . .

Decree No. 5 of 2 March 1967 (extract).

Article 1. There shall be established a Tripartite committee consisting of representatives of democratic trade unions, employers' organizations and the Ministry of Labour and Social Welfare.

Article 2. The purpose of the Committee shall be to study and assess periodically the extent to which basic freedom of association exists in the country, in accordance with the terms of the relevant provisions of the law and of Conventions Nos. 87 and 98 adopted by the International Labour Organisation and ratified by Costa Rica, and also the extent to which democratic workers' organizations participate in the formulation and execution of the national development plans.

Article 3. The Committee shall submit periodic reports on the above-mentioned studies and developments to the Secretary-General of the Organization of American States.

. . .

II. International Conventions

1. *International Convention on the Elimination of All Forms of Racial Discrimination.*

Approved without reservation by Act No. 3844 of 5 January 1967. The instrument of ratification has been deposited with the Secretary-General of the United Nations.

2. *Convention on the Political Rights of Women.*

Approved without reservation by Act No. 3877 of 2 June 1967. The instrument of ratification has been deposited with the Secretary-General of the United Nations.

[1] Note furnished by the Government of Costa Rica.

CYPRUS

NOTE [1]

1. Annual Holidays with Pay Law enacted on 3 March 1967

The Annual Holidays with Pay Law came into operation on 1 August 1967. It created a central Holiday Fund administered by Government. Payment into the Fund is made by employers in the form of special stamps affixed in a "holiday-booklet", and provision is made for the Minister to exempt from the scheme any employer who offers better conditions.

The maximum holiday it was possible to offer in view of economic considerations was nine working days. This will cost the employer 3 % of his wage bill. Whilst this comfortably exceeds the six days minimum of ILO Convention 52 concerning Minimum Holidays with Pay and is a decisive step forward, it cannot be regarded as overgenerous in the light of current law and practice, particularly in the light of ILO Recommendation 98 which calls for two working weeks. For this reason, provision has been made in the Law for increasing the number of days' leave when circumstances permit.

This new law covers all employed persons including Government employees, and it is hoped that by the end of 1968 when the "running in" period is over, every employed person in the island will receive annual leave with the exemption of a number of casual workers who work less than 25 weeks a year.

[1] Note furnished by the Government of Cyprus.

2. Termination of Employment Law, enacted on 27 March 1967

This Law, which came into operation on 1 February 1968, provides protection for both employer and employee.

It has three main provisions:

(i) It protects the employee against arbitrary dismissal by the employer. Whilst the employer retains the right to dismiss, if he does so without good reason (e.g., misconduct or inefficiency), the employee may claim compensation. The maximum compensation payable is on year's wages.

(ii) It prescribes minimum periods of notice, in some cases, considerably in excess of periods allowed by the common law.

(iii) It contains special provisions for dealing with problems of redundancy.

A national redundancy fund is created into which employers make a contribution of 0.5 % of each worker's wage. The risks of redundancy are, therefore, spread out on the insurance principal over all the employers in the island.

The redundant employee may clain a payment from the fund in the scale of two weeks for each of the first six years of service and one week's wages for each year thereafter up to a maximum of 20 years. For the purposes of the Law, service prior to 1 January 1960 is discounted.

These payments are additions to existing social security payments and are designed to "tide over" the redundant employee during the difficult period of unemployment and perhaps resettlement that may follow redundancy.

CZECHOSLOVAKIA

NOTE [1]

I. Right to vote and right to participate in government

1. *Act No. 113/1967 on Elections to the National Assembly and Act No. 114/1967 on Elections to National Committees of 30 November 1967* stipulate that elections to the said bodies take place on the basis of universal, equal and direct right to vote through secret elections. The right to vote may be, in principle, exercised by all citizens of the Czechoslovak Socialist Republic who are 18 years of age as of the date of elections, regardless of their nationality, sex, religion, employment, period of residence, social origin, property circumstances and previous activity. Any citizen of the Czechoslovak Socialist Republic who possesses the right to vote and is 21 years of age as of the date of elections, may be elected to the National Assembly or a National Committee. Candidates are proposed for individual electoral districts, and the number of candidates proposed may exceed that of the deputies to be elected in any electoral district. The Acts further contain detailed provisions concerning electoral lists, electoral districts, election commissions, candidates, declaration of elections, voting procedure, ascertaining election results, cessation of the function of a deputy and by-election to the National Assembly and National Committees.

2. *Act No. 69/1967 of 26 June 1967 on National Committee* newly adjusts the status and terms of reference of National Committees. It defines National Committees as organs of Socialist State power and administration in regions, districts and communities. National Committees consist of deputies elected on the basis of universal, equal and direct suffrage by secret vote. The deputies are people—controlled, responsible to people, and may be recalled by the decision of their voters.

National Committees organize a planned economic, cultural, health and social development in their territories (in communities and towns, there are Local and Municipal National Committees; in districts, District National Committees; and in regions, regional ones). As State organs of a self-government character, they link up in their work the meeting of society's needs with the needs and interests existing in their territories, especially the needs relating to the development of towns and communities. They put into harmony all-society, local, group and personal interests. They protect the the rights and legitimate interests of citizens and organizations and guide them toward the implementation of laws and respect for the rights of their fellow citizens. They play their role in the protection of the socialist economic system, socialist order of society, and in strengthening the Republic's ability to defend itself. National Committees carry out all their activitities while maintaining close links with the citizens, with their active participation and under their continuous control. Thus they offer the citizens the possibility to share in the State administration to the broadest possible measure. The Act further contains detailed provisions relating to the competence of national committees, to the deputies, organs of the National Committees and their control, etc. Section 64 provides for the setting up of citizens' committees whose mission is to enable the citizens to bring forth their needs and interests in National Committees' work and to organize their participation in the handling of public affairs.

3. *Act No. 70/1967 of 29 June 1967 on the People's Control Commissions* contains provisions dealing with the system of elected controlling bodies—the People's Control Commissions—consisting of the Central People's Control Commission elected by the National Assembly, the Slovak National Council's Commission elected by the Slovak National Council, the People's Control Commissions elected by regional, district and local National Committees, and the factory People's Control Commissions acting as organs of factory trade-union organizations. The Central People's Control Commission controls, in particular, the implementation of laws and other legal

[1] Note furnished by the Government of the Czechoslovak Socialist Republic.

regulations, National Assembly resolutions as well as those of its Presidium and the Government, the situation and standards in dealing with complaints, communications and initiatives of the working people presented to State organs and socialist enterprises. The competence of other People's Control Commissions is stipulated by the organs to which the commissions concerned are responsible for their activities. The work of judges and prosecutors is expressly exempted from the competence of the People's Control Commissions. The Act stipulates that People's Control Commissions carry out their activities with the broadest possible participation of the working people.

II. Protection of citizens' rights in administrative procedures

Administrative Procedures Act No. 71/1967 of 29 June 1967 sets procedures governing the decision-making of National Committees, ministries and other State administration bodies in the field of State administration relating to the rights, legally-protected interest or duties of citizens and organizations. Administration organs proceed in harmony with laws and other legal regulations and are obliged to protect the interests of the State and society, the rights and interests of citizens and organizations. They are obliged to proceed in close co-operation with citizens and organizations, and to provide them always with the opportunity to effectively defend their rights and interests, especially to express their opinion on the merits of the case, and to bring forth their proposals. Administrative bodies must provide assistance anad counsel to citizens and organizations so that they do not suffer in the course of the procedure due to the lack of knowledge of legal regulations.

III. Right to social security

Act No. 116/1967 of 1 December 1967, changes and supplements in some ways the *Act No. 141/1965 on Social Security of Co-operative Farmers.* It represents an improvement of the social security of farmers working in co-operatives as one of the measures equalizing the conditions and standards of social security of co-operative farmers with those of workers and other persons working as employees. Under the Act, the most significant change lies in a broader coverage in dispensing sickness payments and in wider rights of co-operatice farmers to retirement pensions. It stipulates that as of 1 January 1968, all co-operative farmers are entitled to sickness payments and support, under the usual conditions, when attending ailing members of their families, payable from State funds. Individual provisions bring improvement of the co-operative farmers' social security also as regards equalization payments during pregnancy and motherhood, cash allowence payable on child's birth, as well as family allowances for certain categories of co-operative farmers.

IV. Right to just and favourable working conditions and remuneration, etc.

Regulation No. 3/1967 Sb. contains Directives on the conclusion, registration and control of collective contracts, issued by the *Central Trade Union Council.* It defines the collective contract as a document expressing the harmony of social and personal interest, the participation of the working people in the management of factories, enterprises and sectors. It expresses mutual obligations of the collective employees, represented by the appropriate trade-union body, and the management relating to the fulfilment of production tasks and the use of funds thus made available for the development of the factory, enterprise or sector and for the wages and welfare of the employees. It is binding for both parties. Collective contracts set out the principles relating to wage trends, stipulate the share of the employees' fund in the enterprise's own funds, and deal in detail with the conditions governing their utilization for payment of wages. The Regulation contains provisions on concluding, contents, registration, validity and control of collective contracts.

The Regulation was issued on the basis of the authorization provision contained in article 21 of the Labour Code No. 65/1965 sb.

V. Right to education

1. *Act No. 49/1967 of 7 May 1967 on Postgraduate Studies* considers postgraduate studies to be the principal form of further education of university graduates; applicants to these studies are accepted on the suggestion of appropriate organizations employers or at their own request. The Dean of Faculty decides on their enrolment. His decision may be appealed to the Rector whose decision is final. Postgraduate studies are financed by the organizations wishing to employ the students following the completion of their studies, or from university funds provided the studies are organized on the basis of the decision of the Ministry of Education.

2. *Act No. 87/1967 of 9 August 1967* stipulates the extent of financial and material security in boarding-school type of apprenticeship schools for youngsters requiring special care, and in apprenticeship schools attended by apprentices coming from social-care institutes for physically handicapped youth.

DAHOMEY

ORDINANCE No. 33 P.R./M.F.P.T.T. OF 28 SEPTEMBER 1967, TO PROMULGATE A LABOUR CODE [1]

(EXTRACTS)

PART I

GENERAL PROVISIONS

1. This Ordinance shall apply to workers and employers carrying on their occupational activities in Dahomey.

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

2. In this Ordinance "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 worker.

Persons appointed to permanent posts on the establishment of a public administrative service shall not be subject to this Ordinance.

3. Forced labour is absolutely forbidden.

The term "forced 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.

PART II

TRADE UNIONS

Chapter I

PURPOSE AND CONSTITUTION OF TRADE UNIONS

4. Trade unions shall have as their sole object the study and defence of economic, industrial, commercial, agricultural and handicrafts interests of their members, and educational activities bearing on the future economic and social development of the Nation.

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

6. Any member of a trade union may withdraw at any time notwithstanding any clause to the contrary, subject to the right of the trade union to demand the contribution in respect of the six months following withdrawal from membership.

7. It shall be unlawful for any employer to take into consideration the fact as to whether a worker is or is not a member of a trade union or carries on any trade union activities, in taking decisions, *inter alia,* recruitment, conduct, distribution of work, vocational training, promotion, remuneration, grant of special benefits, disciplinary measures and dismissal.

It is unlawful for an employer to use any means of pressure in favour of or against any trade union organization.

Any measure adopted which is contrary to the provisions of the foregoing paragraphs may give entitlement to damages.

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

Registration shall be carried out at the town hall or the principal town of the administrative area in which the trade union is established, and a copy of the by-laws shall be sent to the labour inspector, the public prosecutor for the area and the Minister of Labour.

[1] *Journal officiel,* No. 27 of 15 December 1967. The text of the Ordinance in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series,* 1967—Dah. 1.

Any amendments to the by-laws and any changes in the composition of the board of managers or directors of the trade union shall be brought to the knowledge of the same authorities in like manner.

9. The members responsible for the management or leadership of a trade union must be citizens of Dahomey or nationals of any other State with which residence agreements stipulating reciprocity as regards trade union rights and defence of trades and occupations have been entered into, and must be in full possession of their civil and political rights in accordance with the provisions of the basic laws respecting the electorate on this subject.

10. Married women carrying on a trade or profession may, without the authorization of the husband, join trade unions and participate in their management or direction subject to the conditions given in the preceding section.

Minors over 16 years of age may join the trade unions unless the father, mother or guardian objects.

11. Trade union organisations shall not be dissolved or suspended by administrative decision.

In the case of dissolution (whether this be voluntary, prescribed by the by-laws or ordered by a court) the property of the trade union shall devolve in the manner prescribed in the by-laws or, if there is no provision in the by-laws, according to rules made by the general meeting. If no ruling is made by the general meeting, the property shall devolve by virtue of a court order. In no case shall the said property be distributed among the members.

Chapter II

Civil-law capacity of trade union

12. Trade unions shall enjoy legal personality. They shall have power to sue and be sued and to acquire movable or immovable property without authorisation, with or without valuable consideration.

They may in any court exercise the rights reserved to civil-action plaintiffs in criminal proceedings, in relation to acts causing direct or indirect prejudice to the collective interests of the trade or profession which they repreent.

13. They may devote a part of their resources to the creation of workers' dwellings or the purchase of fields for cultivation or sports grounds for the use of their members.

They may establish, administer or make grants to institutions serving the trade or profession, such as provident schemes, solidarity funds, laboratories, experimental farms, schemes for scientific, agricultural or social education, courses and publications on matters concerning the trade or profession.

The movable and immovable property entirely paid for and required for their activities shall be exempt from attachment.

14. They may make grants to producers' or consumers' co-operative societies.

They may make contracts or agreements with all other trade unions, companies, undertakings or persons. Collective employment agreements shall be made in the manner laid down in this Code.

15. If they are so authorised by their by-laws and on condition that they make no distribution of profits (even by way of refund) among the members, the trade unions may—

(1) purchase, with a view to hiring out, loaning or distributing to members, anything that is necessary for the trade or occupation, inclucing raw material, tools, implements, machinery, fertilisers, seeds, plants, animals and cattle food;

(2) provide a free service for the sale of products derived exclusively from the personal labour or holdings of the members, and promote such sale by means of exhibitions, advertisements, publications, group orders and deliveries, but not by carrying out the selling operation in their own name and on their own responsibility.

16. They may be consulted on all disputes and all questions related to their branch of activity.

In contentious matters legal advice obtained by the trade union shall be held at the disposal of the parties, who may have access thereto and take copies thereof.

Chapter III

Trade union marks

17. Trade unions may register their marks or labels in such manner as is prescribed by order of the Minister of Labour. As from that moment they may claim exclusive ownership of the mark or label, subject to the provisions of the said order. Such marks or labels may be affixed to any product or article of commerce to certify its origin and conditions of manufacture. They may be utilised by all individuals or undertakings selling the products.

Any clause of a collective agreement or understanding stipulating that the use of the trade union mark by an employer shall be subject to an obligation for the said employer to employ or to continue to employ only members of the trade union to whom the mark belongs shall be null and void.

Chapter IV

Special mutual aid and pension funds

18. The trade unions may, if they comply with the laws in force, establish special mutual aid and pension funds among their members.

The assets of such special funds shall be exempt from attachment, within the limits prescribed by law.

Every person who withdraws from a trade union shall retain his right of membership in any

munal aid societies and old-age pension societies to whose assets he has contributed by assessments or capital payments.

Chapter V

FEDERATIONS OF TRADE UNIONS

19. Occupational or regional trade unions which have been duly formed in accordance with the provisions of this Act shall be free to unite for the study and defence of their economic, industrial, commercial, agricultural and handicrafts interests.

They may form themselves into any manner of federation.

20. The provisions of section 8 of this Code shall apply to federations of trade unions, which must in addition notify under the said section the names and registered addresses of the member trade unions. Their by-laws must give rules for the representation of the member trade unions on the Governing Body and in the general meetings.

Such federations shall enjoy all the rights conferred on trade unions.

21. Premises may be placed at the disposal of the federations of trade unions for carrying on their activities, by decision of the General Council.

[Other provisions of the Ordinance deal with contracts of employment; wages; conditions of work; special provisions for alien workers; health and safety; arrangements for giving effect to the Code; and labour disputes.]

DENMARK

NOTE [1]

I. Legislation

1. A new statute on sterilization and castration (No. 234 of 3 June 1967) was enacted in June 1967. The most important changes are the following:

According to previous legislation, weak-minded persons might be sterilized without consenting to the operation. By virtue of the new act, any person who is capable of understanding the nature of the intervention must consent to it. If he lacks the understanding, a guardian must consent on his behalf.

While castration might previously be forced upon sexual criminals, who had committed crimes of a serious nature, any castration has new to be consented to.

2. A law on extradition (No. 249 of 1967) was enacted on 9 June 1967.

Before this act entered into force, extradition was governed internally solely by customary rules except as far as regards extradition among the Nordic Countries.

The purpose of the act is to safeguard the legal protection of the persons in question by stipulating the conditions under which extradition may to whether the conditions are fulfilled. It is, take place and by introducing judicial control as *inter alia,* stated that military or political offenders cannot be extradited and that extradition shall be refused if the person in question risks persecution because of his origin, his ethnic affiliation or his religious or political conviction.

If the authorities decide to comply with the request of extradition, the person in question has the right to obtain a court decision as to whether the legal prerequisites for an extradition are present.

A number of amendments to the Penal Code were made in statute No. 248 of 9 June 1967.

Inter alia, the prohibition against publishing or importing pornographic literature was abolished as well as a number of other restrictions regarding obscene publications.

II. Court decisions

The Supreme Court in a decision which appears in *"Ugeskrift for retsvæsen"*, 1967, p. 46, held that the freedom to hold political opinions was not iolated in a case where a worker's union paid a relatively small sum of money each year to a political party, although membership in the union is of big importance in order to get employment and stay employed.

[1] Note furnished by Mr. Niels Madsen, Permanent Secretary of State, Ministry of Justice, government-appointed correspondent of the *Yearbook on Human Rights.*

DOMINICAN REPUBLIC

ACT No. 112 OF 8 MARCH 1967, AMENDING THE PARAGRAPH OF ARTICLE 22 OF DIVORCE ACT No. 1306 *BIS* OF 12 JUNE 1937 [1]

Article 1. The paragraph of article 22 of Divorce Act No. 1306 *bis* of 12 June 1967, added by Act No. 2153 of 12 November 1947, shall be amended to read as follows:

"*Article 22.* In all cases where summonses are to be issued for an appearance before the State Council (*fiscal*), it shall be obligatory, under penalty of complete and final nullification of the proceedings for the petitioning husband, to publish for three consecutive days in a national daily newspaper with a wide circulation an announcement notifying the defendant wife that, in the absence of information as to her place of residence, she will be summoned to appear in divorce proceedings before the State Counsel *(fiscal)* of the court which is to take cognizance of the petition. The announcement shall name the court in question, the date on which the petition will be communicated to the State Counsel (*fiscal*), the grounds for the petition, the name of the petitioner, the name of the wife against whom the petition is being brought, the last place of residence of the wife that was known to the husband, and the time and date of the hearing. A complete copy of this announcement shall be transmitted to the State Counsel *(fiscal)* dealing with the petition. The judge in charge of the case shall declare the petition inadmissible if it cannot be proved ved that the necessary annoucement have been made, by the submission of copies of the three newspapers, certified by the publishers, containing the three consecutive announcements ordered by this law."

[1] *Gaceta Oficial*, No. 9.027 of 31 March 1967.

ECUADOR[1]

CONSTITUTION OF ECUADOR [2]

PREAMBLE

The people of Ecuador, faithful to the democratic and republican tradition that inspired its birth as a State, set forth in this Constitution the basic principles that protect its inhabitants and guarantee their free coexistence, under a system of fraternity and social justice.

They therefore invoke the protection of God, proclaim their unyielding adherence to the cause of universal peace and culture, declare that the rights of the human person are inalienable, and condemn every form of individual or collective despotism.

TITLE I

BASIC PRECEPTS

Article 1. The Ecuadorian nation, in order to fulfil its historical destiny, constitutes a sovereign, democratic and unitary State. Its government is republican and presidential, and therefore elective, representative, responsible and alternating.

Article 2. Sovereignty resides in the people, and is exercised by the organs of the public power.

Article 3. Every organ of the public power is responsible, and cannot exercise functions other than those established by law.

Article 4. Ecuadorians are equal before the law.

Article 5. All inhabitants are subject to the legal order of the State, and owe obedience to its authorities.

. . .

Article 9. The Ecuadorian State proclaims peace and co-operation as the system of international coexistence and the juridical equality of States; it condemns the use or threat of force as a means of settling differences, and repudiates the spoils of war as a source of law. It supports the settlement of international disputes by legal and peaceful methods, and declares that international law is the standard of conduct for States in their relations with one another.

...

It also supports the international community and the stability and strengthening of its agencies, and, within it, Ibero-American integration as an effective means to achieve the development of the community of peoples united by bonds of solidarity originating from their identity of origin and culture.

Ecuador may form associations with one or more States for the promotion and defence of national and community interests.

Article 10. It is a primary function of the State to establish social conditions in which the members of the community may enjoy the means necessary to the fulfilment of their purposes.

TITLE II

NATIONALITY

Article 11. Ecuadorians are such by birth or by naturalization.

Article 12. Persons born in the territory of Ecuador are Ecuadorians by birth.

Article 13. The following persons born in foreign territory are also considered Ecuadorians by birth:

(1) Children of Ecuadorian parents, or of an Ecuadorian father or mother, when one or both are in the service of Ecuador.

(2) Children of parents or of a father or mother Ecuadorian by birth, temporarily absent from the country or in the service of any international organization of which Ecuador is a member.

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[1] Texts furnished by the Government of Ecuador.

[2] *Registro Oficial*, No. 133 of 25 May 1967.

(3) Children of parents or of a father or mother Ecuadorian by birth, domiciled in foreign territory, unless they expressly renounce Ecuadorian nationality after reaching their majority.

(4) Children of parents or of a father or mother Ecuadorian by naturalization, if, having been born in foreign territory, they indicate, between the ages of eighteen and twenty-one, their intention to be Ecuadorians.

The rights of Ecuadorians referred to in this article are equal to those of Ecuadorians born in the national territory.

Article 14. The following are Ecuadorians by naturalization :

(1) Persons who have obtained Ecuadorian nationality from the Congress for outstanding services to the country.

(2) Persons who have obtained a certificate of naturalization.

(3) Minors born abroad of foreign parents who later become naturalized in Ecuador. When they attain the age of eighteen years, they shall retain Ecuadorian nationality unless they expressly renounce it.

(4) Foreigners adopted by Ecuadorians, as long as they are minors. They shall retain Ecuadorian nationality if they indicate, between the ages of eighteen and twenty-one, their intention to retain it.

Article 15. Neither marriage nor its dissolution alters nationality. The law shall provide for naturalization of the foreign spouse of a person having Ecuadorian nationality.

Article 16. Persons who had Ecuadorian nationality prior to the issuance of the present Constitution, shall continue to possess it. Persons who in accordance with previous constitutional provisions, did not acquire Ecuadorian nationality but would have been able to acquire it according to the provisions or article 13 of the present Constitution, shall be considered Ecuadorians by birth.

Article 17. Without the loss of their nationality of origin, and under a system of reciprocity, Ibero-Americans and Spaniards by birth shall be considered Ecuadorians by naturalization if they are domiciled in Ecuador, and indicate their intention to be considered as such. Reciprocally, Ecuadorians shall not lose their nationality when they acquire another under the principle of dual nationality.

Article 18. Juridical persons legally authorized for such purposes as the law may determine, are considered Ecuadorian.

Article 19. Ecuadorian nationality is lost:

(1) By treason to the country, judicially pronounced.

(2) By renunciation as provided in article 13(3).

(3) By naturalization in another State, except as provided in article 17.

(4) By cancellation of the certificate of naturalization as provided by law.

Article 20. Nationality may be recovered in accordance with the law.

TITLE III

CITIZENSHIP

Article 21. Ecuadorian citizens are persons over eighten years of age who are able to read and write and therefore to exercise the political rights set forth in this Constitution.

Article 22. The rights of citizenship are suspended:

(1) By conviction for offences against freedom of suffrage.

(2) By conviction, in the case of a judge, a public official or public employee, for violation of a constitutional provision.

(3) By conviction for fraud in the handling of public funds, for the time that the sentence runs.

(4) By failure to pay moneys shown to be due in the accounts of public funds, for the duration of the delay.

(5) By judicial interdiction.

(6) By penal sentence, for the time that the sentence runs, except in the case of a petty offence.

(7) By insolvency declared to be fraudulent.

(8) In all other cases determined by the Constitution and the laws.

TITLE IV

RIGHTS, DUTIES AND GUARANTEES

Chapter I. General provisions

Article 23. The State recognizes, guarantees and fosters the rights of man, as an individual and as a member of the family and of other groups that promote the development of his personality. The law shall protect the freedom and rights of the individual against abuses by the public power and by private persons.

Article 24. The State guarantees free access to culture and to social and economic advancement to all its inhabitants; to Ecuadorian citizens, it guarantees effective participation in political activity. The law shall eliminate any obstacles that may hinder or limit certain sectors of the national population from the exercise of these rights.

Article 25. There shall be no discrimination based on such distinctions as race, sex, filiation, language, religion, political opinion, or economic or social position. No prerogative shall be granted nor shall any obligation be imposed if it places some persons in a better or worse position than others. There are no hereditary honours or offices, and no personal privileges or rights. Honesty, ability and other merits shall be the sole criteria for determining personal worth.

Article 26. Any law, administrative regulation or other provision that hinders the exercise of

the rights guaranteed by this Constitution shall be null and void.

Article 27. The State, all other institutions of public law, and semi-public entities are obliged to indemnify private persons for injuries to their property and rights as a result of the operation of public services or of the acts of their officials and employees in the performance of their duties.

Notwithstanding the provisions of the preceding paragraph, the State and other entities mentioned therein shall enforce the responsibility of their officials and employees who, through malice or negligence, have injured the State or private persons. The penal responsibility of such officials and employees shall be determined by the competent judges.

Chapter II. Personal rights

Article 28. Without prejudice to other rights deriving from the nature of the individual, the State guarantees:

(1) The right to life and to the means necessary for a decent existence.

(2) The inviolability of life; there is no death penalty.

(3) Personal integrity; there is no torture, nor may drugs or other means that enervate the faculties of the person, be employed, except for therapeutic purposes.

(4) The right to honour and to personal and family privacy.

(5) Freedom of opinion and freedom of expression through any means of collective communication, provided that the law morals and personal honour are respected.

This right shall be exercised with due regard to the fact that the primary objective of collective communications media is the defence of national interests and the dissemination of culture, and that they should constitute a social service deserving of the respect of the State.

No authority or official may suspend, close, seize or impound publications, presses or other means of collective communication. Their directors, editors and other workers and assistants shall not be prosecuted or imprisoned for alleged crimes committed by such means, except by judicial sentence.

Anonymous publications shall be subject to legal regulation.

Every natural or juridical person has the right, as provided by law, to have false or calumnious statements or allegations by collective communications media corrected free of charge.

(6) Free participation in the cultural life of the community and in scientific research.

(7) The right to information and free access to the sources thereof, with no limitations other than the international security of the State and the private life of persons.

(8) Freedom of religious belief and of individual or collective worship, in public or in private.

(9) The inviolability of the home; no one may enter the home of another without his consent or without an order signed by a competent authority; without such an order, only in such cases as may be expressly determined by law.

(10) The inviolability of correspondence and secrecy of telegraphic and telephonic communications. It is forbidden to open or register papers, business records, letters and other private documents, except in the cases and in the manner determined by law. Confidentiality shall be preserved regarding matters extraneous to the purpose of the registration or examination.

Documents obtained in violation of this guarantee, shall not be admissible as evidence.

(11) Freedom of movement and residence in the national territory, as well as exit and return, for which no passport shall be required of Ecuadorians.

(12) The right of petition; the judge, official, or authority receiving a petition is obligated to reply to it within thirty days, unless the law determines a special period. This right may be exercised individually or collectively, but never in the name of the people; so-called lock-outs are forbidden and are declared punishable, as are strikes of public employees in violation of the law and those carried out by cities or regions as a means of petitioning the authorities.

(13) The right of Ecuadorian and foreign authors over their literary, artistic, and scientific works; the law shall regulate the exercise of this right, reconciling it with the social function inherent in cultural endeavour.

(14) The exercise of occupations and professions and of agriculture, commerce and industry, as provided by law.

(15) The right to demand judicial protection against any violation of constitutional guarantees, without prejudice to the duty of the public power to see to the observance of the Constitution and the laws.

(16) The privacy of the citizen with respect to his political and religious convictions; no authority may oblige him to testify concerning them, nor molest him, except in the cases provided in the Constitution and the laws.

(17) Freedom of assembly and association, without arms, for purposes not prohibited by law.

(18) Personal freedom and security. Consequently:

(*a*) Any order that subjects one person to another, absolutely and for an indefinite period, is null and void.

(*b*) Except in cases of compulsory support, there is no imprisonment for debts, costs, fees, taxes, fines or other obligations of a civil nature.

(*c*) No one may be restrained for any act not expressly declared to be an offence by the

law, no suffer a penalty not established in the law. Both the offence and the penalty must be declared prior to the act. In case of conflict or two penal laws, the less severe one shall be applied, even if it takes effect subsequent to the offence.

(*d*) No one may be punished without prior judgement, nor deprived of the right of defence at any stage of the proceedings or of the right to be heard last.

(*e*) No one may be withdrawn from his natural judges, nor judged by special commissions.

(*f*) No one shall be compelled to testify against himself under oath or duress in any matter in which he may incur penal responsibility, nor be obliged to testify in criminal proceedings against his spouse or relatives within the fourth degree of consanguinity or the second degree of affinity.

(*g*) No one shall be deprived of this liberty except in the manner and for the period that the law establishes, nor held incommunicado for more than twenty-four hours. Except in case of *flagrante delicto,* every deprivation of liberty shall be effected by an order signed by a competent authority, setting forth the legal cause. In cases of *flagrante delicto,* the judge or authority ordering the detention shall, within twenty-four hours, issue a signed order setting forth the legal reasons for the detention.

(*h*) Anyone who considers his imprisonment or detention to be unconstitutional or illegal, may demand a writ of habeas corpus. This right shall be exercised by himself of by another without need for a written order before the mayor or president of the council having jurisdiction in that place, or before the person acting in place thereof. This authority shall order that the petitioner be brought before him immediately and that the order depriving him of liberty be exhibited, and the person in charge of the prison or place of detention shall obey this order.

If the detained person is not produced, or if the order is not exhibited, or does not meet the requirements prescribed above, or if there has been an error in the proceedings, or if, in the opinion of the mayor or president of the council, the petition for redress is justified, he shall order the immediate release of the petitioner. Anyone who disobeys such order shall, without further proceedings, be immediately dismissed from his office or position by the mayor or president of the council, who shall give notice of the dismissal to the Office of the Comptroller-General and to the authority responsible for his replacement.

The dismissed employee may appeal against the dismissal to the President of the Superior Court of the corresponding district, within twenty-four hours of receiving notice of dismissal, but only after having released the detained person.

If the petition is not justified, it shall be dismissed.

(*i*) Punishment shall not violate human dignity, but should be directed at the rehabilitation of the convicted person. Humiliating treatment shall not be employed in the investigation of an offence.

(*j*) Innocence is presumed as long as there is no judicial declaration of guilt according to law.

The State shall endeavour to restore the honour of anyone accused, tried or sentenced by judicial error or for other reasons.

Chapter III. The family

Article 29. The State recognizes the family as the basic unit of society, and protects it equally with marriage and motherhood.

Marriage is based on the free consent of the parties and on the essential equality of the spouses.

The State shall support parents in the exercise of parental authority, and shall see to the fulfilment of the mutual obligations of parents and children.

Children, whether born in or out of wedlock, have the same rights with respect to name, upbringing, education and inheritance.

The law shall regulate matters pertaining to filiation, and shall facilitate investigation as to paternity.

In registering births, no statement shall be required concerning the status of filiation.

Article 30. The State shall protect the child from his conception onwards, and shall also protect the mother, regardless of their antecedents; it shall protect any minor who is in a disadvantageous position, so that he may develop normally and with assurances of his moral integrity.

It shall grant special consideration to large families, and shall provide for tax reductions and exemptions according to the number of children.

Article 31. The State shall endeavour to ensure for the family moral, cultural and economic conditions that favour the attainment of its purposes and permit it to enjoy a decent life.

Inalienable and unattachable family property rights *(patrimonio familiar)* are established, the amount and conditions of which shall be regulated by law.

Article 32. The State shall see to the physical, mental and moral health of minors and to their right to education and home life.

Minors shall be subject to special legislation, which shall be protective and non-punitive.

Chapter IV. Education

Article 33. The State guarantees the rights to an education that enables the person to live decently, to support himself and to be useful to the community.

The right to education includes the right to equal opportunity to develop one's natural talents

in a profession, art or trade, to the degree or level providing the best guarantee of one's own welfare, the welfare of one's dependants and the service of others.

Article 34. The State shall provide and regulate education. It is the duty and right of parents to educate their children, and they may therefore choose the kind of education that shall be given to them.

The State shall establish the laws, regulations and programmes to which public, municipal and private education shall conform, seeking the coherent unity of the educational process.

Article 35. The State guarantees freedom of education within moral limits and those of democratic and republican institutions.

Public education is secular, meaning that the State, as such, neither teaches nor opposes any religion.

Article 36. The object of education shall be the full development of the personability, and it shall teach respect for fundamental rights and freedoms; it shall promote understanding and tolerance between social and religious groups, and the maintenance of peace.

At all levels of education, special attention shall be paid to the moral and civic training of the students.

Article 37. Elementary education and basic education are compulsory; when given in public institutions, they shall also be free.

Article 38. In education, special attention shall be given to the rural dweller. Teachers and officials dealing, with such persons should know Quechua and other vernacular languages.

In schools established in areas having a predominantly indigenous population, Quechua or the respective indigenous language shall be used, if necessary, in addition to Spanish, so that the student will gain a knowledge of the national culture in his own language, and afterwards practise Spanish.

Article 39. The State shall foster, established and maintain technical schools and special institutions for instruction in arts, trades, commerce, agriculture and other remunerative occupations, according to the requirements of the regions and of the economic development and social progress of Ecuador.

The State,.in collaboration with private entities and at joint expense, may found technical schools and other special institutions, and may entrust their operation to such entities.

Article 40. The State shall devote its attention to the urgent elimination of illiteracy; the budget of the State shall be required to include items for this purpose.

Article 41. In free institutions, whether public or private, supplies and social services shall be provided to students who need them.

Article 42. Without prejudice to the appropriations provided in special laws to benefit private education, the legislature and, with its consent, the municipalities shall, whenever they deem it appropriate, furnish aid to free private elementary and basic education.

Article 43. Universities and technical schools are autonomous and are governed by law and by their own statutes; to make this autonomy effective, the law shall support the creation of university endowment funds.

Their premises are inviolable, and forced entry may not be made except in the cases and under the conditions in which the dwelling of a person may be so entered.

The maintenance of their internal order and security are within the competence and responsibility of their authorities.

The basic functions of the universities and technical schools are education, professional training, scientific research, exposition and study of the social, educational and economic problems of the country, and contributing to national development.

Article 44. Capable and deserving students have the right to attain the highest levels of study. The State shall make the exercise of this right possible through scholarship and other benefits to be awarded competitively.

Article 45. All educational sectors of the country, both public and private, shall be represented on the national education supervisory bodies, as provided by law.

Article 46. Stability and fair remuneration are guaranteed to teachers in all categories; the law shall regulate their appointment, promotion, transfer and separation, in accordance with the characteristics of public and private education.

Chapter V. Property

Article 47. The State recognizes and guarantees the right to private property, as long as it fulfils its inherent social function. The law shall regulate its acquisition, use, enjoyment and disposal, and shall facilitate the access of all to property.

Article 48. The confiscation of property is prohibited; should it in fact occur, it shall cause no limitation or modification of the right of the injured party, and a summary action for damages shall originate against the authority that ordered the confiscation and against the State.

Fines, attachments and penalties affecting the ownership of movable property shall be governed by law.

Article 49. No one may be deprived of property rights or of the possession of his property except by virtue of a judicial order or of expropriation, legally carried out, for reasons of public benefit or social interest.

Only the State and other institutions of public law may order expropriation for reasons of public benefit or social interest recognizing fair compensation, except in cases in which the law does not provide for compensation.

Article 50. Only the authorities empowered by law may issue orders that obstruct or interfere with the freedom to contract for, transfer and transmit property; any order in this respect that

comes from any other authority shall have no effect and shall not be obeyed.

Article 51. It is the duty of the State to correct the defects of the agrarian structure, in order to bring about the fair distribution of land, the most effective utilization of the soil, the expansion of the national economy and the improvement of the standard of living of the rural dweller. To this end, it shall promote and carry out agrarian reform plans, which shall be in accord with the interests both of social justice and the economic development of the country, and shall eliminate precarious forms of land tenure.

The owner of agrarian property is obligated to exploit it rationally and to assume responsibility for and personal supervision of its exploitation.

The maximum and minimum areas of agrarian property shall be determined by law.

Article 52. There shall be no immovable property that is inalienable or indivisible in perpetuity.

Article 53. The right to make a will and the right to inherit are guaranteed, within the limits of the law.

Article 54. No private person may enrich himself with contributions from public investments.

The owners of rural or urban property shall repay the value of the economic benefits obtained by virtue of such investments, as provided by law.

Article 55. Lands having no owner shall be the property of the State, as shall agrarian lands which, having an owner, are abandoned for more than eight consecutive years without legal cause. This ownership shall be imprescriptible, but the lands shall be awarded to private persons for purposes of agrarian reform and settlement.

The following also belong to the State: the sea-bed and the continental shelf, and the minerals and other substances forming deposits or concentrations of a composition different from that of the soil. This ownership is also inalienable and imprescriptible, but concessions may be granted for the rational exploration and exploitation of such minerals or substances, as provided by law.

Article 56. The utilization of natural resources, whoever may be their owners, shall be regulated in accordance with the needs of the national economy.

Article 57. Property rights are guaranteed with respect to parents, trade marks, models and commercial, agriculture and industrial emblems or names, as provided by law.

All national products shall be marked to indicate their Ecuadorian origin.

Article 58. The artitic and archaelogical wealth, together with the fundamental historical documents of the country, whoever may be their owners, constitute the cultural heritage of the nation and are under the control of the State, which may prohibit or regulate their disposal or exportation and may order such expropriation as it deems appropriate for their protection, as provided by law.

Article 59. The State reserves the right to engage in certain economic activities as a substitute for, or in order to foster or supplement, private initiative, without detriment to legitimate private interests.

Enterprises operating public services that tend to become monopolies shall be nationalized as provided by law.

Article 60. The State shall determine the territorial areas over which foreigners may not exercise ownership or carry out acts of possession.

Chapter VI. Labour and social security

Article 61. The State guarantees to the inhabitants of Ecuador the right to work and to remuneration that permits them to live decently. It shall prevent unemployment, in order to ensure this right.

No one shall be required to perform work, with or without remuneration, except as provided by law. In general, all work must be remunerated.

Article 62. Work, which has a social function, is compulsory for all members of the community, subject to freedom of choice, consideration being given to conditions of age, sex and health.

Article 63. The State guarantees the enterprise as a community of labour, in which elements of an instrumental nature are subordinate to those pertaining to the human category, and all are subordinate to the common good.

The social organization of the enterprise shall be fostered, without prejudice to the authority or the unity of management.

Article 64. The State shall see that justice is observed in relations between employers and workers, that the dignity of workers is respected and that their responsibility is fostered.

The law shall regulate matters pertaining to employment, in accordance with the following standards:

(1) No one may be required to work except under contract, save only in cases expressly stipulated in the law.

(2) The rights of the worker may not be waived; any stipulation to the contrary shall be void, and actions to claim these rights shall be taken within the period established by law, beginning from the termination of the employment.

(3) In case of doubt regarding the scope of the legal provisions, judges shall apply them in the manner most favourable to the workers.

(4) Equal remuneration shall be received for equal work, without distinction as to race, sex, age, nationality or religion; for purposes of remuneration, specialization and experience in the work shall be taken into account.

(5) There shall be a living wage and a family allowance; wages shall include sufficient remuneration for the basic necessities of food, clothing, housing and culture, both for the worker and for his dependants.

Remuneration shall correspond to the ability, efforts and needs of the worker. To the extent and in a manner compatible with the common good, the law shall establish minimum wages and family allowances.

(6) Wages for work shall not be attachable, except for the payment of debts for support, and must be paid in legal tender, and not with promissory notes, tokens and other similar means. They shall be paid for periods not exceeding one month and may not be decreased or subjected to deductions except as provided by law.

(7) Whatever an employer owes to a worker for wages, salary, compensation and retirement pay is a first-class privileged debt-claim with preference even over mortgage liens, in the amount and under the conditions provided by law.

(8) All workers shall share in the net profits of the respective enterprises, in the percentage established by law, which may not be less than 10 per cent; the law shall regulate the distribution thereof.

(9) The law shall establish the maximum workday, the weekly rest period, and holidays and annual vacations; the rest period and vacations shall be remunerated, and the worker shall enjoy them freely.

(10) The right to form unions is guaranteed to employers and workers, in accordance with legal rules and without need for prior authorization.

(11) Collective bargaining shall have special protection.

(12) The right of workers to strike and of employers to lock out is recognized, subject to regulations concerning the exercise thereof.

(13) For the solution of collective labour disputes of all kinds, conciliation and arbitration tribunals shall be constituted, composed of representatives of employers and workers and presided over by a public official.

(14) Individual labour disputes shall be resolved in oral proceedings, in the manner prescribed by law.

(15) Employers are obligated to ensure for their employees working conditions that do not endanger their lives or health, and to indemnify them for risks arising during or as a result of their work. The law shall regulate the conditions in which the rehabilitated worker, after an occupational accident or illness, shall again be permitted to work.

(16) The working mother shall be the object of particular attention. A pregnant woman shall not be required to work during the period fixed by law prior to and subsequent to childbirth, during which time she is entitled to full remuneration. Moreover, a mother shall be entitled to time off during the workday for nursing her child.

(17) The employment of persons under fourteen years of age is prohibited save for the exceptions established by law, and the employment of persons under eighteen years of age shall be regulated.

(18) The law shall extend special protection to agricultural labour and to the security of the rural worker, and shall regulate matters pertaining to the protection and promotion of artisan labour, as well as other special kinds of work.

(19) No law may be issued which weakens the rights and guarantees recognized for workers under present legislation.

Article 65. All inhabitants have the right to the protection of the State against risks of unemployment, disability, illness, old age and death, as well as in case of maternity and other circumstances depriving them of the means of subsistence.

The State shall progressively introduce or extend a system of social security that protects all inhabitants against such risks; furthermore, it shall guarantee and protect private enterprises that directly carry out this purpose.

Article 66. The system of social insurance shall be operated by autonomous institutions with their own juridical personality; the State, employers and insured persons shall be represented on their governing bodies.

Social insurance shall have its own funds or reserves, which shall be separate from those of the Treasury, and shall not be used for any purpose other than that for which they were established; they shall be invested under conditions of safety, return and liquidity.

Social insurance benefits may not be assigned, attached or withheld, save in cases of support payments due according to law or of obligations contracted in favour of the National Social Insurance Fund. The said benefits are exempt from national and municipal taxes. Any provision depriving an insured person of such benefits shall be null and void.

Article 67. The State shall contribute to the advancement of all sectors of the population, particularly rural dwellers, in the moral, intellectual, economic and social sphere; it shall foster housing programmes; it shall strive to eliminate alcoholism and drug addiction, and shall stimulate the improvement of health.

Article 68. The State shall provide means of subsistence to those who lack such means and are not in a position to acquire them by their work, when there is no person or entity required by law to provide for them. Social welfare shall ensure for the recipient a life which is compatible with human dignity and is such as to enable him to help himself.

Chapter VII. Political rights

Article 69. The State guarantees to Ecuadorian citizens the right to participate actively in political life: election of officials, drafting of laws, supervision of the public power, and holding of public office or public posts.

Article 70. The system of direct and indirect periodic elections is established.

It is the duty and right of citizens to vote; voting is therefore compulsory for men and women.

Article 71. Freedom and secrecy of the ballot are guaranteed. Proportional representation of minorities is also guaranteed when more than one person is to be elected.

Article 72. The plebiscite is established for direct consultation of the opinion of the citizenry, in cases stipulated by the Constitution; the decision of the plebiscite shall be incontestable.

Article 73. To take part in public elections, it is necessary to be an Ecuadorian citizen and to be in exercise of politicial rights.

Members of the public forces on active service shall not make use of this right, being guarantors of the integrity of the ballot.

Article 74. The State guarantees to Ecuadorian citizens the right to participate in political parties, except for members of the public forces and religious, clergymen and ministers of any faith.

The law shall provide special guarantees for the functioning of political parties, and shall support their strengthening, so that they may be a means for the exercise of civic action.

Only political parties recognized by the Supreme Electoral Tribunal may present lists of candidates when more than one person is to be elected.

The law shall also establish the requirements to be met by parties for recognition by the Supreme Electoral Tribunal, which shall make no distinctions on ideological grounds.

The national and provincial leaders of political parties recognized by the Supreme Electoral Tribunal shall have the right to be judged by a Superior Court.

Article 75. The law guarantees to political parties the means of collective communication for dissemination of their programmes: likewise, it shall establish control of electoral expenditures in order to prevent the hegemony of economic groups.

Article 76. The administrative career service is instituted to ensure stability for public servants and efficiency in administration, on the basis of ability, merit and honesty, and competitive examinations are instituted as the means of selection and promotion.

The administrative career service does not include public servants subject to special laws, nor those expressly excepted in the respective law.

Public office must be exercised on the basis of service to the community and defence of the interests of the nation and the people.

Public employees may form associations for the protection of their legitimate interests, and may resort to the strike only in the cases and under the conditions authorized by law and provided that the strike does not paralyse public services completely.

Article 77. No one may hold two or more public offices at the same time. This incompatibility also applies to officials and employees of the National Social Insurance Fund, the Central Bank of Ecuador, the National Development Bank and, in general, entities financed in whole or in part by national or municipal taxes, charges or subsidies.

This prohibition shall not apply to professors of universities, technical schools and secondary schools; such persons may hold one additional position, provided that it is compatible with the performance of their teaching duties. Also excepted are telegraph and radio operators who are classified as technicians by law; they may hold one additional position, if it is compatible with their working schedule.

For the purpose of this prohibition, offices held by virtue of popular election shall not be considered public offices.

Ministers of State and those who discharge functions in one or more agencies by virtue of their position may not receive any remuneration other than that for their principal position.

No public official of employee, and no official or employee of a semi-public entity, may receive remuneration exceeding that paid to the President of the Republic.

Nepotism is prohibited in the public administration, the judiciary and semi-public institutions, under the terms established by law.

No Ecuadorian may, without the corresponding appointment or certificate of election, carry out public functions of a permanent nature, nor occupy a public position on a contractual basis.

In order to provide services to the State, to municipalities and to other institutions of public law, foreigners must enter into the respective contract.

Article 78. At the time of taking and leaving office, public officials and employees shall make a sworn declaration of their assets. Unlawful enrichment during the exercise of public functions shall be punished.

Article 79. In the cases referred to in articles 27 and 78, the penalties imposed upon the offender may not be remitted, reduced or commuted during the constitutional period in which the offence was committed.

Only after the said period shall the statute of limitations begin to run for the prosecution of such offences and for the penalty imposed upon those responsible for them. Civil responsibility is independent of penal responsibility.

Article 80. The State, in accordance with the law and with international agreements, guarantees Ecuadorians the right to seek asylum in case of prosecution other than for common crimes.

Extradition of an Ecuadorian shall never be granted; his trial shall be subject to the laws of Ecuador.

Chapter VIII. The status of foreigners

Article 81. Under the terms established by law, foreigners shall enjoy the same rights as Ecuado-

rians, except for the constitutional guarantees and political rights established exclusively for Ecuadorians.

Article 82. Contracts concluded between a foreign natural or juridical person and the Government of Ecuador or any Ecuadorian natural or juridical person shall include an express or tacit waiver of any diplomatic claim.

Article 83. For the purposes of economic development and social progress, the State shall foster and facilitate immigration; however, it shall investigate the suitability of immigrants and shall require that they engage in the activities to which they have committed themselves.

Article 84. In accordance with the law and with international agreements, the State guarantees foreigners the right of asylum in case of prosecution other than for common crimes.

Title V

THE ECONOMY

Chapter I. General provisions

Article 85. The fundamental objective of the national wealth is the attainment by the inhabitants of Ecuador of their individual and social purposes. Consequently, the State shall establish a socio-economic order in which the members of the community can live decently and enjoy the fruits of progress.

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Chapter II. Planning

Article 94. The State undertakes to see to the efficient utilization of the national resources and to promote the orderly and continuing development of the economy.

Consequently, it shall carry out its action in accordance with a plan covering several years and including coherent measures to achieve, with the participation of all the inhabitants, the specific purposes of economic development and social progress.

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Title VI

THE SUFFRAGE AND ITS ORGANS

Article 107. The organs of suffrage are: the Supreme Electoral Tribunal; the provincial electoral tribunals; the parish electoral boards; and for the granting of identity cards and preparation of the corresponding registers, the Department of Civil Registration, Identification and Certification.

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Title VII

THE LEGISLATIVE POWER

Chapter I. General provisions

Article 117. The National Congress is composed of the Senate and the Chamber of Deputies.

Article 118. The National Congress has its seat in the capital city or Ecuador, and may function elsewhere only in exceptional cases.

Article 119. The Senate is composed of two representatives of each province and one representative of the Colón Archipelago, elected by direct popular vote, and fifteen functional senators:

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Article 120. The Chamber of Deputies shall be composed of the citizens elected by each province of the Republic and by the Colón Archipelago, in proportion to their population.

Provinces shall elect one deputy for every 80,000 inhabitants, and another deputy if there is an excess of 40,000 or more. In no case shall a province have fewer than two deputies. The Colón Archipelago shall elect one deputy.

Article 121. A senator or deputy is required:

(1) To be Ecuadorian by birth and to be in exercise of political rights.

(2) To be a native of the electing province or to have been domiciled there for at least three consecutive years immediately preceding the election.

Functional senators must have been engaged in the activity which they are elected to represent for at least three consecutive years, as provided in the preceding paragraph.

(3) To be at least thirty-five years of age in the case of senators and twenty-five years of age in the case of deputies.

(4) Not to be disqualified under the Constitution or the laws.

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Title VIII

THE EXECUTIVE POWER

Chapter I. The President and Vice-President of the Republic

Article 170. The executive power is exercised by the President of the Republic; he is the Head of State and, as such, represents the State.

Article 171. The President of the Republic is required to be Ecuadorian by birth, to have reached the age of forty, and to be in exercise of political rights.

Article 172. The following persons may not be elected President of the Republic:

(1) Relatives of the President of the Republic within the fourth degree of consanguinity or the second degree of affinity.

(2) The Vice-President.
(3) A person who, at the time of the election, is exercising the functions of President or has exercised them within the six months immediately prior to the election, and his relatives within the degrees indicated in sub-paragraph (1) above.
(4) Ministers of State in office at the time of the election or within the six months immediately prior thereto.
(5) Members of the public forces on active service within the six months immediately prior to the election.
(6) Ministers and religious of any faith.
(7) Persons who have contracts or concessions with the State for the exploitation of the national wealth or the operation of public services, and representatives of such persons or of domestic or foreign companies in the same circumstances. This disqualification does not apply to legal representatives or agents of institutions of public law that have obtained such concessions.

Article 173. The President of the Republic shall be elected every four years, by popular, direct and secret ballot, on the first Sunday in June. He shall hold office for four years, and may not be re-elected until a further four years, counted from the end of his own term, have elapsed.

Article 174. There shall be a Vice-President of the Republic elected by popular and secret ballot, at the same time as the President and for a like term of office.

The same qualifications are required in order to be elected Vice-President of the Republic as for the Presidency.

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Title IX

THE JUDICIAL POWER

Chapter I. The judiciary

Article 199. The judicial power is exercised by the Supreme Court, the Superior Courts, and the other tribunals and courts that the Constitution and the laws establish.

The judicial career of judges and of judicial officials and employees shall be regulated by law.

Article 200. The law shall provide for the dispensing of justice free of cost.

Trials shall be public, except in cases stipulated by law, but courts may confer in secret.

In no case shall there be more than three instances. Judgements shall include a statement of the facts and the law upon which they are based.

In procedural law, there shall be an effort to handle cases simply and efficiently; oral argument shall be used so far as possible, and justice shall never be sacrificed because of the mere omission of formalities.

Article 201. Judges are independent in the exercise of their functions. No other organ of the State shall exercise powers belonging to the judicial power, unless the law gives it competence to do so, nor may it interfere in judicial activities.

Except for cases established in special laws, no review of proceedings or trials of any kind may be ordered when the case has been decided by legitimate authority in the last instance.

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Article 204. A Justice of the Supreme Court is required:

(1) To be Ecuadorian by birth.
(2) To be in exercise of political rights.
(3) To be at least forty years of age.
(4) To have been a practising lawyer of recognized integrity for at least fifteen years.
(5) If the foregoing requirement is not met, to have been a judge for twelve years, which must include a full term as a Superior Court judge.

The requirements set forth in sub-paragraphs (4) and (5) of this article may be replaced by the holding of a university professorship in law for at least twelve years.

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Title X

OTHER ORGANIZATIONS OF THE STATE

Chapter I. The Tribunal of Constitutional Guarantees

Article 219. There shall be a Tribunal of Constitutional Guarantees, having its seat at Quito, with jurisdiction throughout the Republic.

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Article 220. The powers and duties of the Tribunal of Constitutional Guarantees are as follows:

(1) To see to the observance of the Constitution and the laws, especially the constitutional guarantees, to which end it shall call upon the President of the Republic and other officials of the Government and the Administration.

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Title XIV

Supremacy, amendment and permanence of the Constitution.

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Article 258. The Congress in ordinary session may discuss any proposed constitutional amendment, provided that the procedure established for the drafting of laws is followed. However, the Congress may not make any change that will replace the republican form of government or the democratic nature of the Ecuadorian State.

If the proposal is approved by both chambers, it shall be submitted to the President of the Repu-

blic so that he may make known his opinion; if he favours the amendment, the Congress in ordinary joint session, with the attendance of the Justices and State Attorneys of the Supreme Court (who shall have the right to speak and to vote), shall adopt or reject, in whole or in part, the proposed amendment, in a single discussion and by an absolute majority of all its members.

If the President of the Republic disapproves of the amendment, in whole or in part, he shall submit the part or parts with which he disagrees to a plebiscite, in accordance with the provisions of article 184 (10).

The President of the Republic may not veto a law amending the Constitution and shall be obligated to promulgate it.

If an amendment to the Constitution is proposed by the President of the Republic and is rejected in whole or in part by the Congress, the matter shall be resolved in accordance with the provisions of article 184 (10).

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HOLDING OF POPULAR ELECTIONS FOR PROVINCIAL COUNCILLORS AND CANTONAL COUNCILLORS, AND FOR MAYORS IN THE CHIEF CANTONS OF THE PROVINCES, ON THE FIRST SUNDAY IN APRIL OF THE CURRENT YEAR

Promulgated by Decree No. 009 of 23 January 1967 of the National Constituent Assembly [3]

Article 1. Popular elections of provincial councillors and cantonal councillors in all the provinces and cantons of the Republic, and of mayors in the chief cantons of the provinces, shall be held on the first Sunday in April of the current year.

The number of provincial councillors to be elected shall be that fixed by article 81 of the Administrative Procedures Act in force.

The number of cantonal councillors to be elected shall be that fixed by the Municipal Procedures Act in force.

Elections for mayor shall be held only in the provincial capitals; the mayor shall be elected by direct popular vote and shall perform the duties conferred by law on both mayors and chairmen of cantonal councils. The President of the Town Council, an official who shall also have the powers and duties conferred by law on mayors, shall serve as the Executive of the other municipalities.

Article 2. The election shall be carried out in accordance with the electoral rules laid down in the Electoral Law which was in force until 11 July 1963, and in conformity with the new system of identification established under the Civil Registry Act, where applicable. The rules of the 1966 electoral statutes shall apply to invalid ballots.

Article 3. Political organizations which submit lists of councillors, shall have the exclusive right, in each province, to be assigned a letter of the alphabet. Organizations which participated in the elections of 16 October 1966 shall have the right to be assigned the same letter they used in those elections.

Political parties which have entered their names in the Register of Parties of the Supreme Electoral Tribunal before 11 July 1963 shall be recognized and their registration confirmed.

[3] *Ibid.*, No. 51 of 26 January 1967.

RESTORATION OF RIGHTS TO WORKERS ILLEGALLY DISMISSED DURING THE ADMINISTRATION OF THE MILITARY COUNCIL OF GOVERNMENT

Promulgated by Decree No. 0010 of 1 March 1967
of the National Constituent Assembly [4]

Article 1. Workers are entitled to demand from their employers the rights provided for by law and by collective bargaining agreements in cases where they have been illegally dismissed, forced to resign or terminated under special decrees, decisions or resolutions of the Military

[4] *Ibid.*, No. 78 of 6 March 1967.

Council of Government, and pleas of prescription shall not be entered against them, since prescription is deemed to have been suspended in respect of the period from 11 July 1963 until the date of entry into force of this Decree.

Prescription shall have effect only from the date of entry into force of this Decree.

In addition, the provisions of such decrees, agreements or resolutions may not be invoked against them.

Article 2. Legal personality shall be restored to all trade unions deprived thereof by any decree, agreement or resolution of the Military Council of Government.

Article 3. Contracts or agreements concluded between employers and workers dismissed during the military dictatorship referred to in this Decree, are hereby declared legally invalid if the compensation paid was less than the amount prescribed by law. Consequently, such workers may demand payment of the compensation to which they were entitled on the date of termination minus the amount already received.

Article 4. Workers terminated during the administration of the Military Council of Government who have filed legal claims which have been rejected, and who meet any of the conditions specified in this Decree, may file new claims; pleas of *res judicata* against them shall not be accepted with respect to that part or those parts of the claim which have been rejected.

Article 5. All collective bargaining contracts revoked by the military dictatorship are hereby declared to be in force.

Article 6. A labour inspector, appointed by the Director-General of Labour or by the Assistant Director of Labour for the Coastal Region, shall, through the press or by any other suitable means, convene the necessary general meetings for the purpose of establishing managing committees.

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AMENDMENT TO EXISTING CODE OF CRIMINAL PROCEDURE

Promulgated by Decree No. 088 of 6 June 1967
of the National Constituent Assembly [5]

Article 1. Article 362 shall read:

"Any offence committed by means of the press shall be tried by the President of the Superior Court exercising jurisdiction in the place in which it is committed, applying the procedure appropriate to the nature of the offence."

Article 2. Article 363 shall read:

"In the case of any judgement in respect of offences committed by means of the press, irrespective of the penalty imposed, the accuser, the prosecutor, in cases in which he participates in accordance with the law, and the accused may appeal against the sentence to the court, if the court has only one chamber, and to the chamber of which the President is not a member, when there are two. Should there be more than two chambers, lots shall be drawn by the chambers of which the President is not a member to determine which chamber is to hear the appeal.

"If convicted, the accused shall have the right to appeal in third instance to the Supreme Court of Justice irrespective of the penalty imposed in the court of second instance."

Article 3. Articles 364, 365, 366 and 367 are rescinded.

Article 4. Article 369 is replaced by the following:

"When the original text has been exhibited, the author shall be notified of the charge so that he may answer it within five days. Should the original text not be exhibited within the period indicated by the President of the court before which the case is being tried, a period which shall not exceed three days, notification of the charge shall be made to the person specified in article 360."

[5] *Ibid.*, No. 168 of 12 July 1967.

AMENDMENTS TO THE LAND REFORM AND SETTLEMENT ACT

Promulgated by Decree No. 155 of 9 June 1967
of the National Constituent Assembly [6]

PRELIMINARY TITLE

BASIC PROVISIONS

Article 1. Article 1 shall read: "The purpose of this Land Reform and Settlement Act is to correct the defects of the agrarian structure through better distribution and utilization of the land. This change shall be accompanied by technical, economic and social measures designed to increase productivity and raise the standard of living of the agricultural worker and of the community in general."

Article 2. Article 5 shall read: "In order to improve the situation of the peasant and agricultural worker, this Act is aimed at:

"(*a*) The abolition of defective methods of land tenure and utilization, such as the *huasipungo, yanapa, ayuda,* the *arrimado,* the *finquero,* the *sembrador,* the *desmontero,* the *pensionista* and similar types;

"(*b*) The progressive elimination of absentee systems of farming such as tenant farming, sharecropping and similar forms and their replacement by direct, modern forms of farming, such as agricultural enterprises and co-operatives; and,

"(*c*) The improvement of the standard of living of the landless agricultural worker and the peasant by enabling him to own land, establishing adequate minimum wages, offering him a share in the profits of agricultural enterprises, providing him with technical assistance and social security coverage."

...

Article 4. Sections (*d*) and (*h*) of article 14 shall read:

"(*d*) Supervise the expropriation and reversion of landed properties for purposes of land reform, in accordance with the provisions of this Act;

"(*h*) Under its authority and in writing, delegate administrative powers, except for those referred to in section (*d*), to directors of departments, chiefs of section, or, in their absence, to provincial or regional delegates."

...

[6] *Ibid.*, No. 167 of 11 July 1967.

AUTHORIZATION FOR THE NATIONAL SOCIAL SECURITY FUND TO ADMIT APPLICANTS TO VOLUNTARY MEMBERSHIP

Promulgated by Act No. 014-CL of 20 September 1967
of the Permanent Legislative Commission [7]

Article 1. As from the entry into force of this Act, and at any time, the National Social Security Fund shall admit to voluntary membership applicants who, as a result of the appropriate medical examination, have previously been considered insurable.

Article 2. Persons who obtain Social Secutity coverage under this Act, shall receive the same benefits and payments as those granted to compulsory members with regard to insurance convering disability, old age, death, industrial accidents, occupational diseases, and sickness and maternity assistance.

[7] *Ibid.*, No. 235 of 19 October 1967.

FEDERAL REPUBLIC OF GERMANY

THE PROTECTION OF HUMAN RIGHTS IN 1967 — A SURVEY OF LEGISLATION, JUDICIAL DECISIONS AND INTERNATIONAL AGREEMENTS [1]

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22. International instruments for the protection of human rights

[1] Report prepared by *Assessor* Klaus Holderbaum, *Referent* at the Max Planck Institute for Foreign Public Law and International Law, Heidelberg.

Abreviations

Bayer Verv. Bl. Bayerische Verwaltungsbläter (Bavarian Journal of administration)

BGBl Bundesgesetzblatt (official gazette of the Federal Republic), parts I and II

BVerfGE Entscheindungen des Bundesverfassungsgerichts (Decisions of the Federal Constitutional Court, officially compiled (volume and page))

BÖV Die Öffentliche Verwaltung (Public Administration)

DVBl Deutsches Verwaltungsblatt (German Journal of Administration)

GBl Gesetzlatt (official gazette (of Länder))

GVBl, GVOBl Gesetz- und Verordnungsblatt (journal of legislative provisions, regulations, etc. (*of Länder*))

JZ Juristenzeitung (Lawyers' Journal)

MDR Monatsschrift für Deutsches Recht

NJW Neue Juristische Wochenschrift

Introduction

In accordance with past practice, legislative enactments and judicial decisions during the year under review which relate to fundamental rights and freedoms, are again presented in the order followed in the United Nations Universal Declaration of Human Rights of 10 December 1948. In the case of judicial decisions, only those which, because of their subject-matter, bring to light aspects not previously discussed, have been included in the report.

1. Protection of human dignity

(Universal Declaration of Human Rights, preamble and article 1)

The courts had occasion during the year under review to make rulings concerning the precept of respect for human dignity in connexion, *inter alia,* with the treatment of convicts. For instance, the *Land* High Court at Hamm, in a judgement of 23 June 1967 (*NJW* 1967, page 2024), had to consider the problem of decent living conditions for convicts. A convict had complained to the prison authorities that he was housed with two other prisoners in a single (one-man) cell having a toilet that was not partitioned off for privacy. The State counsel-general notified the complainant that, owing to the shortage of detention facilities and the resulting overcrowding of prisons, he was unable to rectify those conditions, which the prison authorities also felt were unreasonable. The convict in question successfully sought a judicial ruling against this answer. In its judgement, the *Land* High Court at Hamm stated, *inter alia,* that the authorities responsible for the administration of justice had a duty and a right to enforce and execute a sentence in such a way that, on the one hand, justice was done to the recognized purposes of punishment by the State while, on the other hand, human dignity was not encroached on and other fundamental rights were not subjected to greater restrictions than were necessarily bound up with deprivation of liberty and with its purpose. The prison authorities, in housing three convicts in a one-man cell, had exceeded those bounds. The court, after commenting in detail on the amount of space each prisoner was entitled to and on the fact that the space of the cell was further reduced by its furnishings, proceeded to rule that, in particular, the failure to have the toilet which was provided in the cell partitioned off made the accommodation as a whole offensive and degrading. A prisoner who was exposed to the view of other prisoners while attending to his bodily needs was not only placed in a demeaning situation himself but was also a nuisance to his fellow prisoners. To house a convict in that way went beyond carrying out the purpose of the sentence; deprivation of liberty was intended to have a severe and lasting punitive effect on the lawbreaker, thus achieving the deterrent, retributive, expiatory and correctional purpose of the punishment, but to house three convicts in a one-man cell with an unpartitioned toilet was a violation of the convict's right to respect for his personality and hence for his dignity. Such dignity belonged to all human beings, including one who had incurred punishment. His crime did not divest him of that dignity, which was innate to him and could not be forfeited. The prison authorities must respect that human dignity. Nor could the overcrowding of the prison as a result of the shortage of detention facilities have justified the degrading way in which the complainant was housed, and steps should therefore have been taken to end the overcrowding.

Convicts were also the subject of a judgement of the Federal Social Court of 31 October 1967 (*NJW* 1968, page 1158). Under German law as it now stands, convicts and persons in preventive detention who are required to perform work while in prison, are covered by the statutory accident insurance scheme; but they are not subject to compulsory insurance under either the statutory sickness and pensions insurance scheme or the unemployment insurance scheme. The Federal Social Court ruled in this connexion that, as a general principle, only employment relationships that were freely entered into could be subject to the compulsory insurance schemes. Such a relationship did not exist in the case of convicts and persons in preventive detention, since they were required, as a direct result of the terms of the Penal Code and the public-law relationship of constraint arising out of their subjection to prison discipline, to perform work. The differential treatment of persons who chose to work and of convicts was a violation neither of the human dignity protected by article 1 of State (article 20, paragraph 1, of the Basic Law) or the principle of equality (article 3 of the Basic Law). Again, there was no contravention of articles 4 and 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, since the performance of work by convicts and persons in preventive detention who had been lawfully sentenced by a competent court, involved neither slavery or servitude nor forced or compulsory labour of a kind prohibited under article 4, paragraph (2), of the Convention.

Whereas the Federal Social Court, in the decision discussed above, did not conclusively answer the question whether the requirement that human dignity should be respected meant that everyone must be guaranteed a modicum of social security, the Higher Administrative Court at Berlin, in a judgement of 9 March 1967 (*NJW* 1967, pages 1435-1436), took the view that recognition of an entitlement to social assistance was a derivative of the human dignity protected under article 1 of the Basic Law. The inner security with regard to the basis of his existence which the recipient must feel when he knew that he was entitled to continuing assistance, was part and parcel of human dignity and of the right to personal freedom (article 2 of the Basic Law). Consequently, a person who because of disability for work or old age was dependent on a regular grant of social assistance, had not merely an entitlement restricted to the current month of payment; rather, he was entitled to a continued grant of assistance, so long as the state of need—which must, of course, be proved by the recipient—continued. Any other approach would make the recipient of assistance, in an inadmissible manner, the object of public relief.

The Berlin-Tiergarten District Court was confronted with a particularly controversial question of law in a judgement of 4 October 1967 (*NJW* 1968, page 61). Article 161, paragraph 1, of the Penal Code makes it mandatory, whenever a person is convicted of perjury, for the court also to order the defendant disqualified from giving evidence on oath and deprived of his civic rights. This provision had already given rise to conflic-

ting court decisions in the past. Whereas, subsequent to a decision by a district court, several of the *Land* High Courts and the Fourth Division of the Federal Court of Justice had felt that permanent disqualification from giving evidence on oath was not permissible because it was a violation of human dignity and of the prohibition of inhuman treatment in article 3, of the European Convention, the Federal Court of Justice and most of the *Land* High Courts have recently been taking the opposite view. The outcome was that the Berlin-Tiergarten District Court supported the first of those viewpoints; it converted the mandatory provision of article 161, paragraph 1, of the Penal Code into a permissive clause. In stating its reasons for this, the court invoked the principle of reasonableness, which the Federal Constitutional Court must take into account in the case of encroachments on fundamental rights, as in others matters. The court held that disqualification from giving evidence on oath was—like deprivation of civic rights —an encroachment on the constitutionally protected fundamental right of general freedom of action (article 2, paragraph 1, of the Basic Law). Such an encroachment must not be manifestly disproportionate to the occasion or to the intended result. A measure was in any event disproportionate if it was neither a suitable nor a necessary means of achieving the result which was sought. Since disqualification from giving evidence on oath could perform only very imperfectly, or not at all, its function of protecting the administration of justice in the future against unsuitable witnesses and experts, and since deprivation of civic rights for a period of not less than one year—as prescribed by the Code—imposed an intolerably heavy additional penalty in the case of minor offenders, the principle of reasonableness and of punishment appropriate to the offence required a deviation from the statutory provisions of article 161, paragraph 1, of the Penal Code. Thus, the outcome is that the Berlin-Tiergarten District Court has declared a provision of the Penal Code currently in force to be in any event partially void, because unconstitutional. Since this was the judgement of a Berlin court, there was no question of referring it to the Federal Constitutional Court under article 100 of the Basic Law, with a view to testing the constitutionality of article 161, paragraph 1, of the Penal Code.

The Federal Court of Justice, in a decision of 24 April 1967 (*NJW* 1967, page 1565), had occasion to deal with the question of the capacity of an attorney to be a party to proceedings regarding the withdrawal of his licence to practise. The attorney's licence had been withdrawn on the ground that, owing to mental infirmity, he was permanently incapacitated from properly exercising the profession of attorney. The Federal Court of Justice ruled that it was a general principle of German law, deriving from article 1, paragraph 1, of the Basic Law, that even incompetents and the mentally infirm were deemed to have the capacity to be parties, with a view to the protection of their rights, to proceedings involving a decision on the measures to be taken because of their mental condition. As a rule, the withdrawal of an attorney's licence affected the financial basis of his existence. The principle of human dignity did not permit the attorney to be made the mere object and subject-matter of the proceedings concerning withdrawal of his licence to practise. He must therefore be allowed to defend himself in person against so grave an encroachment on his sphere of vital interest.

The Federal Administrative Court, in a judgement of 10 February 1967 (*NJW* 1967, page 1674), found no violation of human dignity in the fact that a member of Jehovah's Witnesses, who was recognized as a conscientious objector to military services but who also ignored an order to report for alternative civilian service and was sentenced accordingly, was again ordered to report for alternative service. In stating its reasons, the Federal Administrative Court cited decisions of the Federal Constitutional Court to support its ruling that only military service as an armed combatant could be refused on conscientious grounds; complete justice was thereby done to the protection of human dignity. With regard to the further problems which arise from a repeated refusal to perform alternative civilian service, see section 13 below.

2. The principle of equal treatment

(Universal Declaration, articles 2 and 7)

The Federal Constitutional Court, in a decision or 11 April 1967 (*BVerfGE* 21, page 292), declared article 6 of the Rebates Act void because it violated the principle of equality. Among the provisions of the article which was annulled was one prohibiting department stores from allowing a discount for cash payment; other retail businesses are permitted to allow a rebate of up to 3 per cent of the retail price for payment in cash. The Federal Constitutional Court noted in this connexion that, in so far as the purpose of article 6 of the Rebates Act was to protect middle-class retail businesses against the more powerful competition of large retail concerns, such as department stores, it was pursuing a defensible goal of economic policy in a constitutionally permissible manner. Article 6 of the Rebates Act placed department stores at a disadvantage, however, in that the provision in question did not prohibit a third group of retail businesses, namely, mail-order firms, chain-stores, supermarkets and discount shops from allowing cash discounts. Yet if there was any objective justification for that privileged treatment vis-à-vis department stores it was not apparent, and the provision in question was therefore arbitrary and must be annulled because it violated the general principle of equality set forth in article 3, paragraph 1, of the Basic Law.

For similar reasons, the Federal Constitutional Court, in a decision of 14 February 1967 (*NJW* 1967, page 819), had described the branch establishments tax on banks and lending institutions as incompatible with the principle of equality, and had declared void the relevant provision of the Business Tax Act. Article 17, paragraph 1, of the Act authorized municipalities to levy a higher

rate of business tax on a bank, lending institution or retail business if it had a branch, but not its head office, in the municipality. The Federal Constitutional Court had already, in 1965 (*NJW* 1965, page 1581), declared this provision unconstitutional and void as concerns the branch establishments tax on retail businesses, and it now invalidated such taxation in the case of banks and lending institutions also, as constituting a special imposition which did not conform to the business tax system. The court stated in that connexion that it was not permissible to tax anyone more heavily, simply because he was not of local origin; yet if there were objective grounds for discriminating against outside banks and lending institutions, they were no more apparent than in the case of retail businesses.

The Federal Administrative Court had occasion, in a judgement of 9 June 1967 (*NJW* 1967, pages 1627, 1629), to deal with the significance of the principle of equality in a completely different connexion. The point at issue in this case was the permissibility of parking prohibitions for the benefit of official vehicles. The court ruled that the Road Traffic Order provided no legal basis for the imposition of a ban on parking which was not, however, to apply to vehicles belonging to a government authority. The granting of preferential treatment to official vehicles through parking prohibitions imposed for their benefit was not covered by the Road Traffic Order. Prohibitions could be imposed on parking for reasons of traffic safety and convenience, but they must then apply to all road-users, including official vehicles.

The principle of equality in the specific form of equality of rights for men and women (article 3, paragraphs 2 and 3, of the Basic Law) served the Federal Constitutional Court as a ground for declaring a provision of *Land* legislation relating to the public service void, in its decision of 11 April 1967, (*NJW* 1967, page 1851). The court ruled that article 134 of the Hamburg Civil Service Act violated article 3, paragraphs 2 and 3, of the Basic Law because it did not place women civil servants on the same footing as male civil servants in the matter of making provision for their next of kin. The principle of equality gave the widower of a woman civil servant a right to be provided for in the same measure as the widow of a male civil servant. The provision limiting the widow's allowance" payable to the widower of a woman civil servant, where the couple were living together as man and wife at the time of her death, to the amount of the "statutory maintenance" which he head been entitled to receive from the deceased, was therefore unconstitutional and void.

On another point of law relating to the public service, the Administrative Court at Mannheim, in a judgement of 14 June 1967 (*NJW* 1967, page 2028), also invoked article 3 of the Basic Law. In a petition seeking the issue of an interim order, the plaintiff, who was a Protestant, asked that the education authority should be prohibited from considering only Catholic applicants when filling the post of head teacher of an elementary school. The court allowed the petition, stating as its reason that article 33 and article 3 of the Basic Law afforded every German equal access to any public office in accordance with his suitability, ability and professional achievements. Access to public offices as well as the rights acquired in the public service were independent of religious denomination. No one might suffer prejudice on account of his adherence or non-adherence to a denomination. The precept of equality, as thus spelt out, conferred on a public servant a basic right, the substance of which was that, when he applied for a higher post, his employer might treat his case only in the light of those considerations that were permitted to apply—in other words, according to the principle of achievement, but not according to his religious affiliation.

In a decision of 8 November 1967 (*NJW* 1968, page 147), the Federal Constitutional Court also considered from the standpoint of equal treatment the question—not expressly regulated by statute—whether a petition for resumption of the proceedings could be lodged against a *Strafverfügung* (an order for punishment issued by the district-court judge, without a hearing, on receipt of a direct report from the police) which had attained the force of law. After a thorough review of the varying opinions expressed in the literature and in judicial decisions, the court came to the conclusion that it was compatible with the general principle of equality (article 3 of the Basic Law) that a resumption of the proceedings should not be permissible in the case of a legally rated *Strafverfügung*, even though it was permissible in the case of a *Strafbefehl* (a similar order issued on the written application of the State Counsel's Department). While it was true that the two types of proceedings were closely related, the fact that the *Strafverfügung* was strictly limited of trifling offences provided an objective ground for differentiation that sufficed to allow the principle of the certainty of the law to prevail when it clashed with the principle of material justice, which, if considered in isolation, would require that a resumption should be possible. The Federal Constitutional Court recognized that that solution could not be entirely satisfactory, but felt that it was impossible to declare an interpretation of the law unconstitutional merely because a different interpretation might be more in accord with the principle of equality. In such a case, only the legislator could provide relief.

On the other hand, the Federal Constitutional Court, in a decision of 6 June 1967 (*Betriebs-Berater* (Business Adviser) 1967, page 737; *NJW* 1967, page 1267) did find a violation of the principle of equality in the fact that a needy party to a case whose application for legal aid, submitted in due time, had not been approved until after the period allowed for an appeal had expired, had had his petition for *restitutio in integrum* (article 234, paragraph 1, of the Code of Civil Procedure) denied. The court stated that, where the protection of rights was concerned, the position of persons possessed of means and that of needy persons with regard to litigation must be largely equalized; it must not be made disproportionately

difficult for the poor party, in comparison with the party possessed of means, to sue and to defend himself at law.

3. Protection against arbitrary deprivation of liberty

Universal Declaration, articles 3, 4 and 9)

The Hanseatic *Land* High Court of Hamburg having, by its decision of 4 November 1966 in connexion with unusually extensive investigatory proceedings concerning national socialist atrocities, ordered the continued detention pending investigation, beyond the statutory six-month time-limit, of the accused persons, who had been in custody since 1961 and 1964 respectively, and the constitutional complaint lodged against that decision having been rejected by the Federal Constitutional Court in its judgement of 14 March 1967 (*NJW* 1967, page 1019), the Hamburg Court, in its decision of 31 August 1967 (*MDR* 1967, page 1028), subsequently quashed the detention orders against the accused. The court, in explaining this action, stated that after completion of the investigations, the State Counsel's Department had failed to carry out the evaluation of the voluminous material resulting from them with the requisite speed. In the case of such unusually difficult and extensive proceedings, the Department should not have assigned only one responsible official to classify and evaluate the material. Where such faulty organization had occurred, the special difficulty and extraordinary scope of the investigations could no longer be invoked as a justification for continued detention, even in the case of investigatory proceedings concerning national socialist atrocities. For similar reasons, the *Land* High Court at Brunswick, in a decision of 2 February 1967 (*MDR* 1967, page 514), stated that detention pending investigation for more than six months was not permissible, bearing in mind the principle of reasonableness.

The *Land* Court at Nürnberg-Fürth also referred to the principle of reasonableness, in a different connexion, in a decision of 5 June 1967 (*NJW* 1967, pages 2126-2127). The court ruled that the investigating judge was not normally entitled to review the expediency of an application by the State Counsel's Department to have an accused person brought forcibly before the court for a hearing. While it was true that to bring the accused forcibly before the court was an encroachment on his fundamental right to personal freedom (article 2, paragraph 2, of the Basic Law), the only test which the judge needs apply was whether the principle that the means should be proportionate to the end had been observed. What was involved was a weighing of the fundamental right of the accused against the public interests which had led to the application for such action. In such cases, the gravity of the charge usually sufficed to make it constitutionally permissible to bring the accused forcibly before the court.

The Federal Constitutional Court, in its decision of 23 May 1967 (*NJW* 1967, page 1221), ruled that the action of the police in ordering a traffic offender to attend traffic instruction and the imposition of a penalty for refusal to comply with such an order were constitutional. The court held that the order to attend traffic instruction was not a restriction of freedom within the meaning of article 104, paragraph 1, of the Basic Law, since the latter provision protected physical freedom of movement only against direct coercion.

The *Land* High Court at Celle had already ruled in a 1966 decision that a convict had no right to remuneration, of the kind enjoyed by a person who chose to work, in respect of the work he performed in prison. A convict's obligation to work was based on article 15 of the Penal Code and was an inherent and integral part of the carrying out of the sentence. Nor, for the same reasons, could a convict assert any right to time off from work analagous to a vacation. The *Land* High Court at Celle held in a decision of 7 August 1967 (*NJW* 1967, page 2370), that this rule did not violate any provisions of the German Basic Law or article 4 or 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In a test case concerning the constitutionality of the Youth Welfare Act and the Federal Social Assistance Act, the Federal Constitutional Court ruled, *inter alia,* in a judgement of 18 July 1967 (*NJW* 1967, pages 1795, 1799-1800), that the provisions of articles 72 to 74 of the Social Assistance Act were incompatible with the Basic Law and were therefore void. The provisions in question made it possible for a judge to commit endangered persons over the age of eighteen years to an institution against their will. The requirements for such action were that the endangered person must be particularly weak-willed or particularly lacking in self-control, that he must also be neglected or in danger of neglect, and that help could be effectively provided only in an institution. The Federal Constitutional Court took the view that this infringed on the essential substance of the fundamental right to individual freedom (article 2, paragraph 2, of the Basic Law), since the endangered person was committed to an institution neither for the protection of the public nor for his own protection, but solely in order to induce him to follow an orderly way of life, to accustom him to regular work and to make him settle down. However, it was not a function of the State to "improve its citizens," and it followed that the State had no right to deprive them of their personal freedom for that purpose, unless they would be a danger to themselves or to others if left at large. In addition, the Federal Constitutional Court considered that, here again, the principle of reasonableness was violated and that the requirements laid down in the Act for the commitment of an endangered person to an institution were too vague to meet the rigorous standards of a State based on the rule of law.

The Federal Constitutional Court had occasion to deal with a special form of deprivation of liberty in its decision of 7 November 1967 (*NJW* 1968, page 243). On a request for a ruling

from a High Military Court (disciplinary court for the federal armed forces), the Federal Constitutional Court held that a judge's decision concerning the lawfulness of detention imposed under the Code of Military Discipline must, if the relevant provision was construed in conformity with the Constitution, include a full review of the grounds on which the proposed award of detention might be permissible and appropriate. Any other interpretation of the Code of Military Discipline would conflict with article 104, paragraph 2, first sentence, of the Basic Law, which made the decision concerning a deprivation of liberty a term that included detention under the law relating to military discipline—the sole responsibility of a judge. The judge must therefore fully review the application made by the superior officer wishing to impose detention.

4. The right to physical integrity

(Universal Declaration, articles 3 and 5)

Unlike the *Land* High Court at Frankfurt, which, in a 1966 judgement (*NJW* 1967, page 632), taking the view that a sacrifice was involved, had awarded monetary compensation to a schoolboy who had been so seriously injured in a gymnastics accident that his health was permanently impaired, the Federal Court of Justice, in a judgement of 16 January 1967 (*DÖV* 1967, page 266), declined to order the payment of compensation in such cases. In stating its reasons, the court noted that instruction in gymnastics at school formed part of the general hazards of any schoolchild's existence, which he himself must bear. There was therefore no decisive reason for saddling the public with the consequences of even a severe case of physical injury resulting from an unexceptionable scholastic arrangement, by awarding compensation on the ground of sacrifice. The Federal Court of Justice emphasized that there was a difference between such a case and that of a compulsory inoculation required of the public and any injuries which might result, since the latter involved not simply a materialization of the general hazards of existence but the creation of a new area of danger. The Federal Court of Justice sought to temper the harshness of its findings in the case before it by pointing out that, in a State founded on the rule of law and on social justice, it was the function of the legislator to make provision for public-law compensation in the case of serious physical injuries to schoolchildren during gymnastic lessons, as had been done, for instance, in Hamburg.

The right to physical integrity (article 2, paragraph 2, of the Basic Law) is subject to certain restrictions in prisons. In addition to external order, absolute cleanliness is a prime necessity in any prison, since there would otherwise be, in such close living conditions, special dangers to prison hygiene and hence to the health of all inmates. The *Land* High Court at Celle accordingly ruled, in a decision of 3 November 1967 (*NJW* 1968, page 123), that a convict was required to have his excessively long hair cut.

5. Judicial and administrative guarantees of due process

(Universal Declaration, articles 8 and 10)

During disorders in the Schwabing district of Munich in 1962—the so-called Schwabing riots—passers-by were struck with rubber truncheons by police officers. One of the citizens involved brought an administrative court action seeking, *inter alia,* a ruling that the manner in which direct force had been used against him was unlawful. In its judgement of 9 February 1967 (*DVBl* 1967, pages 379, 382), the Federal Administrative Court declared the petition for a ruling admissible. The court noted that the use of direct force against the petitioner had formed part of an administrative act, which, it was true, had been terminated immediately after the restoration of law and order; nevertheless, the petitioner had a legitimate interest in obtaining a subsequent ruling that the action taken against him had been unlawful, since the unlawful use of force by the police had violated his human dignity. A ruling that such action had been unlawful was calculated to rehabilitate in an appropriate manner a citizen who had been discriminated against by the police encroachment. A special form of the guarantee of recourse against administrative measures is the provision whereby acts of the authorities responsible for the administration of justice may be contested in the *Land* High Courts (articles 23 *et seq.* of the Introductory Act to the Judicature Act). These acts include, in particular, disciplinary penalties imposed by the warden of a prison (e.g., withdrawal of privileges). The Federal Constitutional Court, ruling on a constitutional complaint by a convict in a decision of 15 February 1967 (*Bayer. Verw. Bl.* 1967, page 235), stated that the *Land* High Courts, in reviewing acts of the authorities responsible for the administration of justice, must not only consider the legal aspect of the case but must also determine whether the facts on which the official action had been based were correct. If not, there was a violation of article 19, paragraph 4, of the Basic Law—in other words, an abridgement of the guaranteed comprehensive right of recourse against acts of public authority.

The *Land* High Court at Munich disagreed with the *Land* High Courts at Frankfurt and Bremen in ruling, in a decision of 12 July 1967 (*NJW* 1968, pages 609-610), that acts of the authorities responsible for the administration of justice, in the technical sense of article 23 of the Introductory Act to the Judicature Act, did not include the exercise of clemency. The court held that the decision of the State counsel-general on a petition for clemency was an act of benevolence and mercy and, as such, was not subject to judicial review. The person concerned did not thereby suffer a deprivation or infringement of any subjective right referred to in article 19, paragraph 4, or the Basic Law, since no legal right to clemency existed. Any application for a court ruling against the rejection of a petition for clemency was therefore inadmissible. Despite conflicting decisions by other *Land* High Courts, the *Land* High Court at Munich was unable to

refer the question to the Federal Court of Justice for a ruling, since the exercise of clemency is exclusively a matter for the *Länder*.

The Federal Finance Court had occasion, in a judgement of 2 August 1967 (*NJW* 1967, page 2379), to deal with an extremely controversial question relating to judicial review of examination results. Whereas in the past the courts, including the division of the Federal Finance Court which was now considering this case, had always declined to allow an examinee to inspect his examination records without the consent of the competent authority, the highest German finance court now expressly abandoned that view of the law, stating in its decision that the records must not only be produced to the court for unrestricted evaluation but must also be made available for inspection to the examinee who had contested the results. The court held that the different practice followed in the past did not stand the test of the principles of a State governed by the rule of law; in particular, it violated the right of the examination candidate to a lawful hearing (article 103, paragraph 1, of the Basic Law) and the principle that any person whose rights were infringed by public authority must have adequate recourse to the courts (article 19, paragraph 4, of the Basic Law). The fact that the Federal Administrative Court had taken the opposite view failed to convince the Federal Finance Court, which had been given the opportunity, in a case where the results of an examination for tax agent (*Steuerbevollmächtigter)* or tax consultant were being contested, to reconsider its position on this issue and to change its own view of the law.

The right to be granted a lawful hearing also entered into a number of other decisions. For instance, the Federal Constitutional Court, in a judgement of 1 February 1967 (*MDR* 1967, page 376), ruled that, where the State counsel instituted proceedings contesting the legitimacy of a child, the father (i.e. the mother's husband) was entitled to be heard, even though he was not a party to the proceedings, since a successful contestation would operate for and against everyone and would affect both the status of the child and the associated rights of the father. Because the judgement in the proceedings contesting the legitimacy of the child would thus directly affect the father's legal position, there was an obligation, derived directly from article 103, paragraph 1, of the Basic Law, to grant a judicial hearing, even where the type or proceedings in question offered only an inadequate assurance of the minimum lawful hearing guaranteed by the Constitution.

The Federal Court of Justice had occasion to deal with a question of the German *ordre public* as it relates to procedural law, in a judgement of 18 October 1967 (*NJW* 1968, page 354). A maintenance order of the English High Court of Justice was to be enforced in West Berlin. The judgement debtor objected that he had been denied a lawful hearing in the proceedings before the English court, contrary to German public policy, with the result that the order of the High Court could not be declared enforceable. The judgement debtor had in fact been barred by the English judge from taking any further part in the proceedings because he had been found in contempt of court for failing to comply with an interim maintenance order. The Federal Court of Justice nevertheless dismissed the objection raised by the judgement debtor. It began by noting that article 103, paragraph 1, of the Basic Law conferred on "everyone"—i.e., both Germans and aliens —an entitlement to a lawful hearing and that that right, as a governing principle of German procedural law, formed part of the German *ordre public*. Non-observance of that principle by a foreign court meant that its judgement would not be recognized in Germany. In the case before the court, application of the international *ordre public* meant that the principle set forth in article 103, paragraph 1, of the Basic Law must be measured against the yardstick of the English system of procedural law, and in that connexion, it was necessary to go back to the basic values which were protected by that constitutional provision, namely, the principle of the rule of law and the inviolability of human dignity. Those values had not been infringed by the English judge, since the situation was not by any means the judgement debtor had played the role of a passive object of the maintenance proceedings, but that he had been barred from taking any further part in the proceedings because of his culpable failure to comply with an interim order, as was permissible under English procedural law.

The penal chamber of a *Land* Court referred in one of its judgements to a police interrogation record which was not a subject of the trial proceedings. Upon appeal by the defendant, the Federal Court of Justice quashed the conviction, in its judgement of 13 December 1967 (*JZ* 1968, page 434). The Federal Court of Justice stated in its decision that a court basing its conclusion partly on facts which were not the subject of the trial proceedings and on which, therefore, the accused was unable decisively to express his views to the trial court, was violating not only provisions of the Code of Criminal Procedure but also article 103, paragraph 1, of the Basic Law. Since that procedural defect would be conducive to the success of a constitutional complaint, there was already a right and a duty at the appeal-court level to consider, upon complaint by the defendant, whether the right to be granted a lawful hearing had been violated and, if the complaint was substantiated, to quash the contested judgement.

In connexion with the scope of the right of recourse to the courts, as guaranteed by article 19, paragraph 4, of the Basic Law, paragraph 3 of the same article is of considerable importance. According to this provision, the basic rights also apply to domestic juridical persons in so far as the former, according to their nature are applicable to the latter. Despite the unambiguous wording of article 19, paragraph 3, of the Basic Law, the Federal Constitutional Court had occasion to rule, in a judgement of 1 March 1967 (*BVerfGE* 21, page 207), that this provision could not be applied even by analogy, to foreign juridical persons.

In a judgement of 2 May 1967 (*BVerfGE* 21, page 362), the same court gave a ruling on the

controversial question whether article 19, paragraph 3, of the Basic Law also applied to bodies instituted under the public law. The court rejected a constitutional complaint by a social insurance authority as inadmissible because the authority performed public functions and exercised State powers. It was true that the social insurance authority was a legally competent public-law institution and therefore a juridical person. Nevertheless, the basic rights, according to their nature, were intended to protect the sphere of freedom of the individual against encroachments by State authority. Consequently, the State could not be at one and the same time the party against which the basic rights were invoked and the party entitled to exercise them. It was immaterial in that connexion whether the State entered the picture directly or whether it made use, for the performance of its functions, of an autonomous legal instrumentality. For that reason, there were objections of principle to extending legal capacity in respect of the basic rights to public-law bodies, in so far as such bodies, performed public functions.

6: Due process in criminal proceedings

(Universal Declaration, articles 10 and 11)

The principle of the lawful judge, which is particularly important with respect to due process in criminal proceedings and which is guaranteed by article 101, paragraph 1, second sentence, of the Basic Law, was the subject of several judicial decisions during the year under review, only one of which, however, will be reported here. Under German law relating to the constitution of the courts, the State counsel may bring charges in the district court either before a single judge or before the lay-judge court, which is composed of a professional judge and two lay judges (article 25 (2) (*c*) of the Judicature Act). The Federal Constitutional Court ruled, in a decision of 19 July 1967 (*NJW* 1967, page 2151), that this provision could not be interpreted to mean that the State counsel was thereby given discretion, not subject to any review, to decide before which court he would bring charges. It followed from the statutory distribution of competence between the single judge and the lay-judge court that only cases of lesser importance were to be dealt with by the single judge. The State counsel must, therefore, always bring the charge before the single judge in such cases, but before the lay-judge court in more serious cases. It was a violation of the principle of the lawful judge for the State counsel to have the right of free choice.

The *Land* High Court at Frankfurt ruled, in a judgement of 12 June 1967 (*NJW* 1968, page 217), that it was not an abridgement of due process in criminal proceedings for the appeal of a defendant who appeared at the hearing in a drunken state to be dismissed out of hand. The court held that, through his drunkenness, the defendant had culpably rendered himself totally incapable of participating in the proceedings, and he was to be treated in exactly the same way as if he had failed, without valid excuse, to attend the hearing.

Of fundamental importance to due process in criminal proceedings is the guarantee set forth in article 103, paragraph 3, of the Basic Law, which provides that no one may be punished for the same act more than once (*ne bis in idem*). On this basis, the High Military Court at Oldenburg considered it unconstitutional that, under the terms of the Code of Military Discipline, an offence against military penal law could be punished by the imposition of a disciplinary or career penalty in addition to a criminal sentence, and referred the case to the Federal Constitutional Court for a ruling in accordance with article 100 of the Basic Law. In a decision of 2 May 1967 (*NJW* 1967, page 1654) the highest German court declared the contested provision constitutional. In stating its reasons, the court noted, *inter alia,* that criminal sentences and disciplinary penalties were so different in nature that the principle *ne bis in idem* could not be applied to those two kinds of punishment. The purpose of criminal sentences, including those imposed under military penal law, was to expiate the wrong that had been committed. The constitutional lawgiver had been thinking only of such sentences when laying down in article 103, paragraph 3, of the Basic Law that no one might be punished for the same act more than once, on the basis of the "general criminal laws". The purpose of disciplinary penalties, on the other hand, was not to punish a wrong but to restore and ensure integrity, authority and discipline in the federal armed forces or in some other area of public administration. Career penalties, such as reduction in rank or stoppage of pay, were typical disciplinary measures to which, according to the prevailing views of the courts and of legal writers, article 103, paragraph 3, of the Basic Law did not apply. In another, controversial decision of the same date (*NJW* 1967, page 1651), the Federal Constitutional Court upheld this view with respect also to the relationship between disciplinary detention and a criminal sentence involving deprivation or liberty. The court did, however, specify a limitation, which is of importance for the practical application of this principle, by declaring that it was incompatible with the principle of the rule of law that a criminal court should pass a sentence of imprisonment without taking into account disciplinary detention already imposed for the same offence. The court gave as its reason for placing this limitation on the rule which it had itself laid down—namely, that article 103, paragraph 3, of the Basic Law did not apply to the relationship between a criminal sentence and a disciplinary penalty—the fact that detention went beyond the exclusively educative purpose of disciplinary law, displaying also, to outward appearance, some features of imprisonment under general criminal law. The idea of justness which formed part of the notion of the rule of law therefore required that when a criminal sentence was being assessed, any time spent in disciplinary detention, which was similar in its effect, should be deducted.

A judgement of the *Land* High Court at Celle of 23 January 1967 (*NJW* 1967, page 745), which deals with the extent of the legal validity of an order for punishment (*Strafbefehl* deserves

mention in this connexion. The *Land* High Court, sitting as an appeal court, quashed a sentence of imprisonment suspended for a probationary period, that had been imposed on an adolescent after an order for punishment, which had in the meantime become final, had already been issued against him on the basis of precisely the same facts. In explaining its decision, the court stated that the reason why the defendant could not be prosecuted again for the same act was not that double punishment was prohibited (article 103, paragraph 3, of the Basic Law), but that the order for punishment had become final and its validity was subject to no limitation in the case thus adjudicated, since the facts of the case had not changed in any way.

An order for punishment *(Strafbefehl)* attains the force of a valid judgement after expiry of a time-limit for the lodging of an objection. It has been held that, in view of the drastic consequences of this for the person concerned, special attention must be paid to his right to a lawful hearing in proceedings after the order for punishment has been issued (objection proceedings). However, the person concerned can only institute these objection proceedings if he is aware of the punishment order. It is therefore essential to ensure, by means of a particularly strict service procedure, that the person concerned receives the order for punishment. For these reasons, the *Land* Court at Hanover, in a decision of 31 August 1967 (*NJW* 1968, page 416) ruled that service of a punishment order by mail was not permissible.

A long-disputed point of law was settled by the Federal Constitutional Court in its judgement of 4 July 1967 (*NJW* 1967, page 1748). Under German law relating to road traffic, the police are entitled to caution road-users who contravene traffic regulations, and to charge them a fee of up to DM 5. Many judges and legal writers regard the fee for the caution as a fine, which only the courts are competent to impose. The Federal Constitutional Court, however, ruled that it was constitutional for the police to issue cautions and charge a fee. The fee represented a *quid pro quo* for the information imparted to the traffic offenders by the authorities; it was more akin to court costs than to a fine, and unlike a fine it could be neither collected by legal process nor converted into a sentence of imprisonment. In addition, the caution fee was not recorded either in the penal register or in the index of traffic offenders and could therefore never have the effect of aggravating a penalty later.

Another problem of due process in criminal proceedings was dealt with by the *Land* High Court at Düsseldorf in a decision of 13 October 1967 (*NJW* 1968, page 117). In the course of criminal proceedings concerning a traffic offence, the defendant had lodged a constitutional complaint against the judgement of the *Land* High Court remitting the case to the *Land* Court for retrial. During the proceedings before the Federal Constitutional Court, the criminal proceedings were not continued; the time-limit for prosecution expired before the defendant was again convicted. Upon further appeal by the defendant, the proceedings were annulled on the ground that the time-limit for prosecution had expired. In stating its reasons, the court noted that the fact that an exceptional remedy was being sought through the lodging of a constitutional complaint would not have prevented the criminal court from continuing the proceedings against the defendant. There had been no suspension of the time-limit for prosecution during the period when the matter was before the Constitutional Court.

The Federal Court of Justice saw no violation either of the Basic Law or of article 6, paragraph (2), of the European Convention for the Protection of Human Rights and Fundamental Freedoms in the provision of the German Penal Code (article 245*a*, paragraph 1) which makes the mere possession of burglary tools a punishable offence where, *inter alia,* the possessor has previously been convicted of aggravated larceny. The court held that what was involved was an element of a criminal act which the legislator had decided was dangerous enough in itself to constitute a crime. The fundamental consideration had been that a professional thief needed certain implements and was generally a menace to public safety if he had such implements in his possession. Nor did the provision of the Penal Code in question embody any presumption of guilt to the detriment of the offender of a kind that was impermissible under article 6, paragraph (2), of the European Convention, and it did not prescribe any penalty on the basis of mere suspicion, since it must be proved against the offender, in each individual case, that he knew the articles in question were burglary tools.

7. Protection against interference with privacy

(Universal Declaration, articles 6 and 12)

The fact that technological progress has made it possible to produce sound-recording and listening devices of minute dimensions, has considerably increased the danger of interference with privacy. The Bundestag therefore passed, on 22 December 1967, an Act making the misuse of sound-recording and listening devices a punishable offence (*BGBi* 1967 I, page 1360), under which two new provisions are inserted into the Penal Code. A new article 298 of the Code provides that any person who without due authority mechanically records or secretly listens to the words of another spoken in private, or uses or makes available to a third party an unauthorized sound-recording, shall be liable to imprisonment for a term not exceeding six months and to a fine. In connexion with offences by public officials in breach of duty, the new article 353d of the Penal Code provides even more severe penalties for breaches of confidence with respect to the spoken word (article 298, paragraphs 1 and 2, of the Penal Code).

One point with which the courts had occasion to deal was the question under what circumstances the police are entitled to preserve photographs and finger-prints ("criminal investigation department records"). The Federal Administrative Court noted in this connexion, in a judgement of 9 February 1967 (*MDR* 1967, page 518), that the

preservation of such records could strongly affect the personal sphere of the individual concerned, simply by reason of his knowing that be was regarded by the police as a potential lawbreaker. The public interest in the preservation of criminal investigation department records, on the one hand, and the concomitant adverse effect on the person concerned as well as the possible damage he might suffer if use was made of the records in the event of an unfounded suspicion, on the other hand, must therefore be weighed against each other. That meant applying the principle of reasonableness, which according to rulings of the Federal Constitutional Court, possessed constitutional status. A point material to the question of the preservation of such records was the past conduct of the person concerned in relation to the penal laws and criminality. In this particular case, the Federal Administrative Court held that it was permissible to preserve the photographs and finger-prints. The person concerned had several times in the past been suspected of fraud and had been involved in investigatory proceedings, which, it was true, had in every case been discontinued, but never because of proven innocence and in some cases "despite grave suspicion that an offence was committed".

In a decision of 10 May 1967 (*NJW* 1968, pages 99, 102), the Bavarian Constitutional Court ruled that personal notes which an accused person had made concerning his defence while in detention pending investigation could be read out and used at the trial without thereby violating human dignity or the right to protection of privacy if the notes referred to events of an external nature.

The *Land* High Court at Hamburg, in a judgement of 22 June 1967 (*NJW* 1967, page 1973), considered to what extent correspondence could be inspected in the case of a person detained pending investigation. The secrecy of correspondence, which is proclaimed in article 12 of the Universal Declaration and is protected by article 10 of the Basic Law and article 8 of the European Convention, may be restricted on the basis of a law, and the secrecy of the outgoing mail of persons detained pending investigation is so restricted under the Code of Criminal Procedure. The inspection of such mail is conducive to the maintenance of security and order in detention institutions and the prevention of attempts to escape by exposing plans for doing so. The *Land* High Court at Hamburg took the view that the inspection of mail was necessary even when the detainee's letter was addressed to a public authority, since even a letter of that kind might be used by the detainee to further a plan to escape through deception and trickery.

The fundamental right to inviolability of the home (article 13 of the Basic Law) was the subject of a decision of the Federal Administrative Court of 12 December 1967 (*NJW* 1968, page 563). The court ruled that the provision of article 13, paragraph 2, of the Basic Law whereby any search—except in the event of danger in delay—requires the prior authorization of a judge, was directly applicable law, so that existing legislation concerning searches which made no provision for an order by a judge, must constitutionally be interpreted in a manner conforming to article 13, paragraph 2, of the Basic Law.

The *Land* High Court at Hamburg, in a judgement of 11 May 1967 (*NJW* 1967, page 2314), dealt with the question of protection of the right of personality (articles 1 and 2 of the Basic Law). An action for damages had been brought by the Federal Chairman of the National Democratic Party (NPD) in the Federal Republic, who felt that harm was done to his personal reputation by an election campaign advertisement directed against his party, which began with the words "Do not vote for any National Democrats" and described National Democrats as, among other things, "tumescences of a new brown plague". The *Land* High Court dismissed the action on the ground that, although the description "National Democrats" did refer to an objectively circumscribed class of persons, namely, the members of NPD, the party members including the plaintiff, were not clearly distinguishable from the general public, because membership of NPD—like membership of, for instance, a religious denomination —was not a visible criterion. In view, therefore, of the fact that the individual could not be identified with NPD, not one of the persons concerned was really affected by the campaign advertisement. The court added that, even were an encroachment on the plaintiff's personal sphere of life to be presumed, it would be seen, if the lawful interests involved were weighed against each other, that the free expression of opinion during the election campaign merited greater protection than the reputation of the plaintiff.

8. The right to freedom of movement and the right to leave the country

(Universal Declaration, article 13)

In connexion with the calling up of persons liable to military service, the courts had occasion during the year under review to make several rulings concerning the right to freedom of movement, which is guaranteed to all Germans by article 11 of the Basic Law. Because of the four-Power status of Berlin, the Military Service Act of the Federal Republic does not apply in West Berlin. Consequently, a German who is permanently resident in West Berlin is not required to perform military service in the federal armed forces. This rule has induced many West German youths to transfer their domicile to West Berlin before call-up notices are served on them, in order to avoid military service. With a view to counteracting such evasions, the legislator amended the Military Service Act to include a provision (article 3, paragraph 2) requiring anyone wishing to leave the territory in which the Military Service Act applies to obtain a permit from his local recruiting office. In a judgement of 24 May 1967 (*NJW* 1967, page 1873), the Federal Administrative Court ruled that this provision of the Military Service Act (article 3, paragraph 2) did not give the military authorities a right to decide, at their discretion, whether to grant or refuse a permit to leave the territory in which the Military Service Act applied. The court held that such an inter-

pretation, which would leave the exercise of the fundamental right to freedom of movement under article 11 of the Basic Law entirely subject, in a vital area of existence, to the decision of the military authorities, would be incompatible with the principles of a State based on the rule of law and could not be willed by the legislator. This meant that article 3, paragraph 2, of the Military Service Act was simply in the nature of a regulation, and the transfer of permanent residence to West Berlin without a permit from the military authorities could not be punished with anything more than a fine. Once a fine had been imposed, however, the German national in question was no longer subject to compulsory military service.

There were conflicting court rulings during 1967 on what effect the transfer of permanent residence to a foreign country had on the obligation to perform military service. Whereas the Federal Administrative Court, in a judgement of 19 November 1967 (*NJW* 1968, page 1059), held that the obligation of a person liable to military service who was permanently resident abroad to perform such service was suspended even if he had not transferred his residence to a foreign country until after he had been called up, the *Land* High Court at Celle, in an earlier decision (31 May 1967, *NJW* 1967, page 1670), had taken the opposite view and had ruled that the transfer of permanent residence to a foreign country without the permit to leave West Germany which was required under article 3, paragraph 2, of the Military Service Act, did not have the effect of suspending the obligation to perform military service. In view of the decision of the Federal Administrative Court reported in the first paragraph of this section, the *Land* High Court at Celle has now expressly abandoned this view (decision of 18 March 1968, *NJW* 1968, page 1058), because the administrative courts and administrative authorities would be guided by the precedent-setting decision of the highest German administrative court, and a person charged with desertion would be able to rely at least subjectively on the ruling of the Federal Administrative Court.

9. The right of asylum, deportation, extradition

(Universal Declaration, article 14)

During 1967, the courts were engaged to only a minor degree with matters relating to the right of asylum and extradition, which so far as German law is concerned are governed by article 16 of the Basis Law. The only point worthy of note is a decision of the Higher Administrative Court at Münster of 28 July 1967 (*NJW* 1968, page 365), in which even a threat of deportation under article 13, paragraph 2, of the Aliens Act was stated to be an independently contestable administrative act. The threat of deportation and the order to deport each had an independent significance, since both measures regulated with direct legal effect, a single case in the field of public law.

With regard to treaties concerning extradition and legal assistance in criminal matters concluded by the Federal Republic of Germany with other States, see section 22 below.

10. The right to a nationality

(Universal Declaration, article 15)

Article 16 of the Basic Law does not in principle confer on aliens any legal right to naturalization. The Higher Administrative Court at Berlin in a decision of 2 August 1967 (*JZ* 1967, page 751), stated that "the discretion which is allowed to the authorities brings the administrative act of naturalization close to being an exceptional act of grace". A Greek national, who has worked in the Federal Republic for years as a well-known painter, sculptor and author and who is married to a German national, was refused naturalization on the grounds, *inter alia*, that he was still liable to military service, and his naturalization would be regarded by the Greek Government as an "unfriendly act". In its judgement confirming the contested decision, the Higher Administrative Court first ruled that the principle of equality laid down in the Basic Law did not give the foreign husband of a German national any legal right to naturalization. Such a right existed under German law in the reverse case of marriage between a German male and a woman alien, but that was an exceptional provision which was to be narrowly construed. Whether regulating the matter in that way was a violation of article 3 of the Basic Law could remain an open question, since the court was in any event not entitled to disregard the perceptible intent of the legislator by holding that the husband of a German woman also had a right to naturalization. After further ruling that neither the protection of marriage and the family (article 6 of the Basic Law) nor freedom of creed in religion (article 4 of the Basic Law)—the plaintiff had had only a civil wedding and is regarded as unmarried under Greek law—could provide a basis for establishing any such right to naturalization, the court stated in its judgement that the mere hint of possible damage to diplomatic relations between the Federal Republic of Germany and the Kingdom of Greece justified the refusal of naturalization. Nor could the domestic political changes which had occurred in the meantime in Greece make any difference, since it was not for the German State to involve itself in those affairs.

In another case, an ethnic German from Yugoslavia had applied for the issue of an alien's passport, pending his recognition as a German within the meaning of article 116 of the Basic Law. The Bavarian Administrative Court, in its decision of 3 March 1967 (*DOV* 1967, page 826), refused to order this and stated that, even if it would mean personal hardship for the applicant, he must be expected to continue using his Yugoslav passport for identification purposes. The court noted that the issue of a German alien's passport depended on whether it was in the German interest and on its not adversely affecting relations with the alien's country of origin.

11. Protection of the family

(Universal Declaration, article 16)

During the year under review, ordinances of substantially similar content concerning maternal

welfare for women civil servants (and women judges) were promulgated, amended or reformulated in several of the federal *Länder*, including Berlin (Berlin *GVBl* 1967, page 1454), Hamburg (Hamburg *GVBl* 1967, page 7), Hesse (Hesse *GVBl* 1967, page 85), North Rhine-Westphalia (North Rhine-Westphalia *GVBl* 1967, page 136), Rhineland-Palatinate (Rhineland-Palatinate *GVBl* 1967, page 55), the Saar (*Amtsblatt* (official gazette of the Saar) 1967, page 266 and page 834) and Schleswig-Holstein (Schleswig-Holstein *GVOBl* 1967, page 110). For the content of these ordinances, reference may be made to the 1966 report (section 10).

In the view of the Federal Labour Court, the protection of marriage and the family guaranteed by article 6 of the Basic Law does not prohibit making the amount of a bonus dependent on the attendance record of the employee. Accordingly, the court declared in a judgement of 30 March 1967 (*NJW* 1967, page 1530), that it was permissible, in the case of a woman worker, to take into account absences due to pregnancy. That did not involve any violation of the constitutional precept of protection for motherhood (article 6, paragraph 4, of the Basic Law), since there was no impediment to the employer's treating absences due to pregnancy and absences due to sickness for which the employee was not to blame alike when computing the amount of the bonus. In both cases, the absent employees had not helped to produce the trading surplus which was necessary in order to pay the bonus.

Under German family law, where a married couple are living apart, the wife, if not gainfully employed, has a claim against the husband for payment of maintenance if the was wholly or mainly responsible for the separation. In such cases, the wife cannot be ordered to support herself by working unless she would have been obliged to do so even if the marriage community had continued or unless it would be grossly unreasonable to make demands on the husband. The Federal Constitutional Court, in a decision of 17 June 1967 (*NJW* 1967, page 1507), held that this provision was constitutional and that article 6, paragraph 1, of the Basic Law represented a binding value judgement in respect of the entire range of private and public law relating to marriage and the family. In view of the fact that the wife usually discharged her commitment to the maintenance of the family by managing the household, there were inevitably serious disadvantages for the woman, in the event of termination of the marriage community, if she had to go back to work. Consequently, the granting of an entitlement to maintenance in cases where the wife was not to blame for the separation, reflected a correct understanding of the principle of equality of rights for women in marriage.

According to German civil law, the father of an illegitimate child is liable before the mother for the maintenance of the child up to the age of eighteen years. The *Land* Court at Hamburg ruled, in a judgement of 22 December 1967 (*NJW* 1968, page 1190), that this liability encompassed not only the payment of ordinary living expenses but also the cost of placing the child in an institution because of sickness. The reason why the law held the father of an illegitimate child entirely liable, before the mother, for all maintenance expenses, was that there was no family community; that being so, the mother's sole responsibility for the care of the child's person counterbalanced the father's liability for maintenance. The purpose of article 6, paragraph 5, of the Basic Law in requiring equalization of the status of illegitimate and legitimate children was to bring about an improvement in the legal position of illegitimate children; yet to restrict the father's liability for the maintenance of an illegitimate child, who lacked the protection of the family community, to his "normal necessaries of life" would be to worsen his position.

The Hague Convention on the law applicable to maintenance obligations towards children of 24 October 1956 (*BGBl* 1961 II, page 1013 ; 1962 II, page 16), having been ratified by the Federal Republic of Germany, has been in effect as German municipal law since 1 January 1962, superseding earlier German law. This means that claims for maintenance by children whose place of habitual residence is in Germany, must now be judged according to German law, irrespective of the nationality of the child. Accordingly, the *Land* Court at Bremen, in a judgement of 21 September 1967 (*NJW* 1968, page 361, No. 12), ordered a German to provide for the maintenance of his illegitimate child of Belgian nationality, because the child was permanently resident in the Federal Republic.

The Berlin High Court (*Kammergericht*) had occasion to deal with problems of parental authority in two decisions, of 6 November 1967 (*NJW* 1968, page 361, No. 13) and 13 February 1967 (*Ehe und Familie* (Marriage and Family) 1967, page 230). In the first of these cases, the court declined to apply Iraqi law in deciding which of the parties to a marriage between a German woman and an Iraqi that had ended in divorce, should be given parental authority over the couple's legitimate child. In explaining its reasons, the High Court noted that the inflexible provision of Iraqi law which gave the father the sole right to bring up the child from his seventh birthday onwards violated the principle—guaranteed by article 3, paragraph 2, and article 6, paragraph 2, first sentence, of the Basic Law—that the two parents had equal rights with regard to the exercise of parental authority. Thus, the provision of Iraqi law was directly at variance with the fundamentals of German national life—in other words, the German *ordre public*— and was therefore intolerable to the German way of thinking. The court held that in such cases, in the absence of any other Iraqi provisions, German law must be taken as the basis in deciding who was to be given parental authority. In the second case, the High Court declared that the provision whereby, after a divorce, the innocent party should normally acquire parental authority over the children of the marriage, was not inconsistent with the child's fundamental right to the free development of his personality.

On the question of the right of parents to have voice in the scholastic education of their children, see section 20 below.

12. Protection of property

(Universal Declaration, article 17)

The courts had very frequent occasion, during the year under review, to consider the right to property, which is guaranteed by article 14 of the Basic Law. Consequently, of the many rulings that were made in 1967, only a few judgements and decisions in leading cases can be reported here.

Further to its "crispbread ruling" of 1966, which was discussed in the last report (section 11), the Federal Court of Justice, in a decision of 7 December 1967 (*NJW* 1968, page 293), held that there was also no compensable encroachment on a commercial operation in cases where changes were made in legislative provisions that had previously guided an enterprise in its production arrangements. A producer of motor vehicle accessories had brought an action seeking compensation because part of his investment had proved to be wasted as a result of a change in the provisions concerning the equipment of trailers for use in agriculture and forestry. The Federal Court of Justice, in dismissing the case, stated that no one had a right to the continued existence of a legal situation which operated to the benefit of his commercial operation. The state of the law which guided an enterprise in its planning and production was not a component part of the operation. A different conclusion was possible only if the authorities had deliberately induced a businessman to increased expenditure and investment by drawing attention to an existing legal situation, but that had not been so in the case of the plaintiff.

The Federal Constitutional Court expressed its views on the content and limits of property in two decisions. In a judgement of 12 January 1967 (*NJW* 1967, page 619), the court declared that the official permit required under the Transactions in Landed Property Act for the sale of agricultural or forest land, was constitutional. The court reasoned that the fact that land was non-reproducible and indispensable, meant that its use could not be left entirely to the incalculable play of free forces and to the will of the individual; rather, a just ordering of the law and of society compelled the assertion of the public interest in the case of land to a much greater degree than in that of other kinds of property. Land could not simply be equated with other assets, either from the standpoint of the national economy or in its social importance. The legislator had therefore been entitled, without violating the guarantee of property set forth in article 14 of the Basic Law, to introduce the requirement of a permit for the alienation of agricultural and forest properties, and to make it a condition for the granting of the permit that no "unsalutary distribution of land" should result from the sale. The requirements for the issue of a permit were entirely amenable to judicial review, so that from that standpoint also no infringement of freedom of property could occur. In another judgement, of 14 February 1967 (*NJW* 1967, page 1175), the Federal Constitutional Court ruled that the restrictions on cultivation for new vineyards prescribed in the German Wine Industry Act, were also compatible with article 14 of the Basic Law. In stating its reasons, the court noted that the provision in question helped to maintain a high standard of quality in German wine, since in the long run, the production of wine on land that was not suited for the purpose, would be brought to an end. The measure was also conducive to an improvement in the economic position of the German wine industry as a whole, and particularly of the wine-growers. The restriction of cultivation was a necessary measure for attaining that goal of economic policy; for, in view of the imminence of keener competition from the cheaper table-wines to be imported from Italy and France under European Economic Community arrangements, only a uniformly high quality in German wine could afford the grower an adequate basis of existence. The interference with the use of agricultural land which the restrictions on cultivation involved, must therefore be tolerated.

In accordance with article 14, paragraph 3, first sentence, of the Basic Law, expropriation is admissible only for the welfare of the community at large. The courts, in their decisions, have imposed an additional requirement, whereby expropriation may be effected only for a specified purpose. If it later turns out that the thing expropriated is not used for the purpose that was indicated, this means that the original expropriation was unlawful. The Federal Constitutional Court nevertheless declined, in a judgement of 8 November 1967 (*NJW* 1968, page 810), to rule that the former owner was entitled to "re-expropriation" or reacquisition in any other way of the things which had been expropriated, since that would be going beyond a plain interpretation and application of article 14 of the Basic Law. The court held that recognition of a constitutional right to the return of something that had been expropriated when the purpose of the expropriation lapsed would be an act of law making exclusively within the sphere of competence of the legislator.

Article 14, paragraph 2, of the Basic Law indicates that property entails social obligations. This means that, when social obligations are involved, there can be no compensation because there is no expropriation within the meaning of article 14, paragraph 3, of the Basic Law. Thus, the Federal Court of Justice ruled, in a judgement of 13 July 1967 (*NJW* 1967, pages 1855-1856), that the reconstruction for residential purposes of some old urban back-premises which had been destroyed during the war would be fundamentally at variance with the completely changed general attitude to such building and would obviously not now constitute a legitimate use of the site. That restriction under the building laws did not impose on the property-owner any compensable special sacrifice, but simply materialized the social restraints on him. Consequently, the refusal of a permit for reconstruction of the back-premises did not constitute a compensable encroachment on property.

A type of case which comes before the courts with particular frequency is one where a change in the hitherto existing factual circumstances leads to a reduction in the value of real estate

or of a commercial establishment. In such cases, the property-owners and business proprietors usually try to obtain compensation from the State for this reduction in value. The burden of the judgements rendered by all the courts in connexion with this problem is that no abutter has a right to the continuance of advantages which result solely from given traffic conditions. The Federal Court of Justice, for instance, in two judgements of 29 May 1967 (*NJW* 1967, pages 1749 and 1752), ruled that there was no expropriation where the reclassification of a road, reserving it for motor traffic only, forced a farmer to make a detour in order to reach one of his fields or where, as a result of the reconstruction of a road, traffic along the road which had previously passed by a restaurant and boarding-house, was diverted and the proprietor suffered a loss of earnings because of the absence of transient travellers. For similar reasons, the *Land* High Court at Nürnberg, in a judgement of 15 June 1967 (*NJW* 1968, page 654), declined to order the payment of compensation for encroachment analogous to expropriation to the owner of a house that had become less profitable because a change made in the level of the street on which it stood had lowered the rental value of the ground-floor apartment. A property which had formerly bordered directly on the River Aller but which had lost its distinctive riverside character as a result of improvement works carried out along the river was the subject of a case that came before the Federal Court of Justice for decision. The owner of the property had sued for compensation for the alleged decline in the value of the property as a result of the loss of direct access to the water. In its judgement of 20 October 1967 (*NJW* 1968, page 107), the Federal Court of Justice dismissed the case, stating as its reason that a reduction in the scenic attractiveness of a property as a result of the methodical improvement of a river did not provide sufficient ground for a finding of compensable encroachment on what had formerly been a riverside property.

13. Freedom of conscience and religion; freedom of religious practice

(*Universal Declaration, article 18*)

This basic right, which is protected by article 4 of the Basic Law, has acquired special importance because of the provision in paragraph 3 of that article allowing a refusal on conscientious grounds, to perform military service as an armed combatant. A number of conscientious objectors who are recognized as such—for instance, members of the sect of Jehovah's Witnesses—refuse to perform not only military service under arms but also alternative civilian service. A judgement of the Federal Administrative Court (*NJW* 1967, page 1674), stating that it was not a violation of human dignity to issue a further order to report for alternative civilian service to a person liable for service who had previously been punished for refusing to serve, was reported at the end of section 1 above. In addition to this, the Federal Constitutional Court had to decide whether the refusal to perform alternative service was punishable. Some members of Jehovah's Witnesses who had refused to perform alternative civilian service and had been sentenced accordingly also ignored a second order to report for alternative service, whereupon they were sentenced again. The persons concerned lodged constitutional complaints against these sentences. On 11 July 1967, the Second Division of the Federal Constitutional Court ordered (*NJW* 1967, page 1657) that execution of the sentences of imprisonment imposed on the members of Jehovah's Witnesses should be suspended, because the complainants would suffer serious and irreparable injury if the sentences were carried out despite doubts as to their constitutionality and the convictions were subsequently reversed. Since the constitutional complaints raised difficult points of law, particularly with regard to the prohibition of double jeopardy, execution must be suspended. The final decision on the constitutional complaints was not rendered until 1968, but because the subject-matter is so closely related to the foregoing it is reported here. The First Division of the Federal Constitutional Court, in a decision of 5 March 1968 (*NJW* 1968, page 979), confirmed its past rulings that the fundamental right to freedom of conscience did not entitle anyone to refuse to perform alternative civilian service. In so doing, the highest German court simultaneously established the constitutionality of punishing objectors the first time they refused to perform alternative service. The decision of the Second Division of the Federal Constitutional Court on the constitutional complaints of the Jehovah's Witnesses who had already been sentenced for a second time for refusing to perform alternative service was pronounced on 7 March 1968 (*NJW* 1968, page 982). It declared that repeated punishment for refusal to perform alternative service was unconstitutional and reversed the convictions, because they violated article 103, paragraph 3, of the Basic Law, under which no one may be punished for the same act more than once (*ne bis in idem*). The Federal Constitutional Court placed a direct, unitary construction on the constitutional expression "the same act" in article 103, paragraph 3, of the Basic Law and stated that a repeated refusal to comply with an order to report for alternative civilian service constituted "the same act" if it was based on a decision of conscience taken by the offender finally and for all time to come; the fact that he had in the meantime been sentenced for refusing to serve was immaterial. Moreover, the demeanour of the offenders as a result of their definitive decision of conscience met the demands of the State, which always required of those refusing to perform military service only one and the same thing, namely, the performance of one period of eighteen months' alternative civilian service.

The Bavarian Constitutional Court, in a decision of 10 May 1967 (*DVBl* 1967, page 453), had to deal with the question whether in Bavaria all witnesses were required to testify in a courtroom where a crucifix was displayed on the wall. The court ruled that they were; crucifixes had been installed in courtrooms only as a forcible and graphic reminder of the significance of the oath and their responsibility before God to those

witnesses who belonged to a Christian denomination. The crucifixes were not intended for the rest of the witnesses, and they could reasonably be expected, as an infinitesimal minority in relation to the other witnesses who were of the Christian faith, to tolerate their presence on the walls. Nor did the prohibition of a State Church which was contained in article 140 of the Basic Law by any means require a complete separation of Church and State; on the contrary, it permitted arrangements by the State to take account of existing religious or religio-sociological conditions.

The freedom of a physician to make a decision of conscience, which is protected not by article 4 of the Basic Law but in the context of protection of the personality under article 2 of the Basic Law, was the subject of proceedings before the Federal Administrative Court. In its judgement of 18 July 1967 (*NJW* 1968, page 218), the First Division of the court ruled that a specialist in nervous diseases could not be expected to join the general emergency medical service. A psychiatrist who for decades had been occupied exclusively with his own speciality had become out of touch with general medical knowledge. To force a specialist in psychiatry, long after he had taken the State examination, to work in a field in which the laws relating to his profession otherwise prohibited him from offering any services could cause him constant apprehension of being unable to cope with a case. That was particularly so in the case of emergency medical aid, which could often be a matter of life and death. Thus, the specialist in psychiatry who had brought the case had been genuinely compelled by his conscience to refuse to participate in the emergency medical service.

On the question of the abolition of denominational schools in several of the federal *Länder*, see section 20 below.

14. Freedom of opinion; freedom of information

(*Universal Declaration, article 19*)

The fundamental right to the free expression of opinion, which is guaranteed by article 5, paragraph 1, of the Basic Law, is, in accordance with paragraph 2 of the same article, limited by, *inter alia,* the "general laws". The Federal Constitutional Court has ruled in the past that there is a mutual reaction between these, two domains, in that, while the letter of the general laws does set limits on the fundamental right, those laws must themselves be interpreted with an awareness of the importance of that fundamental right in setting standards in a libertarian democratic State and must thus in turn be limited in their restrictive effect on the fundamental right. For that reason, the Federal Court of Justice, in a judgement of 16 January 1967 (*NJW* 1967, page 891), cleared an attorney of the charge brought against him in the division for legal profession affairs of a court, that he had committed a breach of his professional obligations by writing to the judge of a bankruptcy court. After first ruling that the professional obligations laid down in the Federal Ordinance on Attorneys were "general laws" within the meaning of article 5, paragraph 2, of the Basic Law, the Federal Court of Justice held that the attorney's written statement that he wished to discuss whether certain conduct on the part of the judge could be reconciled with the objectivity required of every judge, constituted a legal dialogue with the judge. An attorney's right to the free expression of opinion, which was essential to the exercise of his profession, could not be abridged by denying him such an exchange of opinion with the court. As the attorney had communicated his misgivings regarding the judge's conduct only to the judge himself, and not to the public, he could not be charged with any breach of professional obligations.

The fundamental right to freedom of opinion and freedom of information in its specific form of freedom of the press gives rise to special problems. What is involved, in many cases, is a conflict between this freedom and other values protected by the Basic Law. One of the constantly recurring cases of "journalistic treason" came before the Federal Constitutional Court in connexion with a constitutional complaint against a criminal conviction. In its decision of 15 March 1967 (*NJW* 1967, page 871), the court ruled that the penal provisions relating to treason formed part of the "general laws" within the meaning of article 5, paragraph 2, of the Basic Law by which freedom of the press, among other freedoms, was limited. The question whether any matter could be reported without violation of those provisions of the penal law could be answered in each individual case only by weighing the protected values involved against each other. The Federal Constitutional Court came to the conclusion that freedom of the press must in any event be overridden if the publication of State secrets would seriously endanger the security of the Federal Republic.

The same court was again concerned with freedom of the press, but from another aspect, in a judgement of 4 April 1967 (*NJW* 1967, page 976). The court ruled that freedom of the press extended to the advertising section of a newspaper. The court did not go into the question whether the revenue from the advertising section was the indispensable economic prerequisite for the existence of a press independent of the State, and for that reason alone could not be subjected to harmful governmental measures; it ruled that article 5, paragraph 1, of the Basic Law applied even to the advertising section of a newspaper, simply because that section was concerned with the dissemination of information on the economic and cultural opportunities set out in the advertisements or on the opinions of others reproduced in them. That was part and parcel of the typical function of the press. The Federal Constitutional Court therefore declared unconstitutional and void a provision of the Labour Exchange and Unemployment Insurance Act which prohibited organs of the press from publishing "situations vacant" advertisements offering employment abroad without the prior approval of the Federal Labour Exchange and Unemployment Insurance Agency. The court held that the provision in question was not a "general law" within the meaning of article 5, paragraph 2, of the Basic Law, since the publi-

cation of "situations vacant" advertisements did not mean that the press was carrying on the business of a labour exchange within the meaning of the Act—a prohibited activity, of which the Federal Agency had the monopoly—and since only the press was affected by the prohibition. The Federal Constitutional Court reiterated, on this occasion, its ruling that the fundamental right of freedom of the press could also belong to a private limited-liability company—in other words, a domestic juridical person—if the company was engaged in journalism as a publisher.

The Federal Administrative Court, in its judgement of 8 December 1967 (*NJW* 1968, page 612), did not find any violation of freedom of the press in the refusal of the Federal Post Office to grant a company engaged in the broadcasting of press reports and opinions, a licence to use its own transmitter and additional frequencies. The court ruled that it was within the discretion of the Federal Post Office to grant licences for the operation of telecommunication equipment. Not even the fundamental right of freedom of the press gave a person a legitimate claim to disseminate news and opinions by having his own transmitting equipment licensed. In view of the shortage of available frequencies, it was permissible for the Federal Post Office to refuse to license radio stations, so that it could itself have control over the frequencies it needed in order to avoid disadvantages.

15. Prohibition of political parties and associations

(*Universal Declaration, articles 20 and 23*)

With the adoption by the Bundestag of the Act concerning political parties (Parties Act) on 24 July 1967 (*BGBl* 1967 I, page 773), the constitutional mandate, contained in article 21, paragraph 3, of the Basic Law, to regulate the constitutional status and functions of the parties by federal legislation has been complied with. Section One of the Parties Act includes a definition of the term "party" (article 2) and provisions stating that a party can sue and be sued under its name (article 3) and must have a name (article 4). If facilities are made available to the parties by the public authorities or if public services are provided, all parties are to be treated alike, but the extent of the services may be graduated according to the importance of the parties (article 5). Section Two deels with the internal organization of the parties, prescribes that they must have a statute and a programme (article 6) and specifies what the party organs must be (articles 8 and 9) and how decisions must be taken in the party (article 15), in order to accord with the principle set out in article 21, paragraph 1, third sentence, of the Basic Law, which states that the internal organization of the parties must conform to democratic principles. The single provision of Section Three deals with the nomination of election candidates, who must be chosen by secret ballot (article 17). Section Four of the Parties Act, regulating the reimbursement of campaign expenses, is one of the most important parts of the Act, since the Federal Constitutional Court had declared unconstitutional the former practice of financing the parties, except for the reinbursement of campaign expenses. Section Five of the Act deals with the question of accounting for the sources of funds, as required by article 21, paragraph 1, fourth sentence, of the Basic Law. In order to ensure proper bookkeeping, the Act prescribes an annual audit of the statement of accounts (article 23, paragraph 2). Section Six contains provisions for giving effect to the prohibition of a party which has been declared unconstitutional, and an article prohibiting the formation of substitute organizations. Section Seven of the Parties Act, entitled "Final provisions", includes a clause stating that campaign expenses for past election periods shall not be reimbursed (article 39).

Where judicial decisions are concerned, the Federal Labour Court, in a judgement of 14 February 1967 (*NJW* 1967, page 843) concerning the fundamental right to freedom of association (article 9 of the Basic Law), gave a ruling in the field of labour law to the effect that the proprietor of a business could not prohibit a trade union from having canvassing and informational material of specifically trade-union content distributed on the premises outside working hours and during rest periods by members of the staff who were also members of the union. The court ruled that the right of trade unions to be allowed to canvass for members in that way on business premises, derived directly from article 9, paragraph 3, of the Basic Law and the protection which it afforded to associations. That protection was effective vis-à-vis not only the State, but also third parties—in other words, private employers—since it would otherwise be inadequate and the trade unions would be impeded in a vital sector of their activities. The right of the unions to provide information and to canvass was, however, subject to certain restrictions, in order that the regular progress of work and the rights of the proprietor should not be impaired. Accordingly, trade unions were not allowed to carry on their canvassing during working hours.

16. The suffrage and the right of self-determination

(*Universal Declaration, article 21*)

In Bavaria, the Municipal Elections Order was amended by Ordinances of 22 February 1967 (Bavaria *GVBl* 1967, page 259) and 2 August 1967 (Bavaria *GVBl* 1967, page 412), with the result that postal voting is now possible even for elections to the municipal assemblies. In another Ordinance, amending the *Land* elections Order which was promulgated on 24 July 1967 (Bavaria *GVBl* 1967, page 387), details concerning participation in referenda were regulated.

Matters which came before the courts included the question of the franchise as currently exercised in the Federal Republic. In a decision of 11 April 1967 (*Bayer.Verw.Bl.* 1967, pages 271-272), the Federal Constitutional Court ruled that the provision now in force with respect to elections to

the Bundestag whereby only one half of the deputies are elected "directly" in the constituencies while the other half enter the Bundestag by way of *Land* lists was constitutional. In support of this view, which it had also taken in earlier decisions, the Federal Constitutional Court stated that it was not a violation of the principle of direct election laid down in article 38 of the Basic Law for candidates to be elected in the order in which their names appeared in a pre-established list.

The Baden-Württenberg Administrative Court had occasion, in a judgement of 24 April 1967 (*Baden-Württenbergisches Verwaltungsblatt* (Baden-Württenberg Journal of Administration) 1967, page 171), to consider the limits of permissible exertion of influence on the voter. The re-election of a mayor had been declared invalid by the Office of the District Administrator (*Landrat*) because the candidate winning the election by an extremely narrow majority had untruthfully asserted in a handbill on the day before the election that the other candidate was not, as he had stated at campaign rallies, an independent, but that he was a member of the Social Democratic Party (SPD). The court, in confirming the decision of the District Administrator stated that electoral propaganda, as a derivative of the right to the free expression of opinion, was of course permitted and was normally necessary as a means of informing the voters of the political views of the candidates. However, the exertion of influence on the voters violated the principle of free elections guaranteed in article 38, paragraph 1, of the Basic Law and was therefore unlawful if it was calculated to influence the voter's freedom of decision in such a way that he was prevented from making his choice between the candidates according to the criteria which corresponded to his personal evaluations and which he would normally apply. That effect could be produced, in particular, by misleading the voter. An election was unlawfully influenced when the voter was misled by objectively incorrect, or at least indemonstrable, assertions of fact concerning the matters on which he based his judgement and which conclusively affected his decision, with the result that he was not in a position to form a true opinion of his own. The democratic principle of free decision-making, in the sense that the voter should be protected against the propagation of factually incorrect assertions, required that the groups and individuals seeking his favour should refrain from making any untrue assertion.

In a judgement of 15 November 1967 (*MDR* 1968, page 255), the Third Criminal Division of the Federal Court of Justice rejected as being without merit the appeal of a defendant who had been convicted of incitement because during the election campaign, he had characterized a Jewish candidate as such by adding the word "Jew" before his name. The Federal Court of Justice stated in its decision that the trial court had rightly regarded the smearing of the Jewish candidate during the election campaign as incitement within the meaning of the Penal Code, since by his behaviour the defendant had been stirring up hatred against the Jewish section of the population, and denying the Jewish candidate's fitness for the office he was seeking solely because of his racial affiliation, without regard to personality or any special qualifications. Viewed against the background of the national socialist persecutions of the Jews, the characterization of the candidate as a "Jew" must be seen as something more than merely antipathy towards and disdain for that particular Jewish candidate.

The question of allowing political parties to use public municipal facilities is one with which the courts have frequently had occasion to deal in the past. Since the emergence in the Federal Republic of the radical right-wing National Democratic Party (NPD), there has been a proliferation of lawsuits by that party demanding to be allowed the use of premises owned by municipalities for political rallies. In accordance with article 21, paragraph 1, second sentence, of the Basic Law, political parties can be freely formed; the unconstitutionality of a party, the conditions for which are set out in article 21, paragraph 2, of the Basic Law, can be determined only by the Federal Constitutional Court. In a judgement of 10 November 1967 (*DÖV* 1968, page 179), the Baden-Württenberg Administrative Court ruled that the assembly hall of a municipality—in this case the Donauhalle at Ulm—must be considered a public facility of the municipality, even if the arrangements for using it were made under private law—for instance by means of a rental agreement. The Baden-Württenberg Municipalities Order gave all residents and associations in a municipality the right to use the public facilities of the municipality on an equal basis. The Donauhalle at Ulm had in the past been used repeatedy by political parties for rallies. Since only the Federal Constitutional Court was empowered to determine the unconstitutionality of a political party, it must be assumed, until such a determination was made, that NPD, like other parties, was pursuing permitted political ends. Consequently, it could not be discriminated against, in the matter of access to the hall, because of its political views. Thus, NPD could not be denied the use of the Donauhalle on the ground that the party or the political event that was scheduled was undesirable. Even if the political views within NPD made it likely that there would be demonstrations against the party rally, the City of Ulm must make the Donauhalle available to the party and, if necessary, use its police force to ensure that the event passed off in an orderly manner, since it would be a contravention of the principles of a State based on the rule of law for the municipality, as a public authority, to be able to evade its legal obligations because of an unlawful threat of force by demonstrators. The Administrative Court therefore granted the application for the issue of an interim order.

The Bavarian Administrative Court likewise ruled, in a judgement of 15 November 1967 (*Bayer.Verw.Bl.* 1968, page 67), that the Bavarian Municipalities Order conferred a public-law right to the use of a municipal facility. The court held that, if the municipality made hoardings available to the authorized political parties free of charge for the posting of placards during the election campaign without regulating the extent to which

that facility might be used by the individual parties, an administrative court could, at the petition of one of the parties, issue an interim order requiring that the parties should be allocated equal space on the available hoardings, so that the omission in the regulations would be made good and the tranquillity of the law would be ensured during the election campaign.

17. The right to choose and exercise a profession or occupation

(Universal Declaration, article 23)

The fundamental right to the free choice and exercise of a profession or occupation gave occasion to a number of judicial decisions during the year under review. The last word in a case which has also been publicized by the daily press was spoken by the Federal Constitutional Court, in its decision of 28 Junes (*NJW* 1967, page 2051). In proceedings relating to the protection of the State, the Third Criminal Division of the Federal Court of Justice had refused to allow an East Berlin attorney, Dr. Kaul, who appeared for the defendant, to continue as defence counsel on the ground that Kaul's membership of the Socialist Unity Party (SED), the fact that he resided in East Berlin, and his behaviour before West German courts—judicial notice being taken of the latter—gave reason to believe that he performed his functions as defence counsel in self-elected dependence on SED and accordingly, if necessary, also acted contrary to the interests of the accused. On a constitutional complaint lodged by Kaul, the Federal Constitutional Court quashed the order of the Federal Court of Justice and indicated, in stating its reasons, that the contested decision encroached upon Kaul's professional activity as an attorney. It represented a restriction on the exercise of a profession within the meaning of article 12 of the Basic Law which, however, was not as yet regulated by legislation in the requisite manner. Neither the provisions of the Code of Criminal Procedure and the Federal Ordinance on Attorneys cited by the Federal Court of Justice nor customary law had made it permissible to prevent the complainant from continuing as defence counsel. The Federal Constitutional Court added that even if there had been a statutory basis for the action it would have been necessary, bearing in mind the principle of reasonableness, to submit to a judicial review the question whether the complainant had given cause for so drastic a measure as refusing to allow him to continue as defence counsel. The Federal Constitutional Court held that he had not, and that the factual findings of the Federal Court of Justice did not suffice to show otherwise. Neither the complainant's personal circumstances nor his political views could justify his being barred from acting as defence counsel.

The Federal Constitutional Court gave rulings concerning the profession of tax agent in two of its decisions. In a judgement of 15 March 1967 (*NJW* 1967, page 1315), the court declared that the provision whereby the responsible management of tax consultant firms may not be in the hands of tax agents, was compatible with the principle of equality and with the right to the free choice of a profession. In explaining its reasoning, the court referred to the different educational background of tax agents and the tax consultants. It noted that the profession of tax consultant could normally be taken up only by persons who had had a complete academic education, whereas anyone with sufficient practical training was admitted as a tax agent. The legislator, in authorizing tax consultant firms, had required that the responsible management of such businesses should be entrusted only to tax consultants. That did not constitute, so far as tax agents were concerned, either arbitrary unequal treatment or an inadmissible restriction of the freedom to choose a profession. In its judgement of 15 February 1967 (*NJW* 1967, page 1317), the Federal Constitutional Court also took the view that it was permissible for the legislator, when setting statutory occupational patterns, to narrow down the freedom to choose a profession or occupation by specifying that certain other activities should not (or should no longer) be engaged in by those following a given profession ("incompatibility"). The court noted that the principle of reasonableness must not, of course, be violated in that connexion and ruled that there had been no such violation in the case of the reform of the laws relating to tax consultant services, as a result of which tax agents are in future prohibited from simultaneously engaging in any commercial activity. As a tax agent, through his work, obtained extensive insight into the business affairs of his clients, there was a risk of his using the knowledge acquired through his consultative activities in his own business, to the disadvantage of his clients, if he was simultaneously engaged in commercial activities.

The Federal Constitutional Court also considered, in two judgements of 4 April 1967 (*NJW* 1967, pages 971 and 974), the labour exchange monopoly of the Federal Labour Exchange and Unemployment Insurance Agency. In the first judgement, the court noted that the monopoly encroached on the basic right to freedom of profession or occupation (article 12, paragraph 1, of the Basic Law), since it made it impossible for the citizen to take up the independent occupation of employment agent. Nevertheless, the Federal Agency's labour exchange monopoly did not violate the Basic Law, since it was aimed at protecting important public interests, which took precedence over the individual's freedom of profession or occupation, and was an essential means of warding off threats to those public interests. The Federal Constitutional Court regarded the prevention of unemployment through the listing of vacancies, and the avoidance of a shortage of manpower as an overriding community value which could be preserved from damage only by a centralized labour administration. For those reasons, it was necessary that the operation of a labour exchange should be made exclusively the function of the State. In the second judgement, the Federal Constitutional Court ruled that domestic judidical persons were also entitled to the basic right set forth in article 12, paragraph 1, of the Basic Law, so far as their trading activities were concerned. Accordingly, a constitutional

complaint lodged by a joint-stock company on the ground of impairment of its "freedom of occupation" was declared admissible.

The provision of the Coupon Tax Act requiring banks to withhold the tax on income from capital (coupon tax), on behalf of the State when paying out interest on government stocks and the like was described by the Federal Constitutional Court, in a decision of 29 November 1967 (*NJW* 1968, page 347), as a permissible regulation of the exercise of a profession or occupation within the meaning of article 12, paragraph 1, of the Basic Law, comparable to the obligation of every employer to effect payment of his employees' wages tax and social insurance contributions. Collection of the coupon tax was still within the sphere of a bank's exercise of its trade. It was true that it represented an additional burden on the financial institutions, but not an inappropriate or unreasonable one.

In a judgement of 2 March 1967 (*NJW* 1967, page 1525), the Federal Administrative Court ruled that freedom to choose a profession included freedom to take up more than one profession successively or simultaneously. Accordingly, it declared incompatible with article 12, paragraph 1, first sentence, of the Basic Law a provision of the Health Practitioners Act which would make it impossible for a veterinary surgeon to be admitted to the profession of Health practitioner. The Federal Administrative Court was able to make this ruling itself because the provision in question antedated the constitutional enactment.

The Administrative Court at Munich, in a judgement of 2 August 1967 (*DVBl* 1967, page 920), took the view that there was no restriction of freedom of occupation where a permit for the commercial distribution of handbills on public thoroughfares, as required for that special use of the streets, was not granted. Even assuming that an activity of that kind was to be regarded as an occupation, the action taken did not in any event encroach on the freedom to choose an occupation, but only on the exercise of it. According to article 12, paragraph 1, second sentence, of the Basic Law, the exercise of an occupation might be regulated by legislation, and that had been done in a permissible manner by federal *Land* highways legislation.

18. The protection of rights in labour legislation

(*Universal Declaration, articles 23, 24 and 25*)

During the year under review, the Bundestag adopted the Fourth Act amending the Military Service Act, of 25 July 1967 (*BGBl* 1967 I, page 797), article 3 of which introduces some changes in the Security of Employment Act. The new provision relates to the continued payment of emoluments or subsistance allowances to civil servants and judges called up for military service or military training, where the persons concerned are over the age of twenty-five or have already performed at least twelve months of military service. In other cases, civil servants and judges are simply granted special leave without pay. Further changes in the Security of Employment Act were introduced in an Act of 22 December 1967 (*BGBl* 1967 I, page 134), the main purpose being to ensure that civil servants and judges do not suffer any career disadvantages through being called up for military service or military training.

Ordinances concerning labour protection for juvenile civil servants were promulgated in four *Länder* of the Federal Republic of Germany, namely, Rhineland-Palatinate (Rhineland-Palatinate *GVBl* 1967, page 263), Hesse (Hesse *GVBl* 1967, page 113) and the two city States of Berlin (Berlin *GVBl* 1967, page 1214) and Hamburg (Hamburg *GVBl* 1967, page 328). The Ordinances apply to all civil servants under the age of eighteen except law-enforcement officers. Their provisions are largely identical both among themselves and with those of the Ordinances of other federal *Länder* on the same subject discussed in last year's report (section 16), to which reference may therefore be made.

Where judicial decisions are concerned, the Federal Labour Court, in a judgement of 12 September 1967 (*NJW* 1967, page 317), had to rule on the question whether a collectively agreed set of rules providing for the imposition of fines in a factory was permissible. The court held that the Works Organization Act did not prohibit such an arrangement, but fully allowed the works council, together with the employer, to agree on a set of rules concerning fines for the maintenance of order in the factory, as well as on other matters. Nor did the imposition on an employee of a fine for "idling" by the body designated in the rules contravene any provisions of the Basic Law. Since internal fines of that kind were not criminal penalties, there was no violation of the principle of the lawful judge (article 101, paragraph 1, of the Basic Law), especially in view of the fact that, its application by analogy of article 19, paragraph 4, of the Basic Law, the legality of such an act of self-policing could always be tested by the labour courts. Moreover, an employee's human dignity was not affected by the infliction of an internal fine in accordance with the rules. The imposition of such fines was, of course, permissible only on the basis of rules which had properly come into effect. That meant, first and foremost, that they must have been duly announced and that the general principles of law and justice, such as the granting of a proper hearing to the employee concerned and of an opportunity for the works council to express its views, must be observed. Provided that those requirements were met, the Federal Labour Court saw no reason why a collectively agreed set of rules concerning internal fines should not be permissible.

In a decision of 3 May 1967 (*NJW* 1967, page 1555), the Federal Constitutional Court declared the penal clause of the law relating to working hours to be constitutional. The clause in question, dating from 1923, is contained in the Order concerning Working Hours, which however, was promulgated not as an ordinance but with the same status as a formal law. The court held that the clause had retained that statutory rank after the enactment of the Basic Law. The penal clause

of the law relating to working hours was therefore a criminal "law" (article 103, paragraph 3, of the Basic Law) and must be deemed to be a formal law (article 104, paragraph 1, first sentence, of the Basic Law). Consequently, a punishment based on it did not violate any constitutional principles.

The judgement of the *Land* High Court at Celle of 7 August 1967 (*NJW* 1967, pages 2369-2370), in which the court ruled that a convict had no right to time off from work analogous to a vacation, was discussed in section 3 above.

With respect to changes in the law relating to maternal welfare in several of the federal *Länder*, see section 11 above.

19. State care for persons in need of assistance

(*Universal Declaration, articles 22 and 23*)

By Act of 23 June 1967 (*BGBl* 1967 II, page 1945), the Federal Republic approved the Agreement of 20 April 1966 with the Spanish State concerning unemployment insurance. The presence of many Spanish migrant workers in the Federal Republic had made it clear that there was a need for inter-governmental regulation of the questions which would arise in the event of unemployment. The basic rule laid down in the Agreement is that Spanish workers in Germany and German employees in Spain are subject to the legal provisions of their respective places of employment. Accordingly, Spanish employees in the Federal Republic are subject to compulsory unemployment insurance and are normally entitled to unemployment benefit if they become unemployed in Germany.

With regard to judicial decisions, the Federal Constitutional Court had occasion, in its judgement of 18 July 1967 (*BVerfGE* 22, page 180) mentioned in section 3 above, to give a ruling also on the principle of the social State, which is guaranteed by the Basic Law (articles 20 and 28). The court stated (*op. cit.*, page 204) that that principle required the State to ensure a just social order. On the question of the participation of private institutions in the social welfare system, which is provided for in the Youth Welfare Act and the Federal Social Assistance Act, the court held that the legislator was at liberty to make provision for the collaboration of private welfare organizations with a view to the creation of a just social order. The principle of the social State did not mean that the legislator could prescribe only official measures for the realization of that goal.

The Federal Administrative Court also dealt with the principle of the social State, in its judgement of 10 May 1967 (*DVBl* 1967, page 825). The court ruled that an education grant under the Federal Social Assistance Act to enable a juvenile to attend a secondary school could not be refused on the ground that the applicant already had a suitable occupation. If the Federal Republic was constituted as a social State based on the rule of law, and if the State was entrusted with the protection of human dignity, welfare could no longer be conceived as an administrative system for the relief of the poor. The individual applicant for assistance was no longer an object of welfare, but possessed subjective status. The granting of social assistance for the purpose of further education to an applicant who had a suitable occupation would normally conflict with the notion of the pre-eminence of self-help, which was inherent in the welfare laws. The position was different, however, in the case of a juvenile, who must look to the world around him for help in every aspect of his life. Consequently, a juvenile who had already learnt a non-academic, technical trade, might be entitled to an education grant under the Federal Social Assistance Act to enable him to attend a secondary school. Nevertheless, the Federal Administrative Court could not give a final ruling on the case, since the lower court had not adequately determined whether or not the juvenile had exhausted all possibilities of self-help, which in some circumstances could be deemed to include obtaining a loan, before claiming the education grant. The case was therefore remitted to the competent Higher Administrative Court.

20. The right to education

(*Universal Declaration, article 26*)

In *Land* Baden-Württenberg, an "Act amending the Constitution of *Land* Baden-Württenberg and implementing article 15, paragraph 2, of the Constitution" (Baden-Württenberg *GVBl* 1967, page 7) was passed by the requisite two-thirds majority on 8 February 1967. With the amendment of article 15, paragraph 1, of the Constitution as provided in article 1 of this Act, the only standard type of elementary school anywhere in the *Land* is now the Christian interdenominational school. Thus, denominational schools have been abolished as State elementary schools in the South Württenberg-Hohenzollern part of the *Land*. The "Act implementing article 15, paragraph 2, of the Constitution" is contained in article 2 of the Act of 8 February 1967. Article 15, paragraph 2, provides that former public elementary schools which were organized as denominational schools in South Württenberg-Hohenzollern may be converted into State-assisted private denominational schools, and the implementing Act lays down the conditions on which applications for such conversion may be made. Account has been taken in that connexion of the right of parents to have a voice in the education and training of their children (article 15, paragraph 3, of the Constitution of Baden-Württenberg). The executing Ordinance laying down minimum numbers of pupils at private denominational schools, as provided for in article 2 of the implementing Act, was promulgated by the *Land* government on 6 June 1967 (Baden-Württenberg *GVBl* 1967, page 99).

The abolition of the denominational school as the standard type of school in South Württenberg-

Hohenzollern in consequence of this constitutional amendment led to a whole series of judicial rulings. In a judgement of 14 February 1967 dismissing an application for the issue of an interim order, the Administrative Court at Mannheim held (*NJW* 1967, page 1193) that the amendment of article 15, paragraph 1, of the Constitution of *Land* Baden-Württenberg was valid in law. The court stated that in the case of *Land* Baden-Württenberg, with its population of mixed religious faiths, the Christian interdenominational school was precisely the type of school that entailed, for the members of all denominations, the least possible encroachment on freedom of creed. The abolition of denominational schools in South Württenberg-Hohenzollern did not violate the natural right of parents to the care and upbringing of children, referred to in article 6, paragraph 2, first sentence, of the Basic Law, since that right did not include authority on the part of the parents to have a voice in determining the denominational character of the schools. That was clear from article 7 of the Basic Law, which left the *Länder* free to grant parents the right to have such a voice but which also provided that the wishes of the parents should be taken into account only when it came to permitting private denominational schools. Nor was the constitutional amendment invalid—the Administrative Court further ruled—because of any violation of the 1933 Concordat between the Holy See and the German *Reich* (the *Reich* Concordat), inasmuch as the Federal Constitutional Court had ruled in a precedent-setting decision of 26 March 1957 (*BVerfGE* 6, pages 309 *et seq.*) that with the entry into force of the Basic Law, the *Reich* Concordat, because of the exclusive competence of the *Länder* in educational matters, had become *Land* law which could be amended by the *Land* legislator at any time. The Administrative Court at Mannheim confirmed that view in its decision of 2 June 1967 (*DÖV* 1967, page 637).

The same court had to decide whether to issue an interim order in a test case (article 47 of the Ordinance concerning Administrative Courts) brought by two dioceses of the Catholic Church in Baden-Württenberg against action by the Department of Education to eliminate Catholic denominational schools in the administrative district of South Württenberg-Hohenzollern. In a further judgement of 14 February 1967 (*NJW* 1967, page 1194), the same division of the Administrative Court at Mannheim dismissed the petition, ruling that, although the dioceses were public-law corporations, they neither were "authorities" within the meaning of the second sentence of article 47 of the Ordinance concerning Administrative Courts, nor had suffered, as juridical persons, any encroachment on an interest protected by law. The encroachment on their national interest in the retention of Catholic denominational schools in South Württenberg-Hohenzollern was not sufficient to give the dioceses the right to bring a test case under article 47 of the Ordinance. Thus, in particular, the right vested in parents, prior to the amendment of the education article (article 15) of the Constitution of *Land* Baden-Württenberg, to have a voice in determining the type of school had been granted for the sake of the parents; it had not been intended to serve ecclesiastical interests, nor had it conferred on the church as a body any legally protected status. Likewise, the dioceses could not derive from the *Reich* Concordat any legal status entitling them to bring a test case, since under the Concordat only the Holy See, and not the individual dioceses in the Federal Republic, had the power of a Contracting Party. Furthermore, the Concordat in any event conferred rights in the matter of having a voice in the statutory determination of the type of school on those entitled to bring up children, and not on the church as a body.

In *Land* Rhineland-Palatinate also during the year under review, the denominational school was replaced as the sole type of public elementary school through a new enactment. By a "*Land* Act amending article 29 of the Constitution of Rhineland-Palatinate" of 10 May 1967 (Rhineland-Palatinate *GVBl* 1967, page 137), the education article of the Constitution was amended to provide that public elementary schools should be either Christian interdenominational schools or denominational schools (article 29, paragraph 1). Which type of school is chosen is determined in accordance with the wishes of those entitled to bring up at least two thirds, and in some cases at least four fifths, of the total number of pupils (article 29, paragraph 5). This should mean that the Christian Interdenominational school will become the standard type in areas having a population of mixed religious faiths.

In Bavaria, article 135 of the Bavarian Constitution, which provides that public elementary schools shall be either denominational or interdenominational, was still fully in force during the year under review. In accordance with that provision, however, interdenominational schools may be established only in places with a population of mixed religious faiths upon application of other entitled to bring up children. In its decision of 14 July 1967 (*Bayer.Verw.Bl.* 1967, page 312), the Bavarian Constitutional Court held that that clause did not violate superior constitutional law. The court ruled that the establishment of public schools in denominational form was lawful, even if it meant that pupils belonging to a denominational minority had to attend a public elementary school that was not of their denomination. The fundamental right of such a minority to freedom of religious faith and conscience (article 107, paragraph 1, of the Bavarian Constitution; article 4 of the Basic Law) was not violated if article 135 of the Bavarian Constitution was interpreted restrictively, as it must be, since the singularities of the majority denomination had to be de-emphasized in lessons at denominational schools where there were pupils of the minority denomination. The court noted that one of the ways in which that was achieved was by having teachers of the minority denomination at such denominational schools participate as fully qualified members in the teachers' council (article 8, paragraph 4, second sentence, of the Bavarian Elementary Schools Act). The Constitutional Court had already ruled in its decision of 20 March 1967

(*Bayer.Verw.Bl.* 1967, page 201) that the last-mentioned provision was compatible with the Bavarian Constitution, and in particular with article 135, paragraph 2, the wording of which seemed at variance with it. On 23 March 1967 came the promulgation of an Ordinance implementing article 8, paragraph 4, of the Bavarian Elementary Schools Act (Bavaria *GVBl* 1967, page 389), which provides that a minority teacher must always be employed at a denominational school if at least thirty-five of the pupils are members of the other denomination (article 1 of the Ordinance). In addition to religious instruction for the minority, he is to teach other subjects and have equal standing as a class-teacher with the other teachers of the denominational school (article 6 of the Ordinance). This provision also was the subject of proceedings before the Bavarian Constitutional Court. In its decision of 18 September 1967 (*Bayer.Verw.Bl.* 1967, page 423), the court, relying on essentially the same arguments as in the two decisions cited above, ruled that the provision concerning minority teachers contained in article 8, paragraphs 3 and 4, of the Bavarian Elementary Schools Act was constitutional. The same applies to article 11, paragraph 1, first sentence, and article 12 of the 1958 Act concerning the Training of Teachers, which provide that teacher-training colleges in the *Land* shall normally be denominational and that interdenominational ones may be established only under special conditions. The Bavarian Constitutional Court, in its decision of 7 November 1967 (*Bayer.Verw.Bl.* 1968, page 97), declared this to be constitutional and, in stating its reasons, referred in particular to article 135 of the Bavarian Constitution, which provides that the denominational school shall be the standard type of school in Bavaria. Consequently, the court ruled, the training of teachers must also be of a denominational character and must match the needs of the standard schools.

In Bavaria as elsewhere, efforts to abolish the denominational school as the standard type of elementary school were intensified during the year under review. An ordinance, again based on the existing Elementary Schools Act, concerning the conversion of denominational schools into Christian interdenominational schools and vice versa (Bavaria *GVBl* 1967, page 290) was promulgated on 23 March 1967. This Ordinance, which was amended on 13 September 1967 (Bavaria *GVBl* 1967, page 455), spells out the conditions on which applications for such conversion may be made and the procedure to be followed in polling those entitled to bring up children on whether an application of the kind is to be made.

It should be mentioned at this point that there will shortly be a radical change in the legal situation in the Bavarian educational system, as a majority of the population of Bavaria, in a referendum on 7 July 1968—the first since the entry into force of the Bavarian Constitution in 1946—has indicated that it favours the introduction of the Christian interdenominational school as the standard type of public elementary school (cf. Schuegraf, *Bayer.Verw.Bl.* 1968, page 306).

In Lower Saxony also, the legislator took action in the educational field by reformulating, on 16 March 1967, the Private Schools Act (Lower Saxony *GVBl* 1967, page 71). The main questions regulated by this Act are on what conditions the establishment of a private school may be approved and what financial assistance the *Land* must provide to recognize private schools.

In *Land* Schleswig-Holstein, an Act concerning teacher-training colleges (Schleswig-Holstein *GVOBl* 1967, page 115) adopted on 30 March 1967 conferred on such training colleges the status of autonomous academic institutions of higher learning (article 1, paragraph 1, of the Act).

In the Free Hanseatic City of Bremen, which is a *Land* of the Federal Republic of Germany, the Education Act was reformulated on 1 June 1967 (Bremen *GVBl* 1967, page 65). Article 1 of the Act reproduces the wording of the education article of the Bremen Constitution. Article 32 of that Constitution specifies that the public schools which provide a general education in Bremen are to be interdenominational schools giving non-sectarian instruction in biblical history. In Bremen, religious instruction is given by churches and religious bodies, at the request of those entitled to bring up children, only outside normal school hours. The Bremen Education Act, as reformulated, already takes into account the recommendations of the Conference of Ministers of Education, which has urged that the elementary school as it now exists should be reorganized into a lower school (for the first four school years) and a principal school, in order to ease the transition from the lower school to the other, more advanced schools (the modern secondary school, grammar-school, etc.).

The courts again had to deal with the question whether a private school has a claim to State assistance (subsidies). The Federal Administrative Court, in its judgement of 22 September 1967 (*NJW* 1968, page 613), confirmed its 1966 ruling that article 7, paragraph 4, third and fourth sentences, of the Basic Law did in exceptional cases confer a right to financial assistance from the State, because otherwise the freedom to maintain private schools, which was guaranteed by the Basic Law, was no longer secured. In accordance with article 7, paragraph 4, of the Basic Law, however, an obligation to provide subsidies arose only in the case of "substitute" schools, inasmuch as the latter were to be organized to function as a subsitute for State public schools. Moreover, assistance must cover only such expenditures as was necessary to maintain the school, and not the cost of establishing it, since the initiative for such action always rested in private hands.

21. Protection of industrial rights and copyright

(Universal Declaration, article 27)

The Patents Act, the Trade Marks Act and a number of other statutes, dealing with the protection of intellectual property rights were amen-

ded by Act of 4 September 1967 (*BGBl* 1967 I, page 953). The legislator thus anticipated a part of the planned comprehensive reform of German patent law which is aimed at in view of the development of international law, and in particular the attempted unification of the protection of industrial rights within the European Economic Community. The main purpose of amending the Patents Act, which was published in its revised form on 2 January 1968 (*BGBl* 1968 I, page 2), is to relieve pressure on the German Patent Office by changing the procedure for the issue of patents. In contract to what was formerly required, the Patent Office no longer carries out the time-consuming examination procedure when a patent is applied for, unless a separate application for an examination is made. This is intended to free the Patent Office from making examinations which cease to be of any value to the applicant if the invention proves unprofitable. Changes were also made in the provisions concerning the right to inspect papers. Eighteen months after application is made to patent an invention, the papers accompanying the application may be inspected by anyone. Temporary protection is provided for the applicant when the papers are released for inspection, in that he can demand appropriate reimbursement from any users of the invention but cannot require them to desist from using it. A new provision in the Patents Act covers the patenting of synthetic fabric discoveries. The Federal Republic thereby complies with its obligation under the European Convention on the Unification of Certain Points of Substantive Law on Patents for Invention of 27 November 1963, which provides for such protection of synthetics.

The main purpose of the new Trade Marks Act, as published on 2 January 1968 (*BGBl* 1968 I, page 29) is to impose a requirement that registered trade marks should be used and to provide that a trade mark which has been registered but has not been used for five years may, upon application, be struck from the register of trade marks, which has for a long time been too voluminous.

Other statutes amended by the Act of 4 September 1967 included the Registered Designs Act (published in its revised form on 2 January 1968, *BGBl* 1968 I, page 24) and the Employees Inventions Act.

With regard to the amendment of the European Agreement on the protection of television broadcasts, see section 22 below.

22. INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF HUMAN RIGHTS

(*Universal Declaration, article 28*)

By Act of 11 April 1967 (*BGBl* 1967 II, page 1233), the Federal Republic became a party to the Convention and Protocol for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954. The Convention came into force for the Federal Republic of Germany on 11 November 1967 (*BGBl* 1967 II, page 2471).

The Federal Republic, by Act of 6 June 1967 (*BGBl* 1967 II, page 1785), also ratified the Protocol amending a number of articles of the European Agreement on the protection of television broadcasts of 22 June 1960, signed at Strasbourg on 22 January 1965 (*BGBl* 1965 II, page 1235). The purpose of this Agreement is to facilitate exchanges of television programmes between the broadcasting organizations of the signatory States. The subject of the Agreement is the protection of property rights in television broadcasts and in still photographs of such broadcasts.

In *Bundesgesetzblatt* No. 31 of 7 July 1967 and No. 44 of 10 October 1967 (part II, pages 1996 and 2363), the Federal Minister for Foreign Affairs gave notice of the amendments to the rules of the European Court of Human Rights subsequent to the notice of 2 May 1963.

By Act of 2 October 1967 (*BGBl* 1967 II, page 2345), the Federal Republic ratified the Treaty of 15 June 1964 with the Portuguese Republic concerning extradition and legal assistance in criminal matters. Under the terms of the Treaty, extradition for political offences—with a few exceptions, as, for instance, in the case of an attempt on the life of the Head of State or a member of the Government—will not normally be allowed (article 3 of the Treaty). In addition, under article 11 of the Treaty a person extradited from the Federal Republic of Germany to Portugal may not be sentenced to death.

During the year under review, the Federal Republic also ratified the agreements concerning the promotion and reciprocal protection of investments concluded between 1961 and 1965 with the Kingdom of Morocco, the Republic of Liberia, the Republic of Colombia, the Central African Republic, the Republic of the Congo (Brazzaville) and the Empire of Iran (*BGBl* 1967 II, pages 1641, 1537, 1552, 1657, 1733 and 2549).

FINLAND

NOTE [1]

I. LEGISLATION

1. Administration of justice

Act No. 477, of 10 November 1967, on the Pardoning of Certain Convicted Persons in the Memorial Year 1967 of Finland's Independence (*Suomen Asetuskokoelma,* hereinafter referred to as *AsK,* Official Statute Gazette of Finland, No. 477/67) was passed in commemoration of Finland's fifty years anniversary as an independent State.

According to it, any person who has been sentenced or who will be sentenced for an offence by a court decision which will acquire legal force not later than on 31 December 1970 to forfeit his civic rights, shall be relieved of such a consequence.

Furthermore, any person who has been sentenced or will be sentenced by a similar court decision for an offence committed before 1 September 1967 to pay a fine equivalent to more than ten daily net earnings (sc, day-fines) and who, because of non-payment, is suffering this punishment wholly or partly in prison, shall be relieved of suffering a part of the sentence so that the converted punishment corresponding at the most to twenty day-fines shall be reduced to ten days imprisonment and that for each exceeding two day-fines, only one day imprisonment shall be suffered. If the total time of imprisonment counted in this way would be more than hundred and twenty days, the convicted person shall be relieved of suffering the exceeding part of the punishment.

Finally, any person who in similar circumstances has been or will be sentenced to imprisonment or hard labour, shall be relieved of suffering one sixth of the term of the punishment.

The Act contains detailed provisions for such a case that several punishments combined together are to be suffered at the same time.

2. Right to a nationality

(*a*) Act No. 518, of 1 December 1967, on the Amendment, of Article 4, Paragraph 1, of the Constitution Act (*AsK* No. 518/67).

As regards the acquisition of Finnish citizenship, the principle of *jus sanguinis* is followed. Thus, according to article 4, paragraph 1, of the Constitution Act, any person who is born of Finnish parents is a Finnish citizen no matter where the birth has taken place. In addition, Finnish citizenship used to be automatically granted to foreign women who married a Finnish man. This was considered to be necessary for the unity of family.

However, in the light of the Convention on the Nationality of Married Women, this Article was amended by the Act mentioned above to the effect that a foreign woman, when married to a Finnish man, will no longer be granted Finnish citizenship without her own application.

(*b*) Act No. 519, of 1 December 1967, on the Amendment of the Act on the Acquisition and Loss of Finnish Citizenship of 9 May 1941 (*AsK* No. 519/67)

In the light of the Convention on the Nationality of Married Women. Article 3 of the original Act was amended to the effect that it is now in harmony with article 4, paragraph 1, of the Constitution Act as amended by Act No. 518 summarized above.

3. Right to favourable conditions of work

(*a*) Act No. 344, of 28 July 1967, on the Boarding Houses of Lumberers and Log Floaters (*AsK* No. 344/67) imposes certain requirements on employers under whose direction and supervision logging and floating and other work related

[1] Note prepared by Mr. Voitto Saario, Justice of the Supreme Court of Finland, government-appointed correspondent of the *Yearbook on Human Rights.*

to them are performed. Thus, if it is not reasonable to presume that workers should daily come to the working place by their own means, the employer is under obligation to arrange a boarding house to his workers, separately to men and women, or to pay the cost for back and forth transportation to the working place.

The Act contains detailed provisions on the requirements of the boarding houses, taking into consideration that they should provide a healthy and comfortable place to live.

The workers shall be charged no payments or other compensation for the lodging or transportation.

The implementation of the provisions of this Act is supervised by the Ministry for Social Affairs. For a breach against this Act, there is provided a sanction of fine. If the breach has been committed despite the reprimand of the supervising authority or otherwise in aggravating circumstances, the punishment shall be at the least fifty day-fines or at the most imprisonment for six months.

(*b*) Act No. 345, of 28 July 1967, on the Safety at Shipwork (*AsK* No. 345/67) contains provisions purporting to guarantee the safety at work performed by persons who are in the service of a Finnish merchant ship, for the ship or otherwise, at the order of their superior, on board or elsewhere.

The crew of a ship which is bigger than nineteen register tons, by its net tonnage, shall elect among themselves one or more safety agents to represent them in questions concerning safety at work including fire protection. The safety agents shall also further safety and healthy circumstances among the crew.

Matters concerning safety at shipwork are dealt with by a board established by the Ministry of Commerce and Industry. The members of the board, who shall represent all appropriate interest groups, are elected for a term of four years at a time.

The implementation of the provisions of this Act is supervised by the Central Board of Navigation. A breach against this Act is punishable by fine.

4. Special measures for the training and protection of young workers

(*a*) Act No. 422, of 22 September 1967, on Apprenticeship Agreement (*AsK* No. 422/67)

By apprenticeship agreement it is understood, in this Act, a contract where one party, the apprentice, binds himself to work for the other party, the employer, under his supervision and guidance against remuneration in order to obtain the necessary skill and theoretical knowledge in a certain trade. For each trade, there shall be an apprenticeship programme confirmed by the Central Board for Vocational Education.

Only an employer who has been duly accepted by the local Apprenticeship Board, can be a party to an apprenticeship agreement. An apprentice can only be a person who has reached the age of fifteen but is not older than twenty-four years.

An apprenticeship agreement has to be made in writing on a form confirmed by the Central Board for Vocational Education. Every agreement has to be accepted by the local Apprenticeship Board. The purpose of these measures is, on the one hand, to guarantee that the goal of the agreement can be reached and, on the other hand, that the interests of the employer and the apprentice are taken into consideration in accordance with this Act as well as with other provisions concerning working conditions, such as working time, annual vacation, safety at work and other protection of workers.

After the end of the apprenticeship time, the employer shall give the apprentice a certificate. A copy of the certificate shall be sent to the local Apprenticeship Board.

The highest direction and supervision of the training given in the framework of apprenticeship agreements is vested with the Ministry of Commerce and Industry, as well as the Central Board for Vocational Education. The Ministry also may establish special Central Boards for the planning and direction of training in various fields. In matters of principle, both the Ministry and the Central Board may consult the Council for Vocational Education, a consultative organ under the Ministry.

The local direction and supervision is entrusted to communal authorities who shall, for one or several communes, establish local Apprenticeship Boards.

Apprentices shall not be charged for the participation in training courses to be arranged for giving them theoretical education adhering to their trade. Employers are paid compensation from State funds for the cost arising from fulfilling their obligations under apprenticeship agreements.

This Act replaces Act No. 125, of 28 April 1923, on the same subject, taking into account the changes caused by general development in the labour and social legislation. More detailed provisions are given by Decree No. 563, of 15 December 1967 (*AsK* No. 563/67).

(*b*) Act No. 669, of 29 December 1967, on the Protection of Young Workers (*AsK* No. 669/67)

This Act is to be applied to working relations where a person under the age of eighteen years, on the basis of an agreement, is working against remuneration for an employer under the latter's direction and supervision. According to it, employers shall see to it that, in addition to what is generally provided by law on the safety of workers, the work will not injure the physical, mental or moral growth of young workers and that the work does not require more exertion than is reasonable taking into consideration their age and strength. Furthermore, employers shall see to it that young workers who do not have the necessary skill and experience, will receive instruction and guidance in their work as well as personal coaching required by the working conditions and their age and other characteristics so

that they can avoid causing the danger of accident for themselves or other persons.

Further provisions can be given by a decree to the effect that young workers may not be used to certain work including a particular danger of accident or injury to health or being otherwise injurious to them or other persons.

Any person who has reached or who, during the calendar year, will reach the age of fifteen and who is no more subject to compulsory education, may be hired to work. Also a person who has reached or who, during the calendar year, will reach the age of fourteen may, during school vacation, be hired to do a particularly light work at the most for a time corresponding two thirds of his vacation.

The Act contains detailed provisions on the working hours of young workers and on the necessity of checking their physical condition by medical inspections.

The implementation of the provisions of this Act is supervised by appropriate Trade Inspectors. A breach against these provisions is punishable by fine or imprisonment.

II. INTERNATIONAL AGREEMENTS

1. Act No. 339, of 2 June 1967, on the Adoption and Implementation of Certain Provisions of the Convention on the Recognition and Execution of Decisions Concerning the Alimony of Children adopted at the Hague on 15 April 1958 (*AsK* No. 339/67)

This Act contains necessary provisions on the procedure to be followed in order to initiate the execution of a foreign decision concerning the alimony of a child.

2. Decree No. 340, of 15 July 1967 (*AsK* No. 340/67), brings into force the Convention mentioned above.

GABON [1]

ACT No. 1/67 OF 17 FEBRUARY 1967 AMENDING CERTAIN ARTICLES OF THE CONSTITUTION [2]

Article 1

Article 6, 7 (excluding paragraphs 1-4), 8, 9, 10, 11, 17 (paragraphs 1 and 2), 21 (paragraph 2), 26 (paragraph 2) and 27 of the amended Constitutional Law of 21 February 1961 shall be replaced or supplemented by the following provisions:

. . .

Article 7. New first paragraph

The President of the Republic and the Vice-President of the Republic shall be elected by universal direct suffrage. Voting shall be on the basis of a list, with no splitting of votes, and the order of names on the list shall not be subject to alteration. The President and the Vice-President shall be eligible for re-election.

New second paragraph

They shall be elected by absolute majority on the first ballot. If an absolute majority is not obtained, they shall be elected by relative majority on the second ballot, which shall take place fifteen days after the first ballot.

New third paragraph

The Presidential election shall take place during the seventh year of the term of office of the President of the Republic, on a date fixed by decree of the Council of Ministers.

. . .

New article 17. New first paragraph

When necessary, the President of the Republic shall, after consultation with the Council of Ministers and the President of the National Assembly, dissolve the National Assembly.

New second paragraph

Elections shall be held, not earlier than twenty days and not later than forty days after dissolution, for a new National Assembly whose term shall end on the normal date of expiry of the term which began with the term of office of the President.

. . .

Article 26. New second paragraph

The members of the National Assembly shall have the title of deputies. They shall be elected by universal direct suffrage, and their term of office shall, subject to the provisions of article 17, be the same as that of the President of the Republic.

Elections for the National Assembly shall take place on the same day as the Presidential election. Voting shall be on the basis of the same list and subject to the same rules as in the case of the Presidential election.

In the case provided for in article 10, new elections shall be held for the National Assembly.

Last paragraph: No change.

Article 27. New second paragraph

The conditions governing the election of persons to fill vacant seats until the holding of general elections for the National Assembly shall also be determined by law.

Third paragraph

Former second paragraph.

. . .

[1] Texts furnished by the Government of Gabon.

[2] For extracts from the Constitution, see the *Yearbook on Human Rights for 1961*, pp. 136-137.

ACT No. 2/67 OF 17 FEBRUARY 1967 CONCERNING THE ELECTION OF THE PRESIDENT OF THE REPUBLIC AND THE VICE-PRESIDENT OF THE REPUBLIC

Article 1. The President of the Republic and the Vice-President of the Republic shall be elected by universal direct suffrage.

Elections shall be held on rolls bearing the names of the candidate for the Presidency of the Republic and the name of the person proposed by the latter for the office of Vice-President.

If no roll obtains an absolute majority of the votes cast in the first ballot, only the two rolls for which the largest number of votes have been cast in the first ballot may be submitted in the second ballot.

If necessary, if one of the two most favoured rolls should be withdrawn, the third roll may be submitted in the secoond ballot...

TITLE III

ELIGIBILITY

Article 3. Candidates for the Presidency or the Vice-Presidency of the Republic must fulfil the following conditions:

1. Be of Gabon nationality;
2. Be at least thirty years of age on voting day;
3. Enjoy civil and political right...

ACT No. 3/67 OF 20 FEBRUARY 1967 CONCERNING THE ELECTION OF DEPUTIES TO THE NATIONAL ASSEMBLY

Art. 1. Articles 1, 2, 3, 5 and 6 of Decision No. II/PR of 27 February 1964 concerning the election of deputies to the National Assembly shall be amended as follows:

Art. 1. The deputies, of whom there shall be forty-seven, shall be elected by universal direct suffrage. They shall be eligible for re-election.

Without prejudice to the provisions of article 17 of the Constitution, their term of office shall expire in the seventh year after their election, on the same date as that of the President of the Republic.

If, however, the President of the Republic resigns before the end of the third year of his term of office, the Assembly elected concurrently with him shall remain in office until its term of office has expired in the normal way...

ACT No. 16/67 OF 16 JUNE 1967 AMENDING A PROVISION OF THE CONSTITUTION

Art. 1. Article 7, paragraph 2, of the Constitutional Law of 21 February 1961, amended by Act No. 1/67 of 20 February 1967, shall be replaced by the following provisions:

"They shall be elected by absolute majority either in the first ballot or in the second ballot, which shall take place fifteen days after the first ballot."

GAMBIA

THE PUBLIC RECORDS ACT, 1967

Act No. 6 of 1967, assented to on 15 April 1967 and entered into force on 19 May 1967 [1]

. . .

3. (1) There shall be established an office with as many branches as may be deemed necessary or convenient, to be called the Public Record Office, in which shall be preserved such records of historical value as are transferred thereto or acquired by the Keeper under the provisions of this Act.

(2) There shall be a Keeper of Public Records who shall be a public officer and who, under the direction of the Minister, shall make provision for the custody, preservation, arrangement, repair and rehabilitation and for such duplication, reproduction, description and exhibition of records transferred to the Public Record Office as may be necessary or appropriate, including the preparation and publication of inventories, indexes, catalogues and other finding aids or guides facilitating their use:

Provided that until the appointment of the Keeper shall have been made, the duties and functions of the office shall be performed by such public officer as the Minister may appoint.

. . .

6. (1) The Keeper, with the approval of the Minister. . . shall provide reasonable facilities for the purpose of making available to the Government and to the public information contained in the records under his control either:

(*a*) by making the original records or other materials available for consultation; or

(*b*) by furnishing copies (authenticated by the Keeper's official seal or otherwise) of, or extracts or information collected from, such original records or other materials:

Provided that nothing in this subsection shall require the disclosure of any material exempted from examination by statutory provisions or other lawful restrictions.

(2) Nothing in this section shall affect the power of any competent court to order the production of any document in any proceedings instituted before such court.

. . .

[1] Printed by the Government Printer, Bathhurst.

THE DISSOLUTION OF MARRIAGE (SPECIAL CIRCUMSTANCES) ACT, 1967

Act No. 18 of 1967, assented to on 18 September 1967 and entered into force on 22 September 1967 [2]

. . .

2. (1) Notwithstanding the provisions of any other enactment having the force of law in The Gambia, the Supreme Court shall have jurisdiction to dissolve by decree any marriage at the instance of either party thereto in the following circumstances:—

(*a*) the marriage was in monogamous form recognized by the law of The Gambia; and

[2] Printed by the Government Printer, Bathhurst.

(*b*) since the celebration of the marriage one of the spouses has in good faith and to the satisfaction of the court become converted to a religion which recognizes polygamous marriages and the other spouse has not become so converted.

(2) No applications to the Supreme Court under this section shall be made unless:—

(*a*) the marriage shall have subsisted for a period of three years:

Provided that for good cause shewn the Court may reduce such period;

(*b*) one year shall have elapsed since the conversion mentioned in paragraph (*b*) of subsection (1) of this section:

Provided that for good cause shewn the court may reduce such period; and

(*c*) the applicant is a person in respect of whom the Supreme Court has jurisdiction in matrimonial causes.

(3) Every decree made under this section shall in the first instance be a decree nisi and shall not be made absolute before the expiration of three months from its grant unless the Supreme Court by general or special order from time to time fixes a shorter period.

3. In any proceedings under this Act the Supreme Court shall have the same power to make orders for the custody, care and control, maintenance and protection of any child of the family as it has in matrimonial causes under the law of The Gambia.

4. In any proceedings under this Act the Supreme Court shall have the same power to make orders in regard to ancillary relief and costs as it has in any matrimonial cause under the law of The Gambia.

5. Any conversion or failure to become converted giving rise to proceedings under this Act shall not be regarded by the Supreme Court in making any order under the provisions of section 3 or section 4 as if it were misconduct giving rise to a matrimonial cause.

6. After the date of the coming into force of this Act, but without prejudice to any suit then pending, no action shall lie at the instance of any person to whom the provisions of this Act apply in any matrimonial cause by reason that the respondent has committed adultery by cohabiting with a spouse to whom such respondent is validly polygamously married.

7. Notwithstanding the provisions of any other law in force in The Gambia, if both parties to a monogamous marriage become converted to a religion which recognizes polygamous marriages, then such monogamous marriage shall be deemed to have become polygamous and may be dissolved in accordance with the law or custom of such religion:

Provided—

(*i*) that such law or custom forms part of the law of The Gambia; and

(*ii*) the parties to such marriage are subject to such law or custom.

. . .

GHANA

LABOUR DECREE, 1967

Promulgated by National Liberation Council Decree No. 157 of 10 April 1967 [1]

(EXTRACTS)

PART I

NATIONAL EMPLOYMENT SERVICE

1. This Part of this Decree shall not apply to—

(*a*) employment in temporary work for a period of less than one month;

(*b*) employment in the armed forces, or in the security, prisons or police service;

(*c*) any other employment in relation to which the Chief Labour Officer is satisfied that a satisfactory machinery exists under any other enactment for the recruitment of unemployed persons and the filling of vacancies.

2. The Chief Labour Officer shall establish, by notice published, in the *Gazette*, public employment centres (hereafter in this Decree referred to as "centres").

3. Each centre shall:

(*a*) assist unemployed and employed persons to find suitable employment and assist employers to find suitable workers from among such persons, and more particularly shall, in accordance with regulations made under this Decree:

(i) register applicants for employment, take note of their occupational qualifications, experience and desires, interview them for employment, evaluate, if necessary, their physical and vocational capacity and assist them, where appropriate, to obtain vocational guidance, vocational training or retraining;

(ii) obtain from employers precise information of vacancies notified by them to centres and the requirements to be met by the persons who are to fill such vacancies;

(iii) refer to available employment applicants with suitable skills and physical capacities; and

(iv) refer applicants and vacancies from one centre to another, in cases in which the applicants cannot be suitably placed or the vacancies suitably filled by the centre to which application has been made or in cases in which other circumstances render the reference necessary;

(*b*) take appropriate measures to:

(i) facilitate occupational mobility with a view to adjusting the supply of labour to employment opportunities in the various occupations;

(ii) facilitate geographical mobility with a view to assisting the movement of unemployed and employed persons to areas with suitable employment opportunities; and

(iii) facilitate temporary transfers of unemployed and employed persons from one area to another as a means of meeting temporary local maladjustments in the supply of or demand for unemployed persons;

(*c*) collect and analyse, in co-operation with management and trade unions and other appropriate authorities the fullest available information on the situation of the employment market and its growth in the country as a whole and in different industries, occupations and areas and make such information available without delay to employers, and workers' organisations and the public;

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[1] The text of the Decree in English and a translation thereof into French have been published by the International Labour Office as *Legislative Series*, 1967—Ghana 1.

(*d*) assist in social and economic planning calculated to ensure a favourable employment situation;

(*e*) provide separate arrangements for unemployed and employed persons below the age of 21 for application for registration, obtaining employment, training and for matters connected therewith or incidental thereto;

(*f*) provide vocational guidance facilities to persons up to the age of 21;

(*g*) provide separate arrangements for the registration, obtaining employment, training and retraining of any disabled person and consult rehabilitation centres in the discharge of these functions; and

(*h*) provide separate arrangements for the registration, obtaining employment and other matters connected therewith for persons:

(i) with recognised technical, vocational or professional qualifications or those who although not possessing such qualifications have had experience of a level higher than that of a craftsman;

(ii) who are of the level of supervisors or foremen;

(iii) with experience at administrative, managerial or senior executive levels; and

(iv) who have received training at the post-secondary school or the university levels.

4. (1) Any unemployed person shall, and any employed person may, make an application in the prescribed form to the appropriate centre for registration of his name in the appropriate register.

(2) On receipt of the application, the person in charge of the centre or any other person authorised in that behalf by him, shall forthwith enter the name of the applicant in the appropriate register and shall cause to be issued to the applicant a certificate of registration in the prescribed form.

5. (1) No employer shall employ any unemployed or employed person unless that person is in possession of the registration certificate referred to in paragraph 4 of this Decree.

(2) Every employer who is desirous to employ any person shall apply to the appropriate centre for reference to a suitable applicant for employment.

(3) If the person referred to by the centre is not acceptable to the employer or if no reference is made by the appropriate centre, the employer may, after the lapse of ten days from the date of his application to the centre for a reference to a suitable applicant for employment appoint any other person duly registered.

(4) Any employer, after complying with the requirements of subparagraph (2) of this paragraph may advertise such vacancy and shall ensure that such advertisement requires that suitable registered applicants should report at the nearest public employment centre for reference.

6. (1) Within 14 days of employment of a person, the employer shall furnish the appropriate centre with a statement specifying the particulars of the terms of the employment.

(2) Every employer shall forward to the appropriate centre quarterly returns in the prescribed form giving particulars regarding:

(*a*) the vacancies filled by the employment of persons,

(*b*) the vacancies remaining unfilled and reasons therefor, and

(*c*) any other matter relating to the employment of workers required in writing by the Chief Labour Officer.

7. (1) The Chief Labour Officer may appoint an advisory committee to each centre to advise and assist him or the centre in relation to his and its functions under this Part.

(2) An advisory committee appointed under this paragraph shall consist of a Chairman and either two, four or six other members.

(3) The Chairman shall be a person appointed by the Chief Labour Officer. Of the remaining members:

(*a*) one-half shall be persons representing trade unions or other workers' organisations; and

(*b*) one-half shall be persons representing employers or employers' organisations.

(4) Without prejudice to the preceding provisions of this paragraph, the Chief Labour Officer may also appoint advisory committees on a national and regional basis.

8. An advisory committee appointed under paragraph 7 may co-opt any person with special knowledge to assist it in the discharge of its functions and such person shall not be entitled to exercise a vote at a meeting of such a committee.

(9) Any person who contravenes any of the provisions of this Part of this Decree shall be guilty of an offence and shall, on summary conviction, be liable to a fine not exceeding 200 new cedes or to imprisonment for a term not exceeding 12 months, or to both.

10. In this Part, "appropriate centre", in relation to an employer an unemployed or employed person or a worker, means the centre nearest to where he resides or is desirous of being employed or is employed, as the case may be.

[The Decree further deals with contracts and agreements; provisions relating to severance pay; civil proceedings; the employment of females, children and young persons; labour inspection; protection and remuneration; special provisions relating to daily rated workers in respect of holidays; and forced labour.]

GUATEMALA

ORGANIC LAW OF THE GUATEMALAN INSTITUTE OF TOURISM

Promulgated by Decree No. 1701 of 8 September 1967 [1]

CHAPTER I

BASIC PROVISIONS

Article 10. The promotion, development and extension of tourism are hereby declared to be of national interest. The State is therefore responsible for directing such activities and encouraging the private sector to engage in them.

Article 20. The *Instituto Guatemalteco de turismo* (Guatemalan Institute of Tourism) is hereby created. The Institute's abbreviated name is INGUAT and no other public or private body shall be allowed to use this name. It is domiciled in Guatemala City and its jurisdiction extends over the whole territory of the Republic.

. . .

CHAPTER V

TOURISTS

Article 24. Tourists are defined as:

(*a*) Nationals or foreign residents who go from one place to another in the Republic for purposes of recreation, sport, health, study, vacations, religion, missions or meetings; and

(*b*) Foreigners who enter the country for the same purposes.

Article 25. All tourists shall enjoy the protection and privileges of this law, without distinction of race, sex, nationality or religion; the civil and military authorities are therefore obliged to give them attention and assistance whenever necessary.

Article 26. Foreign tourists are allowed to enter the country with no papers other than the tourist card. INGUAT must therefore arrange for these documents to be obtainable at Guatemalan embassies and consulates, the offices of airlines serving Guatemala, immigration offices at the international airport, and ports and frontiers. The card may be used to re-enter the country within a period of thirty days. Central American tourists may enter the country by showing their identity card or a similar document.

Article 27. Foreign tourists shall have the right to remain in the country for six months, which period may be extended for a further six months by authorization of the immigration authorities. Requests for extension must be submitted at least five days before expiry of the first period.

. . .

[1] *El Guatemalteco,* No. 78 of 6 October 1967.

GUYANA

REVIEW OF EXISTING ARRANGEMENTS FOR THE PROTECTION OR REALIZATION OF CIVIL AND POLITICAL RIGHTS IN GUYANA [1]

The State of Guyana came into being on 26 May 1966, when the former Colony of British Guiana became independent. The independence of Guyana marked the end of 163 years of British rule over the territory formed out of the former Dutch colonies of Essequibo, Demerara and Berbice.

TRADITION OF RULE OF LAW

Despite historical vestiges of a Roman Dutch legal system, the common law of England was the common law of British Guiana for half a century before independence and had significantly influenced the development of the legal system for well over a century. Today, the rule of law is an important element of the basic ethic of the community. The need for integrity and independence in the operation of the judicial process is accepted as axiomatic and its fulfilment in the day to day administration of justice has come to be taken for granted. The traditional responsibilities of the legal profession and, in particular, of a strong and independent Bar in ensuring respect for the rights of the citizen and the dispensation of justice under the law are accepted as normal responsibilities by the rest of the community and are taken seriously by the profession itself. The concept of free periodic elections, of an executive responsive and responsible to Parliament, of the Opposition, in fact, all the essentials of a démocratic parliamentary system are facets of the political philosophy that prevails in the community. An appreciation of this general background is important to any appraisal of the effective protection or realization of civil and political rights in Guyana.

Guyana's national Constitution which came into force on the date of independence—26 May 1966—makes provision for the Government of Guyana as a democratic society founded upon the rule of law.[2]

The Constitution is the supreme law of Guyana and prevails against all other laws that may be inconsistent with it. This principle of the superiority of the Constitution within the legal system lies at the heart of the constitutional arrangements that secure the civil and political rights of the individual in Guyana.

The principal constitutional guarantees of these rights are elaborated in the several articles of chapter II of the Constitution intituled "Protection of Fundamental Rights and Freedoms of the Individual". These articles, which constitute Guyana's "Bill of Rights", proceed from the recognition that every person in Guyana is entitled to the fundamental rights and freedoms of the individual, that is to say, in the language of the Constitution, "the right, whatever his race, place of origin, political opinion, 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:

life, liberty, security of the person and the protection of the law;

freedom of conscience, of expression and of assembly and of association; and

protection for the privacy of his home and other property and from deprivation of property without compensation."

COMPREHENSIVE SAFEGUARDS

The several provisions of the Bill of Rights guaranteeing respect for the rights and freedoms

[1] Working paper prepared by Mr. S. S. Ramphal, Attorney-General and Minister of State of Guyana, for the United Nations Seminar on the Effective Realization of Civil and Political Rights at the National Level, held in Kingston, Jamaica, from 25 April to 8 May 1967, and published by the Ministry of External Affffairs in *Safeguarding Human Rights*. A copy of this publication was furnished by the Government of Guyana.

[2] For extracts from the Constitution of Guyana, see *Yearbook on Human Rights for 1966*, pp. 145-156

of the individual, follow to a substantial degree the provisions of the European Convention of 1950 for the Protection of Human Rights and Fundamental Freedoms.[3] In particular, they have been drafted with a view to avoiding vague generalities and providing, instead, constitutional safeguards that are as precise and as comprehensive as the inherent limitations of drafting and human foresight allow. Thus articles 5 and 10 of the Constitution which secure the right to personal liberty and the protection of the law expressly entrench the more important procedural safeguards that have been formulated over the years —whether as attributes of the principles of "natural justice" or as the essential requirements of "due process". The rule that an arrested person should, as soon as reasonably practicable, be informed of the reasons for his arrest and be brought before a court; in the case of persons charged with criminal offences—the presumption of innocence, the rule of notice and of opportunity to be heard, the right of counsel and, if necessary, an interpreter, the right of cross-examination and the immunity from compellable testimony, the rule against *ex post facto* penal provisions, the rule against double jeopardy and the right to raise pleas of *autrefois* convict and *autrefois* acquit; the rule that judicial proceedings should in general be held in public; the right of the individual to a fair hearing within a reasonable time before an independent and impartial tribunal in the determination of his civil rights or obligations— are all set out with particularity in the basic law.

Explicit, also, is the constitutional guarantee that no person shall be compulsorily dispossessed of property of any description and that no right over such property shall be compulsorily acquired except under the authority of a written law and unless provision is made by such a law for the prompt payment of adequate compensation and for a right of access to the Supreme Court for the determination of the amount of such compensation. So too, the individual's freedom against arbitrary search or entry, and his freedom of conscience, including freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, to manifest and propagate that religion or belief in worship, teaching, practice and observance. So also, his freedom of expression—freedom to hold opinions, to receive and communicate ideas and information without interference, and freedom from interference with correspondence. Likewise, the freedom of assembly and association —the right to assemble freely and to associate with other persons and, in particular, the right to form or belong to political parties or trade unions or other associations for the protection of legitimate interests. Similarly, the individual's freedom of movement—the right of the citizen to move freely throughout Guyana, his right to reside in, to enter or to leave Guyana and his immunity from expulsion from Guyana. In like manner, also, protection of the individual from discrimination whether by legislative or executive act and whether by being subjected to disabilities or restrictions of which others are free or by denial of priviliges or advantages afforded to others. With regard to all these rights and freedoms, the Bill of Rights delineates with care the area of constitutional guarantee so as to lay a foundation for their effective realization and limit the scope of a discretion, whether governmental or judicial, that might lead to their curtailment.

The over-all public interest

Consistently with the comprehensive character of the constitutional guarantees, and again following the pattern of the European Convention, the Constitution frankly recognizes the competing claims of the rights of the individual and the over-all public interest and the need to provide expressly for their just resolution. To this end, the Bill of Rights categorises the general interests which the legislature may from time to time prefer to the guaranteed right or freedom, and prescribes general standards by which the preference must be made. In these cases, the permissible countervailing interests are mainly those of defence, public safety, public order, public morality, public health and the rights and freedoms of others, and the standards prescribed are the reasonable requirements of those interests. It is thus principally on these provisions of the Bill of Rights that must fall the main burden of effecting a continuing reconciliation between the acknowledged civil and political rights of the individual and the justifiable exercise of governmental power —a reconciliation that must in the last resort be made by the courts in Guyana, whatever may have been the initial executive or legislative determination of the competing claims of public interest and individual liberty. The system of constitutional guarantees would not have been complete without an explicit acknowledgement of the legitimary of this judicial function and, in this regard, the Constitution expressly guarantees the right of access to the Supreme Court for enforcement of the protective provisions of the Bill of Rights, and confers a constitutional jurisdiction on the Court to hear and determine applications and to grant appropriate remedies for the purpose of enforcing the constitutional guarantees.

Political rights specially secured

In the particular area of political rights, the Constitution prescribes the qualifications and disqualifications of persons entitled to vote at an election of members to the national Parliament, and to be elected as members of the Parliament, the electoral system to be followed at such elections and the times at which such elections shall be held, and establishes machinery in the form of an Elections Commission for the purpose of ensuring impartiality, fairness and compliance with the provisions of the law in the registration of electors and the conduct of elections. In essence, the Constitution guarantees universal

[3] The text of the European Convention for the Protection of Human Rights and Fundamental Freedoms appears in the *Yearbook on Human Rights for 1950*, pp. 420-426.

adult suffrage, the list system of proportional representation, elections at intervals of not more than every five years and the establishment and functioning of an Elections Commission whose members are drawn from all the main political parties in the country. The constitutional guarantees taken together with the Bill of Rights provide one of the most elaborate systems yet set out in any Constitution for securing the effective realization of the civil and political rights of the individual.

MEASURES TO FOSTER INDIVIDUAL RIGHTS

In keeping with Guyana's adherence to the concept of a parliamentary democracy founded upon the rule of law, the legislature has sought by various measures to foster conditions conducive to the social as well as legal realization of the civil and political rights of the individual. Some of the more important specific legislative measures deserve mention in passing. They include a wide range of labour laws regulating such matters as minimum wages, holidays with pay, industrial injury benefits, standards of safety in industrial premises, the employment of women, young persons and children, as well as statutes aimed specifically at promoting the development of free trade unions in conformity with the principle of collective bargaining. Most of these statutes implement the requirements of Conventions of the International Labour Organisation. In the field of education, statutory provisions regulate a system of compulsory primary education between the ages of 6 and 14 years and free primary education between the ages of 5 and 16 years without interfering in any way with the constitutional right of any religious community in Guyana to establish and maintain places of education. Legislation also regulates entrance to all government or government-aided secondary schools with a view to ensuring that the allocation of free places to children is made strictly according to merit. Over 80 per cent of the population of Guyana is literate.

The Government's current legislative programme provides for the early introduction of a system of national insurance which will include sickness and old age benefits.

PROTECTION OF AMERINDIANS

Special legislative protection has been given to the interests of the Amerindians, who are the indigenous people of Guyana and who live in small groups widely scattered over the very extensive area of the hinterland. The Constitution requires that a Minister should be charged specifically with responsibility for Amerindian affairs, and a department of Amerindian Affairs has been established to promote the full participation of Amerindians in Guyanese society. Within the last year, legislation has provided for the establishment of an Amerindians Lands Commission charged with the responsibility of advising the Government on the implementation of an agreed policy that Amerindians should be granted legal rights of ownership or occupancy over lands on which they are ordinarily resident or settled.

INDEPENDANCE OF JUDICIARY

Attention has already been drawn to the fact that the Constitution specifically acknowledges the legitimacy of judicial review and provides for the exercise by the judiciary of a supervisory authority along the frontier between individual liberty and governmental power. The Constitution goes further however, in establishing arrangements aimed at promoting the independence and impartiality of the judiciary in the discharge of their functions. The Chancellor, who is the head of the judiciary and presides over the Court of Appeal, and the Chief Justice are required by the Constitution to be appointed on the advice of the Prime Minister after he has consulted with the Leader of the Opposition. The other judges of the Court of Appeal and of the High Court and all magistrates, who exercise a summary jurisdiction, are appointed by a Judicial Service Commission established by the Constitution. The Commission is presided over by the Chancellor and its other members are the Chief Justice, the Chairman of the Public Service Commission and at least two other members appointed on the advice of the Prime Minister after he has consulted with the Leader of the Opposition. Of these members, one must be a person who holds or has held high judicial office and the other must be appointed after consultation with organizations representing the legal profession in Guyana. The Constitution also provides for security of tenure of office of members of the judiciary by prescribing their age of retirement, guaranteeing their terms and conditions of service and preventing their removal from office except for inability or misbehaviour established on the basis of an elaborate judicial procedure culminating with a reference to the Judicial Committee of Her Majesty's Privy Council.

These constitutional arrangements are supplemented by statutory provisions so as to establish a hierarchy of courts through which the individual may secure enforcement of his civil and political rights. The lowest courts are the magistrates' courts exercising a summary jurisdiction in criminal causes and a wide jurisdiction in civil claims involving amounts generally not exceeding two hundred and fifty dollars. The High Court has a general original jurisdiction in both civil and criminal matters, criminal cases being tried always with a jury of twelve persons. Appeals lie to the Court of Appeal from the High Court and from the Court of Appeal to the Judicial Committee of Her Majesty's Privy Council.

POLITICALLY NEUTRAL CIVIL SERVICE

The system of governmental administration in Guyana is founded upon a civil service that is politically neutral, the members of which are career officers whose duty it is to serve faith-

fully whatever may be the Government of the day. Much importance is attached to maintaining this character of the civil service and to its significance for the effective realization of the civil and political rights of the individual in the society. With a view to excluding both political patronage and political victimization from the civil service, the Constitution has established a Public Service Commission consisting of persons appointed in a manner designed to ensure their independence and impartiality and who enjoy security of tenure during their period of office. Upon this Commission the Constitution confers general authority to make appointments to offices in the civil service and to exercise disciplinary control over persons so appointed.

But the principal respect in which a politically neutral civil service promotes the effective realization of the civil and political rights of the individual is through its efficiency and integrity and, however insulated it may be from political control, there is need always to ensure against mal-administration. In 1965, the Government, recognizing that the system of judicial review while ensuring ultimate redress for illegal acts or omissions does not always provide a speedy remedy for the abuse of authority or administrative mal-practice, sought to find some other correctional procedure supplementary to the judicial process which could provide swift and effective redress without the financial hazards of litigation. It accordingly advanced proposals for the establishment of the office of Ombudsman in Guyana, and, in due course, provisions establishing that office guaranteeing his security of tenure of office and prescribing the scope of his functions have been included in the Constitution itself.

THE OMBUDSMAN

The Guyana Ombudsman is appointed in accordance with the advice of the Prime Minister after he has consulted with the Leader of the Opposition. The Constitution guarantees him security of tenure of office for a period of four years; he may be reappointed for a subsequent term, but is only removable within any term of office on grounds of inability or misbehaviour established to the satisfaction of a judicial tribunal. The Constitution itself confers on the Ombudsman a general jurisdiction to investigate any administrative action (including omissions, decisions and recommendations) taken by a Government department (including Ministers, officers and members of the department) or by any authority empowered to award Government contracts or that may be specially prescribed by Parliament. The Ombudsman is entitled to act upon his own initiative or upon receiving a complaint from an aggrieved individual or body. A Minister or any member of Parliament is also entitled to request the Ombudsman to investigate may matter within his jurisdiction irrespective of whether the Minister or member is personally aggrieved.

The Ombudsman is concerned with faults in administration. It is not his function to criticize policy, or to examine a decision on the exercise of discretionary powers unless it appears to him that the decision has been effected by administrative mal-practice including, of course, discrimination on political or other grounds. The Constitution also specifically excludes from the Ombudsman's jurisdiction matters in which the complainant has a right of recourse to a court or to some other independent and impartial tribunal. Even in these cases, however, the Ombudsman has jurisdiction to investigate the complaint if the only remedy open to the complainant is a right of recourse to the Supreme Court under the Constitution alleging a violation of the constitutional guarantees contained in the Bill of Rights; and, in any event, the Ombudsman has a discretion to act if he thinks that the remedy available to the complainant before the courts is not one which he could reasonably be expected to seek. Other matters specifically excluded from the Ombudsman's jurisdiction are the exercise of powers to preserve the safety and security of the State, matters affecting Guyana's relations with other countries, the investigation of crime or the commencement or conduct of legal proceedings in any court, action taken by the Judicial, Public or Police Service Commissions established by the Constitution and matters relating to the command of disciplined forces. In imposing such restrictions, the Constitution recognizes that these matters are exclusively the responsibility of Government, the courts, the Service Commissions, commanders of disciplined bodies and other authorities established by the Constitution for the purpose. To permit the Ombudsman to inquire into the discharge of their functions would inhibit and might altogether frustrate the exercise of the discretion properly confided to them.

After he has completed his investigations, the Ombudsman may make recommendations to the department or authority concerned, and in any case, be must communicate his findings to the individual or body on whose complaint or at whose request the investigation was conducted. The Ombudsman is required to lay before Parliament each year a general report on the performance of his functions; but he may make a special report to Parliament in any particular case if no redress is obtained within a reasonable time after recommendations have been made by him as a result of his investigation. Parliament is authorized to supplement the provisions of the Constitution by prescribing the procedure for making complaints or requests to the Ombudsman and for conducting his investigations, and by prescribing the powers, duties and privileges of the Ombudsman and other authorities with respect to the obtaining or disclosure of information for the purposes of any investigation and report by the Ombudsman.

POLICE FREE FROM POLITICAL INFLUENCE

So far as the security forces are concerned the Constitution itself establishes a Police Service Commission which exercises in relation to the Police Force functions similar to those assigned by the Constitution to the Public Service Commission in relation to the civil service. As in the case of the Public Service Commission, the

Constitution itself provides for the appointment of the Police Service Commission in a manner designed to ensure their impartiality and independence and with a view to removing from the area of political influence matters relating to appointments and discipline within the Force. Responsibility for the grant of commissions to members of the armed forces is by statute entrusted to a Commissions Board presided over by the Chief of Staff and including among its three members the Chairman of the Public Service Commission.

Prosecutions insulated from political influence

As a general rule, any person in Guyana may institute procedings in respect of a breach of a criminal law. In practice, the police as the official law enforcement agency generally institute and undertake criminal prosecutions. Traditionally, the Attorney-General exercised a supervisory authority in relation to all criminal prosecutions and was responsible for the institution of proceedings in the name of the Crown in the superior courts with regard to the more serious criminal offences. Recognizing that the Attorney General will now normally be a Minister of the Government in addition to being its principal legal adviser, the Constitution has made provision for vesting these responsibilities in relation to criminal prosecutions in an independent authority, the Director of Public Prosecutions.

The Director of Public Prosecutions is a public officer, and his tenure of office is secured by the Constitution itself which prescribes that he shall only be removable for inability or misbehaviour and only in pursuance of the recommendation of a judicial tribunal of enquiry. By virtue of the Constitution, he may institute and undertake prosecutions in person or through his own officers and he has exclusive responsibility for deciding when to take over, continue or discontinue prosecutions instituted by other persons. With a view to ensuring the insulation of the process of criminal prosecution from political influence, the Constitution specifically enjoins that the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority in the exercise of his constitutional functions. As a practical arrangement, the police are advised by the officers of the Director of Public Prosecutions, and he exercises an effective and continuing supervision over the institution and conduct of all criminal prosecutions.

Emergency situations

Declarations of a state of emergency are governed by the Constitution, which provides for declarations of two kinds. The first is a declaration by the executive in the form of a proclamation of emergency issued by the Governor-General as the Head of State acting on the advice of the Cabinet. The second is a declaration made by the legislature in the form of a resolution of the National Assembly. A proclamation of emergency issued by the Governor-General declares a state of emergency to exist for the purposes of the Constitution and, while it has effect immediately on being made, it ceases to be in force at the end of a period of fourteen days unless within that time the National Assembly passes a resolution approving of its continuance for a further period not exceeding six months. With a view to ensuring the early consideration of the proclamation by the National Assembly, the Constitution requires that it shall be laid before the Assembly as soon as practicable after it has been made, and requires the Governor-General to summon the Assembly within five days for the purpose of considering the proclamation if it is not otherwise due to meet within that period. A proclamation of emergency may be kept in force by resolution of the National Assembly, but can only be renewed before its expiry and then only for periods not exceeding six months at a time. At any time while it is in force, a proclamation of emergency may be revoked by the Governor-General on the advice of the Cabinet.

A declaration of emergency in the form of a resolution of the National Assembly may be made on the ground that democratic institutions in Guyana are threatened by subversion, but such a resolution will only be effective if it secures the support of not fewer than two thirds of all the elected members of the Assembly. A resolution of this kind will cease to be in force at the expiration of two years or of such shorter period as may have been specified in the resolution, but at any time while it is in force, it may be revoked by a further resolution of the Assembly.

Limited scope of emergency powers

During any period when there is in force either a proclamation that a state of public emergency exists for the purposes of the Constitution or a resolution of the National Assembly declaring that democratic institutions in Guyana are threatened by subversion, the operation of certain of the provisions of the Bill of Rights is suspended to a limited extent. During such a period, action may be taken in derogation from the relevant constitutional guarantees, but only if such action is othemwise authorized by law and only to the extent that the action so authorised is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation. The limited derogation permitted during such periods of emergency relates to all the provisions of the Bill of Rights other than those guaranteeing protection of the right to life, protection from slavery, protection from inhuman treatment, protection from deprivation of property, the rule against *ex post facto* provisions and the provisions guaranteeing access to the courts for redress of violation of constitutional guarantees.

Control over declarations of emergency and emergency powers

Attention has already been drawn to the control exercised by Parliament over declarations of emergency. No declaration by the executive can be

effective beyond a period of two weeks without Parliamentary approval and, in practice, through its influence on the executive, Parliament exercises a continuing control over the duration of the emergency. The only special powers exercisable during an emergency are powers conferred by law, and, in this regard, provision has been made by statute authorising the making of regulations by the executive during a period of emergency for the purpose of dealing with the situation arising or existing during the period. Such regulations automatically cease to have effect at the expiration of the period of emergency during which they were made. The special powers available to the executive during periods of emergency are conferred by law and are exercisable only within the terms of the relevant law. Any action taken during the period of emergency in purported exercise of emergency powers which is not authorised by law would be illegal, and the courts may grant redress to any person whose rights have been infringed as a result of the illegal act. All normal remedies are available to such persons both during and after the emergency. In particular, the power of the courts to grant relief by way of habeas corpus for illegal deprivation of liberty remains unimpaired.

The above arrangements relate to situations involving states of emergency which require special declarations. The Constitution also recognizes other situations of emergency of greater or lesser degree, and itself confers special authority for dealing with them. The first of these represents what is possibly the most extreme situation of emergency, namely, a period when Guyana is at war. During such a period, the arrangements described above permitting limited derogation from the Bill of Rights take effect automatically and continue in force for the duration of the war. The second situation is one which does not involve a state of emergency sufficiently grave to justify a general declaration of emergency and the concomitant suspension of a wide range of constitutional guarantees. Recognizing that a situation may arise in which a few individuals may threaten public safety, public order or the defence of the nation in a manner for which normal procedures provide no adequate remedy, Parliament has enacted special provisions (the National Security (Miscellaneous Provisions) Act, 1966) under the specific authority of the Constitution (article 5(1)(*k*)) for dealing with such a situation.

These statutory provisions only come into force on an Order to this effect being promulgated by the Governor-General. Moreover, the provisions themselves, whether brought into force or not, are limited to expire at the end of eighteen months from their enactment, but Parliament may from time to time before their expiry resolve to extend that period for not more than a year at a time. During any period when the provisions are in operation, a person may be detained pursuant to an Order made by the executive provided that not later than three months after his initial detention a Judicial Tribunal reports that there is, in its opinion, sufficient cause for the making of the Order. The Order, which may only be made with a view to restraining the individual from acting in a manner prejudicial to public safety or public order or the defence of Guyana, must state concisely the grounds on which it is made and must be published in the Official Gazette within seven days of its being issued. As soon as practicable after his arrest pursuant to the Order, a copy of the Order must be served on the individual, and the statement of the grounds contained in it must be communicated to him, and he must also be informed of his right to instruct a legal adviser without delay and to present his case either in person or by a legal representative before the Tribunal.

The Tribunal is appointed entirely by the Chancellor, as head of the judiciary, and its members must be drawn from among the serving Judges of the Supreme Court or members of the Bar who are qualified to be appointed as Judges of the Supreme Court. The Tribunal may, with the approval of the Chancellor, make rules for the discharge of its functions and, subject to such rules, may regulate its own procedure. On the application of any person against whom an Order is made, the Tribunal may assign counsel and authorise financial legal aid.

Although not required by the Constitution itself, the statutory provisions require the periodic review by an advisory tribunal of the case of any individual with respect to whom the Judicial Tribunal has found that there was sufficient cause for the making of an Order. This advisory tribunal must consist of three members of the legal profession and be presided over by a chairman appointed by the Chancellor.

The enactment of these statutory provisions made it possible to bring to an end the general state of emergency that had existed in Guyana more or less continuously for a period of nearly four years before and immediately after the date of independence. The years before independence witnessed great social and political upheaval in Guyana. This turbulence has passed, but the need to protect the tranquility of the nation as it faces the challenges of independence requires a cautious transition to normality. The temporary nature of the special provisions demonstrates that they are not envisaged as a permanent feature of Guyana's law; the procedural safeguards that they provide so elaborately are a token of Guyana's continuing adherence to the principles enshrined in the Bill of Rights; the fact that the operation of the provisions is suspended indefinitely manifests the hope that there may never be need to bring them into operation.

Constitutional framework for democratic society

The arrangements described above demonstrate the care that has been taken to create a constitutional and legal framework for the society within which the individual may enjoy the full realization of his civil and political rights. In their totality, the constitutional and legal provisions amply fulfil the declared aim of the national Constitution, as set out in the preamble, of establishing Guyana as a parliamentary democracy founded upon the rule of law.

HAITI

NOTE [1]

FOREWORD

So long as mankind exists in a world divided into independent States, human rights cannot be effectively recognized, developed or respected except through the instrument and within the context of each nation's sovereignty under the over-all supervision of the United Nations. This basic truth compels us this year, by way of exception, to depart from the order which we have usually followed in submitting documents and the texts of legislation for publication in the *Yearbook*. We are primarily concerned with the publication of a diplomatic instrument of great national and international importance and only secondarily with the laws, decrees and conventions designed to enhance the intellectual or material enjoyment of human rights in Haiti, with or without the co-operation of the competent international institutions or of friendly develop countries.

PART I

DENUNCIATION OF THE INTER-AMERICAN CONVENTIONS ON THE RIGHT OF ASYLUM

On the proposal of the Government, the Haitian Legislative Chamber, sitting as a National Assembly, unanimously decided at its meeting on 14 July 1967 to denounce the four Inter-American Conventions: (*a*) The Havana Convention on Asylum of February 1928; (*b*) the Montevideo Convention on Political Asylum of December 1933; (*c*) and the two Caracas Conventions of March 1954, the one on territorial asylum and the other on diplomatic asylum. This is an important event which affects in theory and practice both national sovereignty and human rights. It is a new development in Haitian diplomatic annals and probably in Inter-American relations as well, and shows that the Haitian nation, in keeping with the historic role as champion of human rights without distinction as to race, which it has played since its founding and the adoption of its first constitution in 1805, has taken another highly important step towards the necessary reform. This decision by the Haitian Government, taken in accordance with the procedure established in the conventions, except for certain particular features which should be noted, is in full accord with what is called "American international law". For a proper understanding of the juridical, political and humanitarian aspects, it is necessary not only to reproduce the text of the decisions with their preambles, but to elucidate them by some brief explanatory comments, and particularly by extracts from the very cogent Explanatory Note read out by Mr. René Chalmers, Secretary of State for Foreign Affairs, on behalf of the Government to the Legislative Chamber in support of the denunciation, which was dictated by circumstances.

Prior to the conclusion of these Inter-American Conventions, in Haiti, as very probably in most of the other young Latin American Republics, the right to territorial or diplomatic asylum was exercised under vague customary rules, based no doubt on some general principles of international law, which was not very highly developed at the time. Depending on the circumstances or the relative strength of the parties concerned, this early form of protection of human rights more or less enjoyed the support of the two States concerned in that they respected each other's sovereignty and the inviolability of their national territory and their legations and embassies even when such inviolability extended beyond the legal limits to consulates situated in the provinces and protected symbolically only by their national flags or by foreign marines. The two world wars that cast a pall over the first half of the century marked two stages in the development of legal

[1] Note furnished by Dr. Clovis Kernisan, Dean of the Faculty of Law at the University of Port-au-Prince, government-appointed correspondent of the *Yearbook on Human Rights*.

doctrine and practice relating to human rights, on which the right of asylum is founded. After the First World War, a surge of public opinion in favour of regulating the matter by international agreement led to the successive adoption of two very brief inter-American conventions: one consisting of four articles on the right of asylum was adopted at the Sixth Conference of the Pan American Union—as it was then called—held in February 1928 at Havana, Cuba, and the other, slightly longer, on the right of political asylum and consisting of nine articles, was adopted at the Seventh Conference held five years later at Montevideo, Uruguay. The two conventions were binding only on the twenty and the nineteen Latin American republics respectively, including Haiti, which had signed them without reservations and could therefore ratify them. On the other hand, the United States had made an explicit reservation to the Havana Convention: in signing that instrument, it had declared that it neither recognized nor subscribed to the doctrine known as the right of asylum as a part of international law. At the Montevideo Conference, the United States stated in its reservation that "since the United States of America does not recognize or subscribe to, as part of international law, the doctrine of asylum, the delegation of the United States of America refrains from signing the present Convention on Political Asylum".

Towards the end of the Second World War, in April-June 1945, the United Nations was established to succeed the League of Nations; it was to apply the most advanced thinking and the lessons of experience. The Charter of the United Nations established the principle of human rights without distinction as to race, sex, language, or religion. Of the various countries which had proposed the inclusion of that principle, Haiti had presented the most cogent supporting arguments and had been the second to speak in favour of it. The United Nations General Assembly, held at Paris in December 1948, whose Rapporteur was a Haitian representative, adopted the Universal Declaration of Human Rights. However, in April of the same year, the Ninth Inter-American Conference, held at Bogotá, had already established the new principle as binding by including it both in the Charter of the Organization of American States and in the American Declaration of the Rights and Duties of Man. This humanistic philosophy was still sufficiently popular in March 1954 to influence the Tenth Inter-American Conference held at Caracas (Venezuela); it drafted and adopted the last two Conventions, one, on territorial asylum, consisting of fifteen articles, and the other, on diplomatic asylum, consisting of twenty-four articles. Only Costa Rica was not present at the Caracas Conference; the nineteen other Latin American Republics and the United States attended. This time the United States made no express reservation. Its representatives, like those of the Latin American countries, probably signed the two Conventions with the tacit understanding that they were subject to ratification which is of course necessary before they become binding on signatory States. However, six Latin American Republics (Guatemala, the Dominican Republic, Mexico, Peru, Honduras and Argentina) reserved their positions with respect to the Convention on Territorial Asylum and four others (Guatemala, Uruguay, the Dominican Republic, and Honduras), with respect to the Convention on Diplomatic Asylum where they signed the Convention. They submitted written reservations with regard either to specific articles or to the Convention as a whole, on grounds that they might be interpreted or applied in a manner contrary to their respective constitutions or legislation. That did not prevent them from ratifying the Conventions or from affording diplomatic asylum in their legations or embassies. The only exception was the United States; it was significant that it continued to grant asylum to political exiles only on its territory and not in its legations or embassies. Like most other Latin American republics, Haiti had taken an active part in the work of the three Conferences and had made no reservations when the Conventions were signed. It had not only ratified them with confidence but had scrupulously implemented than and respected its obligations towards all the other co-signatories.

This brief historical account of the circumstances surrounding the development of the institution of the right of asylum in inter-American relations undoubtedly affords some general enlightenment, but we leave it to others to draw conclusions from it concerning reforms which must be made in order to adapt this aspect of the law of treaties to the realities of modern international life and the rapid changes brought about by scientific and technological progress. However, our purpose is to examine the right of asylum objectively merely as an introduction to the official statement of reasons explaining why Haiti denounced the four Conventions. The Secretary of State for Foreign Affairs said, *inter alia:*

> "The right of asylum which has been institutionalized by the inter-American Conventions (of Havana, Montevideo and Caracas)—unquestionably one of the most glorious achievements of the people of the American—has, under the Government of the Leader of the Middle Classes and the Back Country Masses, been systematically diverted from its noble purposes by the representatives of an oligarchy clinging desparately to its unfair privileges. Whenever their repeated attempts at invasion or subversion have failed, they have invoked the right of diplomatic asylum."

In 1960, they tried vainly to enlist young intellectuals and the working classes in support of their secret ambitions; in 1963 and 1965, they shamelessly sought support from abroad; in 1966 and 1967, they tried to subvert Army discipline.

> "They have included soldiers, officers and non-commissioned officers either on active service or retired, civil servants and private citizens who had engaged in political activities but who were sometimes also guilty of crimes or offences under ordinary law; such people should not have been protected indiscriminately by diplomatic or territorial asylum which was established solely to guarantee freedom of political opinion and action within the limits of the law."

The treaties on asylum were never intended to derogate from the rights of the State.

[The Secretary of State then read out the text of articles 3, 9, 14 and 18 of the Caracas Convention on Diplomatic Asylum and articles VII and VIII of the Convention on Territorial Asylum.]

"These conventions entitled the State of origin to submit its observations on refugee cases to the embassy of the State granting asylum and consequently on the time-limit for investigating each case, and entitled it to initiate judicial proceedings *in absentia.* They protected the State against seditious activities, such as the organization of armed expeditions and slanderous and lying propaganda. The Haitian Foreign Office has had to send notes to the embassies or foreign offices of the States granting asylum requesting them—with no effect—to comply with the above-mentioned provisions. It has always come up against a wall of misunderstanding. The political refugee, who is supposed to enjoy a bias in his favour, found the protective doors of the embassy closing upon him and the political exile was able with impunity to transform his host country into a centre for intriguing against his own country, organizing armed expeditions while the local authorities deliberately turned a blind eye, and mounting a bitter and malicious propaganda campaign.

"The signature and acceptance—either in the form of adoption or ratification—of conventions, treaties and international agreements, by obligating and committing the signatory State, cannot fail to influence domestic legislation because the latter must be made compatible with the provisions of those international instruments. Far from diminishing or derogating from national sovereignty, that decision freely taken by the State strengthens and reaffirms its sovereignty since it is assured that its rights and obligations will be respected since it took the decision primarily in the national interest.

"Hence it is necessary to ascertain whether or not those inter-American Conventions on the right of asylum are compatible with the ideas and juridicial principles of the Haitian nation at the present revolutionary stage of its history. And since these Conventions are not compatible with current trends in the development of the nation, the Haitian Government, availing itself of its prerogatives under international law, must declare itself released from all obligations deriving from these Conventions."

"That is why," the Secretary of State for Foreign Affairs went on to say. "I have the honour to propose that the National Assembly should vote on these four draft decrees," and he read them out.

On that proposal, which was supported by two or three of the most outstanding deputies, each of the four decrees was adopted unanimously.

Each of the decrees is substantially the same in purpose and wording and since each differs from the others only in the title of the Convention to which it refers in the preamble and operative part, we are herewith submitting the text of these four decrees in consolidated form, with due regard for the features common to all and peculiar to each.

"*Having regard to* articles 56, 83, 84, 93 and 104 of the Constitution,

"(1) *Having regard to* the Inter-American Convention on the Right of Asylum, signed by the Republic of Haiti in Cuba on 20 February 1928 and of article 17 of the Havana Convention on Treaties of 1928 relating to the denunciation of treaties,

"(2) *Having regard to* the Inter-American Convention on Political Asylum, signed by the Republic of Haiti at Montevideo, Uruguay, on 26 December 1933, and to article 8 of the said Convention providing that it may be denounced by any Contracting Party.

"(3) *Having regard to* the Inter-American Convention on Territorial Asylum signed by the Republic of Haiti at Caracas (Venezuela) on 28 March 1954 and to article XV of the said Convention providing that it may be denounced by any of the signatory States.

"(4) *Having regard to* the Inter-American Convention on Diplomatic Asylum, signed by the Republic of Haiti at Caracas on 28 March 1954 and to article 24 of the said Convention providing that it may be denounced by any of the signatory States,

"*Considering* that given the trend of internal and international affairs, the provisions of the Inter-American Convention on the Right of Asylum of Havana, 1928, the Inter-American Convention on Political Asylum of Montevideo of 1933, and the Inter-American Convention on Territorial and Diplomatic Asylum of Caracas of 1954 are clearly incompatible with national institutions and detrimental to public law and order in Haiti,

"*Considering* that denunciation is an act implicit in national sovereignty and as such represents the exercise of a right which does not violate any provision of the said Conventions or proper international procedure.

"*Considering* that there are grounds for denouncing the Inter-American Convention on the Right of Asylum signed at Havana on 20 February 1928, the Inter-American Convention on Territorial Asylum signed at Caracas on 23 March 1954, the Inter-American Convention on Political Asylum signed at Montevideo on 26 December 1933 and the Inter-American Convention on Diplomatic Asylum signed at Caracas on 23 March 1954.

"The National Assembly has resolved:

"*Article 1.* That the said Inter-American Conventions (of Havana, Montevideo, Caracas, etc.) shall be and shall remain denounced in order that the Republic of Haiti may be released from all commitments and obligations which it has assumed;

"*Article 2.* That this decree shall abrogate all laws or provisions of laws, or all decrees or provisions of decrees or all legislative decrees

or provisions of legislative decrees which are contrary to it;

"*Article 3.* That this decree, to which the said Conventions are annexed, shall be published and given effect by the Secretaries of State for Foreign Affairs, the Interior and National Defence acting within their respective fields of competence."

CONCLUSION

In accordance with the provisions of these Inter-American Conventions, the denunciation thus decided upon on 14 July 1967 has been notified to the Pan American Union for transmission to each of the other signatory States. One year after this notification, the said Conventions shall cease to have effect with respect to the State of Haiti, while continuing to bind the other co-signatories.

A final analysis of the facts officially made public shows that the Government had to choose one of two alternatives: respect for the law, which requires it to defend the inviolability of national sovereignty, the legally expressed will of the people, and the principle of equal human rights for all Haitians, or limitless toleration of dubious and disputed interpretations or applications of the Inter-American Conventions, which are harmful to good international relations and jeopardize its guarantee of human rights to the great majority of the population. The Government has chosen the course of law with its attendant risks and difficulties, placing its trust in the supreme arbitration of the United Nations.[2]

PART II

DECREES, LEGISLATION AND AGREEMENTS RELATING TO HUMAN RIGHTS

1. *Presidential decrees of 6 March 1967*

Three presidential decrees of 6 March 1967 have approved the contracts concluded between the Republic of Haiti and the Inter-American Development Bank (IDA), and between the latter and the National Bank of the Republic of Haiti relating to a loan of one million three hundred thousand dollars ($1,300,000) granted to the Government of Haiti on 14 February 1967 for the purpose of financing a programme for the improvement of agricultural and medical education in Haiti. This loan granted by IDA to Haiti at 2-1/4 per cent interest and repayable over the period 1972/1997 was, moreover, made subject to the condition that the State of Haiti should make a counterpart contribution to the financing of the programme in the amount of one million four hundred thousand dollars ($1,400,000) (*Le Moniteur,* No. 22, 9 March 1967).

[2] See *Le Moniteur,* No. 61 of 17 July 1967, and the Haitian press as a whole for 15 July 1967 and the days following.

2. *Agreement of 30 November 1966*

An Agreement was signed on 30 November 1966 between the Government of the Republic of Haiti, represented by the Secretaries of State for Foreign Affairs, Public Health, Agriculture, National Education and the Treasury, on the one hand, and the *Organisation d'Assistance évangélique d'Haiti,* known under the acronym HELP, on the other hand, with a view to assisting development in general in education and community development in the poorest areas of the country in particular (*Le Moniteur,* No. 28, 30 March 1967).

3. *Act of 28 August 1967 changing the name of the Department of Labour and Social Welfare to the Department of Social Affairs*

This Act does nat merely change a title. It develops and improves the administrative machinery, thus demonstrating the Government's desire to take into account the ideas and methods developed from the most recent scientific and technological discoveries. Its provisions should be studied in relation to the modern François Duvalier Labour Code of 6 October 1961, the Order of 4 December 1961 regulating the administrative and technical organisation of the Haitian Institute of Social Welfare and Research, the Act of 25 July 1965 establishing the National Committee for the Campaign Against Malnutrition under the National Commissariat for Development and Planning, the decree of 8 November 1965, establishing the Bureau of Old-Age Insurance, and lastly the decree of 7 March 1966, establishing the National Housing Office.

In view of its length—472 articles—it would be unreasonable to reproduce even any substantial part of it in this document. However, in order to give an idea of its contents and its progressive provisions, we shall quote below the most important paragraphs of the preamble, and some of the most important provisions or articles describing the main divisions of the administrative and technical organisation of the Department and the new institutions it now incorporates.

These are the principal considerations on which the Act is based:

"*Considering* that it is the duty of the State to establish institutions whose function is to satisfy the legitimate aspirations of the people and to create the necessary conditions for improving the level of living of the community,

"*Considering* the importance of organizing a more effective system of social security, eliminating slums, disease, malnutrition and infirmities, and protecting mothers, the aged, the victims of labour accidents and occupational diseases,

"*Considering* that the State should take appropriate measures to protect the working class and improve its living and working conditions,

"*Considering* the desirability of instituting a new system for the care of maladjusted children and youth with a view to promoting their social rehabilitation,

"*Considering* that in order to bring into harmony all the provisions governing the administrative and technical organization of the Department of Labour and Social Welfare, that ministerial department should be renamed and given a more appropriate statute,

"The Legislative Chamber *has adopted* the following Act:

"*Article 1.* The Department of Labour and Social Welfare shall henceforth be known as the Department of Social Affairs.

"*Article 2.* The Department of Social Affairs shall have the following functions:

"To ensure respect for freedom to work and the obligations deriving therefrom;

" To ensure the protection of the worker and the maintenance of harmonious relations between labour and capital;

"To establish an appropriate system of social security on a nation-wide basis against physiological, economic, social or other hazards;

"To develop and apply scientific and practical methods with a view to intensifying the campaign against hunger, malnutrition, unemployment and economic destitution;

"To establish, authorize, encourage and superwise public and private social welfare and social work activities;

"To provide special protection to the family, women, children, the aged and the infirm;

"To exercise administrative and technical control and supervision over all social defence institutions;

"To co-operate with the Ministerial Departments and other institutions with a view to achieving the above-mentioned objectives and to submit such recommendations to them as may be appropriate;

"To maintain liaison with international labour organizations and organs concerned with social affairs;

"To make recommendations and preparations for the Government's participation in congresses and conferences dealing with social affairs;

"At the request of the Department of Foreign Affairs, to study and recommend for adoption international conventions related to its work and to superwise their implementation after the ratification procedure has been completed.

"*Article 3.* The Department of Social Affairs shall consist of:

"I. The General Secretariat

"II. The Social Security Division

"III. The Labour and Manpower Division

"IV. The Technical Council

"V. The Legal Division

"VI. The National Committee for the Campaign Against Malnutrition (CONALMA)

"VII. The Regional Offices.

"*Article 13.* The Social Security Division shall include:

"(1) The Haitian Social Insurance Institute, consisting of the following bodies:

"(*a*) The Bureau of Labour Insurance (industrial accidents, sickness and maternity)

"(*b*) The Bureau of Old-Age Insurance

"(2) The Social Welfare and Research Institute

"(3) The National Housing Office.

"*Article 21.* The Haitian Social Insurance Institute shall be responsible for the administration of various forms of social insurance in accordance with the principles laid down in the present Act. The Social Insurance System shall be compulsory for all salaried workers; its purpose is to provide effective protection for workers and their families against the hazards of labour accidents, sickness, disability, old age and maternity.

"*Article 24.* The Haitian Social Insurance Institute (IDASH) shall be composed of two divisions:

"(*a*) The Bureau of Labour Insurance (labour accidents, sickness and maternity),

"(*b*) The Bureau of Old-Age Insurance.

"*Article 25.* The following persons shall come under the social insurance scheme:

"(1) Officials employed by the State and State-controlled administrations (such as communes, banks, etc.);

"(2) Employees, workers and day labourers in agriculture, industrial and business enterprises and, in general, any manual or white collar worker who offers his services to an employer in return for payment under an express or implied labour contract;

"(3) Teachers and supervisers in private educational institutions;

"(4) Domestic personnel paid either in cash or in kind.

"*Article 26.* The following persons shall not be covered by any kind of compulsory insurance:

"(1) A husband or wife working exclusively for the other spouse and children under eighteen years of age who are working for their father or mother and at home without receiving previously agreed cash wages;

"(2) Members of the armed forces in active service;

"(3) Clergymen exercising their religious functions.

"*Article 31.* Insurance against labour accidents shall be extended, without distinction as to salary, to all white-collar and manual workers referred to in article 25 of this Act who are not covered by the exemptions provided in article 26. The cost of this insurance shall be borne exclusively by the employer.

"*Article 32.* The amount of the employers' contribution to labour insurance shall be:

"(*a*) 2 per cent in the case of business enterprises;

"(*b*) 3 per cent in the case of agricultural and industrial enterprises, construction compa-

nies and agencies and shipping companies;

"(*c*) 6 per cent in the case of mining enterprises, deducted from wages regardless of the type of job.

"*Article 50.* Health and maternity insurance shall be compulsory for the persons referred to in article 25 above, subject to the provisions of article 24, and not including those exempted under article 26, whenever their base salaries, calculated on a monthly basis, do not exceed 200 gourdes.

"*Article 51.* The rate of the contribution for health and maternity insurance shall be fixed at 4 per cent of the base salary of the insured, half of that sum being paid by the employer.

"*Article 118.* [The Statistical and Actuarial Office.]

"*Article 119.* [The Legal Division.]

"*Article 120. The Medical Service* shall be responsible for the general supervision of the medical care provided for victims of accidents and workers suffering from occupational diseases. It shall ensure copliance with the scale of fees and standards of care in respect of victims of acidents and diseases in hospitals or clinics which have a contractual relationship with the Bureau of Labour Insurance (Labour accidents, sickness and maternity). It shall promote the physical rehabilitation of disabled workers and shall help them to regain their capacity to work. Its accident and rehabilitation centre shall be composed of:

"(*a*) An administrative section;

"(*b*) A dispensary;

"(*c*) A surgery;

"(*d*) A rehabilitation centre;

"(*e*) An X-ray centre;

"(*f*) A laboratory.

"*Article 177.* The Bureau of Old-Age Insurance shall guarantee benefits to all persons employed in commercial, industrial or agricultural enterprises and those with similar status who have reached the age and served the number of years required or who have become physically or mentally disabled; the benefits granted shall be sufficient to enable them to live in decent conditions as a reward for the services rendered during the productive years of their lives.

"The Bureau of Old-Age Insurance shall also, upon the death of the insured employee or person having equivalent status, guarantee to his dependants a portion of the benefits to which he was entitled.

"*Article 183.* The State shall recognize and guarantee the right to a pension for any person who has been insured in accordance with this act and who meets the following requirements:

"(1) He has reached the age of fifty-five;

"(2) He has contributed for at least twenty years.

"*Article 184.* This pension shall be paid in monthly instalments to the insured on the basis of one-third of his average wage for the ten years preceding his request for payment of a pension.

"*Article 252.* The Social Welfare and Research Institute shall be a technical and administrative body within the Social Security Division. It shall be responsible for finding wage and means to:

"Improve the living conditions of the people economically, morally and socially;

"Provide special protection for children, women and families;

"Establish, authorize, encourage and supervise public and private welfare and social work activities;

"Prevent human degradation caused by poverty, disease, infirmity or old age;

"Discover the factors which cause physical, psychological, economic or moral imbalances in the individual, family, or community and take measures to correct those imbalance;

"Organize a social police force;

"Incorporate into the present policy of social justice new techniques of social defence aimed at the complete protection of society.

"*Article 254.* The Social Welfare and Research Institute shall be composed of:

"(*a*) Pregnant mothers enjoy the health, social cil; (*c*) a secretariat; (*d*) a Social Defence Division; (*e*) an Administrative Division.

"*Article 262.* The Prenatal and Mother and Child Service shall be responsible for taking all medical and social measures to ensure that:

"(*a*) Pregnant mothers enjoy the health, social and economic conditions enabling them to complete their pregnancies and give birth to healthy babies;

"(*b*) Mothers and children up to the age of adolescence enjoy decent living conditions so that the latter may develop normally by establishing nurseries, day nurseries, day care centres, children's playgrounds, etc.

"*Article 263.* The Pre-marital Bureau shall be responsible for implementing the Government's eugenics policy, for encouraging marriages between people from urban and rural areas and for providing marriage counselling for intending spouses.

"*Article 264.* Within thirty days before the date set for the marriage, the intending spouses shall personally apply to the Medical Service of the Social Welfare and Research Institute or any other health service accredited to that body for the purpose of obtaining a premarital medical certificate, the form of which shall be determined by an administrative rule.

"*Article 268.* The qualified Civil Register shall not be authorized to publish the banns of marriage, as prescribed in article 63 of the Civil Code, until each of the intending spouses has submitted the aforesaid certificate specifically stating, *inter alia,* that he or she has had had a pre-marital medical examination.

"*Article 276.* The National School of Social Service shall have the following objectives:

"(*a*) To teach the fundamental principles and professional methods which will prepare future social workers to work towards the social rehabilitation of individuals, families and groups so as to ensure their individual development and social well-being;

"(*b*) To convey the basic knowledge required by the profession in order to develop in the students those feelings and attitudes which will enable them to think and act appropriately;

"(*c*) To explain the role of social service in the community and in economic and social policy.

"*Article 288.* The Youth Care Unit shall be composed of five sections: inspection, recreation, juvenile delinquency, psycho-social rehabilitation and re-education centres.

"*Article 295.* The Beggars Control Unit shall:

"(*a*) Conduct inquiries to discover the causes of begging and to determine how it affects the anti-social behaviour of individuals;

"(*b*) Take all possible measures of social defence to reduce the number of beggars and ensure their rehabilitation.

"*Article 296.* The Prostitution Control Unit shall:

"(*a*) Attempt to discover the causes of prostitution and take all appropriate measures to control it;

"(*b*) Supervise the operation of and attendance at cabarets, dance halls, bars and similar place of entertainment;

"(*c*) Participate in the compaign against venereal disease by issuing health certificates to women frequenting the above-mentioned places of entertainment;

"(*d*) Maintain control in co-operation with the other services concerned over pornographic and other publications and performances and over radio and television programmes likely to corrupt public morals.

"*Article 308.* The National Housing Office shall be a technical and administrative unit of the Social Security Division. It shall have the status of a legal entity.

"*Article 309.* The National Housing Office is the basic instrument of national housing policy. It exists for the good of society and its main tasks are, *inter alia:*

"1. To maintain and operate all housing developments constructed by public bodies;

"2. To carry out all the socio-economic studies and research necessary to formulate a country-wide order of priorities and housing needs;

"3. To build and promote the construction of low-cost housing for low-income families and individuals, etc.[3] in urban and rural areas.

"There follows a list of the services to which articles 365 to 443 refer.

"(1) Labour Inspection Section (articles 365 to 396);

"(2) Wages and Research Section;

"(3) Social Organizations Section;

"(4) Women and Children's Section;

"(5) Conciliation and Arbitration Section;

"(6) Workers' Placement and Migration Section;

"(7) Occupational Training Programme;

"(8) Workers' Education Section;

"(9) Hotel Training School of Haiti;

"(10) Rural Handicrafts Section;

"(11) Vocational Training Section;

"(12) Higher Wage Board, Higher Technical Council and Higher Administrative Tribunal.

"*Article 444.* The National Committee for the Campaign Against Malnutrition (CONALMA) shall be an administrative and technical body under the jurisdiction of the Executive Branch, which functions within the framework of the activities of the Office of the Secretary of State for Social Affairs and the National Commissariat for Development and Planning (CONADEP).

"*Article 445.* CONALMA shall have the following functions:

"(1) To work out and propose rational, scientific and workable solutions to reduce hunger and malnutrition among all segments of the population;

"(2) To plan, co-ordinate and supervise the efforts of all public or private national or international bodies concerned with the campaign against malnutrition.[4]

"*Article 468.* Within the limits of budget resources and depending on manpower needs and the industrial, economic and social development of the country ten regional offices shall be established in the ten main population centres other than the capital (Cap-Haitien, Port-de-Paix, Gonaïves, St. Marc, Cayes, Jacmel, Jérémie, etc.).

"*Article 469.* Each Regional Office shall include one or more sections representing the various activities of the Department of Social Affairs. It shall be headed by a Director responsible to the Office of the Secretary of State."

[3] For further information, see the text of the Decree of 7 March 1966 establishing the National Housing Office published in the section on Haiti of the *Yearbook on Human Rights for 1966*, p 162. .

[4] For additional information, see the section on Haiti in the *Yearbook on Human Rights for 1965*, pp. 139-140.

HONDURAS

CONSTITUTIONAL LAW ON EDUCATION

Promulgated by Decree No. 59 of the National Congress of 6 October 1966 [1]

TITLE I

NATIONAL EDUCATION

Chapter I

EDUCATION

Article 1. Education is a formative process which influences the lives of men with the aim of fully developing their personalities and producing citizens fitted for individual and community life, to practise democracy and to contribute to the economic and social development of the nation.

Article 2. Education is a special function of the State for the preservation, development and dissemination of culture, and maximum opportunities to acquire it must be offered without discrimination of any kind.

Article 3. Education is a right of every inhabitant of the Republic, and the State is obliged to provide it in the fullest and most suitable form.

Article 4. The education provided in official establishments is free of cost at all levels.

Article 5. The State shall establish scholastic assistance and welfare services for pupils lacking the resources to enable them to enjoy the benefit of education.

Article 6. Primary education is compulsory. In addition, when it is provided in official establishments, the full cost shall be borne by the State. The parents and guardians of minors of school age are responsible for the fulfilment of this obligation and the State shall provide suitable facilities to enable them to do so. The age limits within which school attendance is compulsory shall be laid down in the relevant Regulation.

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Article 9. Education shall be in the hands of persons of recognized morality, of proved teaching ability and of democratic outlook.

Article 10. No staff member of the educational services shall advocate a political and social system contrary to the democratic system laid down by the Constitution and laws of the Republic.

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Chapter II

THE PURPOSES OF NATIONAL EDUCATION

Article 14. The purposes of Honduran education are: (*a*) to produce citizens who love their country, are aware of their duties and rights, and have a deep feeling of responsibility and of respect for human dignity; (*b*) to contribute to the development of the human personality; (*c*) to produce citizens fitted to build a democracy which suitably reconciles the interests of the individual with those of the community; (*d*) to stimulate the development of feelings of solidarity and understanding between nations; (*e*) to train people to regard work as a fundamental duty in order to develop the economic life of the country; (*f*) to provide training which ensures the use of nature, science and technology in the over-all development of the nation; (*g*) to contribute to the preservation of health and the spiritual training and elevation of man and of society.

Chapter III

FUNDAMENTAL PRINCIPLES OF NATIONAL EDUCATION

Article 15. National education is based on the following fundamental principles: (*a*) it is demo-

[1] *La Gaceta*, No. 19,055 of 3 January 1967.

cratic, because it offers equal educational opportunities to all the inhabitants of the country; (*b*) it is national because the teaching takes into account the interests and needs of the country and aims at developing an awareness which will strengthen feelings of nationhood; (*c*) it is scientific, because it is based on the principles of science in the context of national conditions; (*d*) it is a collective undertaking, because it requires the joint co-operation of the State and the community; (*e*) it is dynamic, because it provides practical training for the productive life of the nation; (*f*) it is progressive, because it uses and creates better techniques to direct the teaching and training process.

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HUNGARY

HUNGARIAN LAWS AND REGULATIONS OF 1967 CONCERNING HUMAN RIGHTS [1]

Labour Code: Act II of 1967

The Code guarantees the citizens' right to employment. Employment relations may be entered into by citizens over 14 years of age after having completed the eight-year general school or during the summer vacation. In employment and the resulting rights and obligations, no discrimination shall be made against citizens as to sex, age, nationality, race or origin. The employers shall be bound to re-engage the worker who has regained his ability to work after having become disabled in their employ owing to industrial accident or occupational disease and whose employment has been terminated earlier so as to cause the loss of his eligibility for disability pension (Code Art. 18).

A pregnant woman or mother shall not be denied employment on account of these circumstances. Under identical conditions, priority shall be given to the pregnant woman and the mother with a baby. The law may prescribe preferential treatment for other persons as well with regard to their social and health conditions or other circumstances (Code Art. 19).

Women and juvenile workers shall not be employed in jobs which might prove detrimental to their physical system or development (Code Art. 20).

Order-in-Council No. 34/1967/X.8 on the application of the Labour Code lays down that for the purposes of employment, a juvenile worker is one who has not yet completed his eighteenth year. From the date of the establishment of pregnancy, the pregnant woman shall not be employed in a job noxious to her health (Order Art. 12).

The institution of occupational counselling, labour exchange and other methods shall help the citizens to find employment (Code Art. 21).

The working time shall be forty-four to forty-eight hours a week (Code Art. 37): forty-four hours in the industry and building industry, and forty-eight hours in other sectors of the national economy (Order Art. 43).

The Code sets new limits to the working hours and overtime work of pregnant women and mothers with a baby. It lays down that the consent of the mother with a baby between six and twelve months old shall be required for her assignment to night shift, overtime work or weekend duty. From the fourth month of her pregnancy until her child has attained the age of six months, she shall by no means be assigned to overtime work or weekend duty; and until the child has attained one year of age, she shall preferably be assigned to the morning shift, and must not be made to work at night (Code Art. 38).

The new limits to the working hours and overtime work of juvenile workers are set so as to forbid also young people between sixteen and eighteen years to be employed in night work. In this respect, however, exceptions are made in view of the fact that the requisites are not given as yet in all industrial branches (Code Art. 38).

The workers' right to rest is secured by the provision of a basic annual leave of 12 days plus a supplementary leave of one day for every two years spent in employment up to an additional 12 days a year at most (Code Art. 42, Order Art. 49). The law provides a supplementary leave to mothers having several children, and a prize vacation to workers performing excellent work. A supplementary leave is granted also to juvenile workers (Code Art. 42).

Pregnant women or women in childbed are entitled to a maternity leave, and the worker pursuing his school studies shall enjoy a study leave (Code Art. 43).

In case of illness, the worker and his family are entitled to medical care, hospital treatment, medicaments and therapeutical equipment. During his disability to work, the worker shall receive sickness benefits. In case of pregnancy and childbirth, the working woman shall receive special benefits (Code Art. 67). For the children in his charge, the worker shall receive family allowances.

[1] Note furnished by the Government of the Hungarian People's Republic.

On arriving at the retiring age or becoming disabled, the worker shall be entitled to pension. In case of the death of the worker, the members of his family shall receive pension allowances (Code Art. 69).

The trade unions, as organizations representing the workers' interests, shall have the duty to work towards raising the material, social and cultural standards of the workers, to protect their rights and interests, to consult and inform them about such matters, and to represent them before their employers and the State organs. State organs and the employers are bound to co-operate with the trade unions, to promote their activities and to take into account their observations and proposals (Code Art. 11).

To assert his claims arising from employment relations, as well as—except if expressly otherwise provided by the Code—to seek remedy against the employer's measure injurious to him, the worker may apply to the organs competent in matters of labour-management relations (Code Art. 4).

Child care allowance: Order-in-Council No. 3/ 1967/1.29/

A child care allowance is paid until the child has attained the age of two years and a half, for the duration of at most 30 months including the period of maternity leave, if the working woman has been in full-time employment for twelve months before childbirth and takes a leave without pay for the purpose of nursing her child. The amount of the allowance is Ft 600 a month. In case of more than one child eligible for this benefit, the allowance shall be paid for each of them.

Labour exchange and manpower recruitment: Decree No. 11/1967 (X.20) of the Minister of Labour

The institution of labour exchange and manpower recruitment shall help the new labour force to find employment and the employers to meet their manpower demand. The services of labour exchange shall be free of charge and must not be denied anyone under any pretext whatsoever.

New provisions on the family allowances: Amendment to Order-in-Council No. 16/1966/VI.1/

The new regulation modifies the original Order with regard to the members of farmers' co-operatives. The modification is related with Act III of 1967 on the farmers' agricultural co-operatives and brings the provisions of the Order into harmony with the purposes of the new act.

Benefits granted to workers continuing their studies: Decree No. 15/1967/XI.18/ of the Minister of Labour

The workers who continue their studies at evening or correspondence courses of primary, secondary or higher educational establishments must not be so employed in working hours, night work or overtime as to hamper them in performing their studies and going in for examinations. The regulation provides in detail for various facilities in the fixing of the working time.

Regulation of social insurance questions with regard to the situation of partially incapacitated persons: Order-in-Council No. 50/1967/XI. 22/

The regulation settles the questions of sickness insurance, old-age pension and family allowance concerning partially incapacitated persons.

Settlement of the situation of partially incapacitated persons: Decree No. 1/1967/XI.22/ of the Ministers of Labour, Health and Finance

The decree makes provisions for the employers' duties in the rehabilitation and vocational training of partially incapacitated persons, for the limitation of dismissal, as well as for the councils' tasks concerning the care of such workers, the financing of rehabilitation, social subsidies and related issues.

IRAN

NOTE [1]

During 1966, the following laws and regulations relating to human rights were promulgated:

1. Act concerning the use of the literacy corps of conscripts holding graduate or post-graduate degrees, No. 7262/7 of 18 Dey 1345 (8 January 1967);
2. Decree of the Council of Ministers approving regulations governing the marriage of Iranian women with aliens, No. 50990 of 6 Esfand 1345 (25 February 1967);
3. Act concerning the suspension of execution of sentence, No. 8348 of 18 Mordad 1346 (9 August 1967);
4. Constituent Assembly Election Act, No. 424 of 16 Farvadin 1346 (5 April 1967);
5. Act prohibiting marriage between employees of the Ministry of Foreign Affairs and Foreign nationals, No. 51052 of 9 Bahman 1345 (8 February 1967);
6. Act adding supplementary articles to the Land Reform Regulations approved on 3 Mordad 1343 by a Special Committee of the two Houses, No. 2970 of 27 Ordibehesht 1346 (17 May 1967);
7. Act charging the Government with the task of drafting a bill on the care and education of needy orphans, No. 5212 of 29 Khordad 1346 (19 June 1967);
8. Act amending some articles of the Statute of the Medical Profession, Tir 1346 (July 1967);
9. Act amending some articles of the Act concerning employment of members of the Imperial Armed Forces, No. 6350 of 18 Tir 1346 (9 July 1967);
10. Act concerning food-stuffs, beverages, cosmetics and sanitary products, No. 7976 of 12 Mordad 1346 (3 August 1967);
11. Family protection Act, No. 6290 of 12 Tir 1346 (3 July 1967);
12. Act amending articles 38, 41 and 42 of the Supplementary Constitutional Act, approved by the Constituent Assembly in 1346, No. 41248 of 8 Mehr 1346 (30 September 1967);
13. Act adopting ILO Recommendation No. 103 on Weekly Rest (Commerce and Offices), No. 45026 of 14 Azar 1346 (5 December 1967);
14. Act adopting ILO Convention No. 106 on Weekly Rest (Commerce and Offices), No. 45026 of 16 Azar 1346 (7 December 1967);
15. Regulations governing the implementation of the Family Protection Act, No. 4526 of 12 Tir 1346 (3 July 1967);
16. Regulations governing the implementation of the Act establishing arbitration councils, No. 28/2718 of 14 Aban 1346 (5 November 1967).

[1] Note and 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*.

ACT CONCERNING THE USE IN THE LITERACY CORPS OF CONSCRIPTS HOLDING GRADUATE OR POST-GRADUATE DEGREES

No. 7262/7 of 18 Dey 1345 (8 January 1967) [2]

Article 1. The Ministry of War and the Ministry of Education shall be permitted, at each periodic intake of fresh recruits, to select, for at least every twenty non-commissioned officers in the Literacy Corps, one conscript holding a graduate or post-graduate degree who is surplus to the requirements of the Health Corps and the Development Corps, to serve as an officer in the Literacy Corps and to guide and supervise the works of the corpsmen.

Note. In recruitment to the Literacy Corps, priority shall be given to conscripts holding degrees in the field of education.

Article 2. The expenses arising from the implementation of this Act shall be met as follows:

(*a*) The salaries and fixed allowances of the military training staff and the cost of the board, lodging, clothing, stationery and training fees of the above-mentioned conscripts during their course of instruction at military training centres shall be paid by the Ministry of War.

(*b*) The salaries and fixed allowances of the conscripts during their course of instruction, their salaries and allowances during their term of service in the Literacy Corps and any other expenses arising in connexion with them during their term of service shall be paid by the Ministry of Education.

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[2] Published in the *Official Gazette*, No. 6394 of 9 Bahman 1345 (29 January 1967).

DECREE OF THE COUNCIL OF MINISTERS APPROVING REGULATIONS GOVERNING THE MARRIAGE OF IRANIAN WOMEN WITH ALIENS

No. 50990 of 6 Esfand 1345 (25 February 1967) [3]

At its session of 6 Mehr 1345, the Council of Ministers, acting on proposal No. 5735/Sh 15 of 27 Mordad 1345 of the Ministry of the Interior, concerning the implementation of article 1060 of the Civil Code and article 17 of the Marriage Act of 1316, approved the following Regulations governing the marriage of Iranian women with aliens:

Article 1. The Ministry of the Interior shall be authorized to issue permits for the marriage of Iranian women with aliens on the terms set forth in these Regulations.

Article 2. Applicants for such permits must submit the following documents:

1. The written application of the man and woman concerned for the issuing of a marriage permit, which should conform to the model laid down by the Ministry of the Interior;

2. A certificate from the authorities of the man's country of nationality stating that there is no legal impediment to his marriage with an Iranian woman and that the marriage will be given official recognition in his country; if it is not possible for the applicant to obtain the above-mentioned certificate, the Ministry of the Interior may, subject to the woman's consent, waive this requirement.

3. In the case of a proposed marriage between a non-Muslim man and a Muslim woman, attestation of the man's conversion to Islam.

Article 3. If the woman so requests, the Ministry of the Interior may require the man to submit the following, in addition to the documents mentioned in article 2:

1. A certificate from the local authorities or diplomatic or consular officials of the man's country of nationality stating whether he is married or single;

2. A certified statement from the local authorities or diplomatic or consular officials of the man's country of nationality that he has no record of wrongdoing or criminal conviction and, in addition, if the man has been resident in Iran, a certified statement from the Iranian authorities that he has no criminal record.

3. A certified statement from the local authorities or diplomatic or consular officials of the man's country of nationality that he is capable of supporting a wife, and also a notarized written

[3] Published in the *Official Gazette*, No. 6442 of 15 Farvardin 1346 (4 April 1967).

undertaking from the man that he will be responsible for the subsistence and expenses of his wife and children and will meet any other claim which his wife may make on him in the event of ill-treatment, abandonment or divorce.

Article 4. The Ministry of the Interior may authorize the offices of Governors and Governors-General and, with the consent of the Ministry of Foreign Affairs, some of the imperial diplomatic and consular representatives abroad to issue marriage permits locally, in accordance with the provisions of these Regulations, and submit the relevant facts for registration.

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ACT CONCERNING THE SUSPENSION OF EXECUTION OF SENTENCE

No. 8348 of 18 Mordad 1346 (9 August 1967) [4]

Article 1. When passing any sentence of corrective detention or a fine or both arising out of the commission of a crime or offence for which the maximum penalty does not exceed solitary confinement, the court may order the execution of the sentence suspended for a period of two to five years provided that:

(*a*) The offender has not previously been convicted of and sentenced for a crime or an offence, or, if he has, the conviction and the sentence have been annulled by a legal authority;

(*b*) The court considers that suspension of execution is appropriate in the light of the offender's social situation and previous record and the circumstances leading to the commission of the offence;

(*c*) The offender undertakes to lead an honest life and to comply fully with the orders of the court;

(*d*) If the sentence is a fine, it has been proved to the court that the offender is unable to pay the whole or a part thereof.

Article 2. If the sentence involves both a term of imprisonment and a fine, the court may, if it sees fit, having due regard to the provisions of this Act, order suspension of the penalty of imprisonment only.

Article 3. The order for suspension of execution of the sentence shall be issued as a part of the judgement imposing sentence, and the offender whose sentence is suspended, if in detention, shall be released forthwith by an order of the court.

Article 4. In its judgement, the court shall state the grounds for suspension and the orders with which the offender must comply during the period of suspension, and shall specify the period of suspension having regard to the nature of the offence and the personal circumstances of the offender in accordance with the provisions set forth in the second part of article 1.

Article 5. The court may require the offender, in the light of his circumstances and the contents of the file of the case, to comply with any of the following orders during the period of suspension, and the offender shall be bound to do so:

1. To attend a hospital or clinic for treatment of an illness or addiction;

2. To refrain from engaging in a specified trade or profession;

3. To engage in study at an educational establishement;

4. To abstain from gambling or the consumption of alcoholic beverages or from frequenting persons whose company, in the court's opinion, has a detrimental influence on the offender;

5. To refrain from frequenting specified places;

6. To report at specified intervals to a person or authority to be designated by the county public prosecutor.

Article 6. Suspension of execution shall not be allowed in respect of the following sentences:

1. Sentences of imprisonment for a term exceeding one year;

2. Sentences imposed for infringement of the laws relating to drugs, food-stuffs, cosmetics and hygiene;

3. Sentences imposed for engaging in or in any way facilitating the import or manufacture of narcotic drugs;

4. Sentences imposed for embezzlement, acceptance of bribes, forgery or use of forged documents.

Article 7. Suspension of execution of sentence shall also apply in respect of any accessory penalties.

Article 8. Suspension of execution of sentence shall not affect the rights of private plaintiffs in respect of injury or loss, and any judgement for payment of damages to a private plaintiff shall be executed.

Article 9. If, in the interval between the date on which the judgement of suspension of execution of sentence is handed down and the expiry of the term fixed by the court, the offender does

[4] Published in the *Official Gazette*, No. 6549 of 22 Mordad 1346 (13 August 1967).

not commit any new crime or punishable offence, the suspended sentence shall be expunged from his criminal record.

As soon as a judgement ordering suspension of execution of sentence becomes final, the criminal record sheet shall be drawn up by the public prosecutor's office concerned and sent to the competent authorities. If any change is made in the period of suspension or the judgement ordering suspension of execution of sentence is revoked, the particulars shall be communicated immediately to the said competent authorities to be entered in the offender's criminal record.

Article 10. If a person in respect of whom a judgement ordering suspension of execution of sentence has become final, commits a new crime or offence in the interval between the date on which the said judgement was handed down and the expiry of the period of suspension fixed by the court, the previous suspension of execution of sentence shall be deemed to be revoked as soon as the judgement relating to the new crime or offence becomes final, provided that the sentence for the new crime or offence can be executed. The court which handed down the judgement ordering suspension shall be notified of its revocation so that the suspended sentence may also be executed.

Article 11. Appeal from a judgement which includes an order for suspension of execution of sentence shall lie at any level of jurisdiction within the statutory period.

Article 12. If, after the judgement has been handed down, it becomes known that the offender's record shows a previous criminal conviction and sentence, and that the court suspended execution of sentence without taking that fact into consideration, the public prosecutor shall apply to the court to revoke the suspension on the ground of the offender's previous conviction. The court, after considering the evidence and establishing the existence of the record, shall revoke the judgement ordering suspension of execution.

Article 13. If an offender the execution of whose sentence has been suspended fails without good excuse to comply with the order or orders of the court, he shall be punished, on the application of the public prosecutor and after the facts have been established in court, by the extension of the period of suspension by one to two years on the first occasion and, on the second, by revocation of the suspension order and execution of the suspended sentence. The court's decision shall be final in this instance.

Article 14. When giving the judgement ordering suspension of sentence, the court shall clearly inform the offender of the consequences of non-compliance with the orders of the court and shall explain to him that if during the period of suspension he commits a crime or offence for which an enforceable sentence is imposed, the suspended sentence will become enforceable, in addition to the sentence imposed for the second offence.

Article 15. The statutory limitation of criminal judgements shall not have effect during the period of suspension.

Article 16. The provisions relating to suspension of sentence shall not apply in respect of persons who have committed a number of crimes or serious offences and have been sentenced as habitual offenders. If a number of final judgements have been handed down by criminal courts in respect of an individual, and an order for suspension of sentence has been included in one of those judgements, the public prosecutor responsible for execution of that judgement shall apply to the court concerned to revoke its judgement and shall apply the severest penalty in accordance with the Code of Criminal Procedure.

Article 17. The Ministry of Justice shall be responsible for establishing, within five years from the date on which this Act is approved, the machinery for the supervision of offenders whose sentence has been suspended or in respect of whom the court has issued orders to be complied with during the period of suspension.

Article 18. All previous laws and provisions relating to suspension of sentence are repealed as from the date on which this Act enters into force.

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ACT PROHIBITING MARRIAGE BETWEEN EMPLOYEES OF THE MINISTRY OF FOREIGN AFFAIRS AND FOREIGN NATIONALS

No. 51052 of 19 Bahman 1345 (8 February 1967) [5]

Sole article. As from this date, marriage between employees of the Ministry of Foreign Affairs and foreign nationals or persons who have acquired Iranian nationality by a previous marriage is prohibited. Any employee who violates this rule shall not be eligible to continue his service in the Ministry of Foreign Affairs.

[5] Published in the *Official Gazette*, No. 6412 of 1 Esfand 1345 (20 February 1967).

Note 1. As from the date of approval of this Act, no person whose spouse is a foreign national or formerly possessed a foreign nationality shall be recruited for service in the Ministry of Foreign Affairs.

Note 2. The posting of any present employee of the Ministry of Foreign Affairs, of whatever rank or grade, whose spouse formerly possessed a nationality other than Iranian to permanent service in the country of which his spouse was a national is prohibited.

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ACT CONCERNING FOOD-STUFFS, BEVERAGES, COSMETICS AND SANITARY PRODUCTS

No. 7976 of 12 Mordad 1346 (3 August 1967) [6]

Article 1. Any person who commits any of the following offences in respect of food-stuffs, beverages, cosmetics or sanitary products shall be liable to the penalties laid down in this Act:

1. Exposure for sale or sale of one product in place of another;

2. Adulteration of a product with fraudulent intent;

3. Non-compliance with a prescribed standard or formula in cases where specification of and compliance with standard or formula are compulsory;

4. Exposure for sale or sale of an unsound product or of a product of which the authorized period of use has expired;

5. Use of unauthorized colouring matter, essences or other additives in food-stuffs, beverages, cosmetics, sanitary products or children's toys.

Article 2. Any person who commits any of the offences enumerated in article 1 shall be liable to a penalty proportionate to the effects of the offence, as follows:

1. If the offence causes the user illness or injury curable by less than one month of treatment, the penalty shall be correctional detention for a term of six months to two years; if the treatment period is more than one month, the term of correctional detention shall be one to three years;

2. If the offence causes the user permanent disablement, the penalty shall be imprisonment with hard labour for a term of three to ten years, the term being proportionate to the degree of such disablement;

3. If the offence relates to sanitary products or cosmetics and causes the user disfigurement or loss of beauty, the penalty shall be correctional detention for a term of one to three years, the term being proportionate to the degree of the loss sustained;

4. If the offence causes the death of the user, the penalty shall be imprisonment with hard labour for a term of three to fifteen years.

In respect of sections 1, 2 and 3 of this article, the penalty for an attempted offence shall be the minimum penalty prescribed above.

Note. In applying this article, the court shall impose on the offender, in addition to the penalty of imprisonment, a fine of 5,000 to 100,000 rials and prohibit him from engaging in work or business relating to food-stuffs, beverages, cosmetics or sanitary products for a term of one to three years.

Article 3. Any person who fraudulently manufactures food-stuffs, beverages, cosmetics or sanitary products which cause the death of the user shall be liable to the death penalty.

Article 4. If food-stuffs, beverages, cosmetics or sanitary products contain an unauthorized quantity of toxic substances, the court shall impose on the person responsible the maximum penalty applicable under article 2.

Article 5. In the case of fraudulent competition on the part of any person in respect of commodities coming under this Act, article 244, paragraph (*a*), of the Penal Code shall apply.

Article 6. If, as a result of the negligence, carelessness or lack of skill of the supplier, manufacturer, vendor or displayer or of any of their agents, food-stuffs, beverages, cosmetics or sanitary products become such that their use causes illness or injury curable by less than one month of treatment, the penalty shall be correctional detention for a term of two to six months, according to the gravity of the offence; if the treatment period is more than one month, the penalty shall be detention for the maximum term laid down in this article and payment of a fine of 5,000 to 50,000 rials.

Article 7. As from the date of approval of this Act, no factory or workshop of any kind for the preparation of food-stuffs, beverages cosmetics or sanitary products may be established unless a licence is obtained from the Ministry of Health and, in the case of a factory, from the Ministry of Economy also. The conditions for the issuing

[6] Published in the *Official Gazette*, No. 6553 of 26 Mordad 1346 (17 August 1967).

of licences and for the operation and management of such establishments and provisions concerning work and production therein shall be laid down in regulations to be drawn up by the Ministry of Health.

Note. Technical responsibility for factories producing food-stuffs, beverages, cosmetics and sanitary products shall be entrusted to persons possessing a graduate or post-graduate degree in medicine, pharmacy, veterinary science, nutrition, chemistry or applied sciences and a specialist degree in the particular field in question (food-stuffs, beverages, cosmetics or sanitary products) and having the required experience as laid down in regulations to be drawn up by the Ministry of Health.

Article 8. A fee of 5,000 rials shall be payable to the Ministry of Health for the issue of a licence to manufacture commodities to which this Act applies in a factory, and a fee of 500 rials for the issue of a licence to manufacture such commodities in a workship. The funds so collected shall be used exclusively for the establishment, expansion and improvement of food-testing laboratories.

Note 1. This Act shall apply to workshops which offer for sale their own products under a distinctive name and in distinctive packaging.

Note 2. Each of the competent laboratories attached to the Ministry of Health may charge the individuals or bodies corporate applying for a test of their commodities or products a testing fee in accordance with a tariff to be proposed by the Ministry of Health and approved by the Financial Committees of the two Houses.

The sums accruing from the implementation of this article shall be paid into a central account in the General Treasury and shall be used for the expansion and improvement of the laboratory concerned.

Note 3. A list of factories and workshops to which this Act applies shall be drawn up by the Ministry of Health and shall be published following its approval by the Health Committees of the two Houses.

Article 9. Suppliers, manufacturers and importers of food-stuffs, beverages, cosmetics and sanitary products produced in establishments of the type eligible for inclusion in the notice to be published by the Ministry of Health, who are engaged in business on the date of the approval of this Act and of the regulations governing its implementation shall submit to the Ministry of Health within the six months following the date of publication of the notice, an application for a public health licence. Each application shall be examined by a technical committee composed of three competent persons designated by the Ministry of Health, and the Committee shall issue a decision within six months accepting or rejecting the application.

If application for a licence is not made within the prescribed period or the Committee rejects an application from the proprietor of an establishment, the operation of the establishment in question shall be temporarily suspended by order of the public prosecutor.

An appeal may be lodged with the county court against such order within ten days of notification thereof. The court shall consider and rule on the appeal as a matter of priority. The ruling of the court shall be final.

Note. The regulations governing the implementation of articles 8 and 9 shall be drawn up by the Ministry of Health and shall take effect following their approval by the Health Committees of the two Houses.

Article 10. Rejection of an application for a licence shall not bar the proprietor of an establishment from submitting a fresh application therefor, provided that the provisions of article 7 are complied with.

Article 11. Proprietors of Iranian establishments of the type to be specified and listed by the Ministry of Health shall be required to give particulars, in accordance with an order of the Ministry, of each type of product legibly in the Persian script on the packaging or inside the container of each item. Where a manufacturer wishes to protect the formula of a synthetic product, he must first submit the formula to the Ministry of Health, and its patent number must be shown on the packaging of the product.

Any contravention of the provisions of this article shall be punishable with a fine of 5,000 or 20,000 rials.

Article 12. The Ministry of Health shall be responsible for publishing a list of the colouring matters, essences and other substances which may be added to food-stuffs, beverages, cosmetics or sanitary products and also a statement specifying the types of container which may be used in the food and beverage industries and the colouring matters which may be used in the manufacture of toys.

The addition of unlisted substances to food-stuffs, beverages, cosmetics, sanitary products or toys without authorization from the Ministry of Health or the use in an unauthorized manner and to an unauthorized extent of toxic substances in the treatment of food containers or wrapping and packaging materials for food-stuffs, beverages, cosmetics and sanitary products for the purpose of bleaching, cleaning or colouring them or rendering them transparent is prohibited. Manufacturers or suppliers who contravene the provisions of this article shall be liable to correctional detention for a term of three months to one year, provided that they have not incurred any more severe penalty.

Article 13. Public health requirements shall be laid down in regulations issued by the Ministry of Health and shall be made known to the public through appropriate channels. Any violation of public health requirements shall be punishable as a petty offence with a penalty to be specified in regulations approved by the Ministry of Justice and the Ministry of Health.

The officials appointed by the Ministry of Health or by other competent agencies for the inspection of food-stuffs, beverages, cosmetics and sanitary products shall be responsible for reporting violators of the public health requirements to the local public health officer, giving in writing details of the violation.

If the inspector's report is substantiated, the local public health officer shall report the offender to the petty offences court and give notice in writing to the manager of the establishment concerned that he must take steps to correct the public health violations within a period of time to be specified by regulation.

If the said violations have not been corrected on the expiry of the specified period, the inspector shall again report the particulars to the local public health officer, who, after investigating and verifying the inspector's report, shall temporarily suspend the operation of the establishment by an order in writing.

Permission to resume operation shall be granted if the owner or manager of the establishment satisfies the local public health officer that the public health regulations are being applied.

Article 14. All fraudulent or unsound products or products of which the authorized period of use has expired shall be seized immediately upon discovery. If the Ministry of Health or another competent agency certifies that the seized products are usable for some human, animal or industrial purpose but it is not feasible to retain custody of them, they shall be sold by order of the county public prosecutor. A representative of the latter shall be present at the sale, and the owner of the goods shall be notified thereof. The proceeds shall be deposited in the court treasury until the trial has been concluded and a final judgement issued. If it is proved that the seized products are not usable for any human, animal or industrial purpose, they shall be destroyed forthwith by order of the public prosecutor.

The court shall issue a disposal order, in accordance with article 5 of the Penal Code, in respect of all the above-mentioned products and also the instruments used in the commission of the offence, or, if they have already been sold, in respect of the proceeds of the sale.

The sums accruing from the implementation of this article shall be used for the establishment, expansion and improvement of laboratories for food testing and inspection.

Article 15. Persons purchasing the products referred to in article 14 shall dispose of them or employ them only for such purposes as have been specified by the Ministry of Health. Any person who fails to comply with this provision shall be liable to the appropriate penalty under this Act.

Article 16. From the date of approval of this Act, food-stuffs, cosmetics or sanitary products to be imported in any form for commercial or publicity purposes shall require for customs clearance, in addition to compliance with the general provisions and a public health and use certificate from the country of origin, an import licence from the Ministry of Health. In order to obtain such a licence, the importer shall submit to the Ministry of Health particulars of the formula used and of any preservatives added.

Article 17. All offences under this Act shall be deemed offences under public law.

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FAMILY PROTECTION ACT

No. 6290 of 12 Tir 1346 (3 July 1967) [7]

Article 1. All civil disputes of a matrimonial or family nature shall be dealt with by the county courts or, in the absence of such courts, by the district courts, without observance of the formalities prescribed by the Code of Civil Procedure.

Article 2. Civil family suits mean civil suits between any of the following persons: wife, husband, children, paternal grandfather, guardian and executor of will, arising in connexion with the rights and duties specified in Book VII (Marriage and divorce), Book VIII (Children), Book IX (Family), and Book X (Legal incapacity and guardianship) of the Civil Code, in articles 1005, 1006, 1028, 1029 and 1030 of the Civil Code, and in the relevant articles of the Non-Litigious Jurisdiction Act.

Article 3. The court may undertake any investigation or measure, in any form it deems appropriate, to shed light on the subject of litigation and to ensure due administration of justice, including such measures as examining witnesses and experts and soliciting the help of social workers.

Article 4. Should the court consider either of the two parties unable to pay for the litigation, it shall exempt that party from the payment of costs, experts' fees, arbitration fees and other expenses, and shall itself appoint free counsel for that party.

If judgement is given in favour of the indigent party, the court may order the losing party to pay the aforementioned costs and also the fees of the court-appointed counsel.

Article 5. The counsel and experts mentioned in the preceding article shall be required to comply with the instructions of the court.

Article 6. The court shall refer the subject of litigation (except when it concerns marriage

[7] Published in the *Official Gazette*, No. 6516 of 13 Tir 1346 (4 July 1967).

or divorce *per se*) to one, two or three arbitrators if either party so requests. The arbitrators shall give their decision within a period specified by the court.

The court shall refuse the request for arbitration if it decides that the request has been made in order to avoid or defer a hearing.

Arbitration under this Act shall not be subject to the terms of arbitration laid down in the Code of Civil Procedure.

Article 7. The arbitrators shall try to bring about agreement between the two parties. Should they fail to resolve the differences between the two sides, the arbitrators shall give their decision concerning the nature of the dispute to the court within the specified period.

The decision of the arbitrators shall be communicated to the two parties by the court. The two parties may object to the decision within ten days of receiving notice thereof.

If the two parties accept the decision of the arbitrators or do not object to it within the specified time-limit, the decision shall be enforced. If an objection is raised against the decision, the court shall deal with the objection in an extraordinary session and shall issue its own decision, which shall be final. If the arbitrators do not give their verdict within the specified period, the court shall examine the substance of the case and shall give its decision accordingly.

Article 8. Divorce shall be effected after the court has examined the case and has issued a decision of incompatibility. The party requesting a decision of incompatibility shall submit an application to the court, stating valid grounds for the request.

After receiving such an application, the court shall, directly or through an arbitrator or arbitrators, as it sees fit, try to reconcile the spouses and prevent a divorce. If its efforts to effect a reconciliation fail, it shall issue a decision of incompatibility. The Divorce Registry shall effect the divorce after the decision is communicated to it, and shall duly register the divorce.

Article 9. If the spouses have agreed on divorce, the two parties shall notify the court of their decision. The court shall issue a verdict of incompatibility. If the divorcing spouses do not make sound provision, in their notice to the court, for the care and maintenance of the children, the court shall act in accordance with the provisions of article 13 of this Act. If the spouses' arrangements for the care of the children prove unsatisfactory after divorce, the court shall act in accordance with article 13 of this Act upon notification by one of the parents, a close relative of the children or the county public prosecutor.

Article 10. In respect of article 4 of the Marriage Act also, a wife seeking divorce on behalf of her husband must obtain a court decision of incompatibility in accordance with article 8.

Article 11. In addition to the grounds mentioned in the Civil Code, a wife or husband may apply to the court for a decision of incompatibility on any of the following grounds also:

1. If the wife or husband has received a final sentence of imprisonment for a term of five years or more; or of a fine for which a term of five years' imprisonment is substituted in the event of inability to pay; or of imprisonment and a fine which together amount to five or more years of imprisonment;

2. In the case of any dangerous addiction which in the opinion of the court is detrimental to the basic structure of family life and which makes the continuation of marital life impossible;

3. If the husband marries another wife without the consent of the existing wife;

4. If one of the spouses abandons the family life; the decision whether or not such a step has been taken rests with the court; or

5. If one of the spouses is finally convicted by a court of an offence detrimental to the family prestige or the standing of the other spouse; the decision whether or not an offence is detrimental to the family prestige and standing rests with the court, which shall bear in mind the position and status of both parties as well as general practice and standards.

Article 12. In all cases where a marital dispute leads to the issuing of a decision of incompatibility, the court shall lay down provisions for the care of the children and the amount of alimony payable for the period of "eddeh",[8] in the light of the moral and financial position of the two parties and the interests of the children. The court shall be required, when issuing a decision of incompatibility, to provide for custody of the children after divorce. If the children are to be kept in the custody of the mother or another person, the court shall specify the manner of their care and maintenance.

The wife's alimony shall be paid out of the husband's income and assets. The children's maintenance shall be paid out of the income and/or assets of either or both spouses, including pensions. The court shall specify the sum to be obtained from the income or assets of the husband or wife or both for each child and shall establish a satisfactory mode of payment.

The court shall also arrange for both parties to visit the children. In the case of the death or absence of the father or mother, the right to visit the children shall be transferred to the closest relatives of the deceased or absent parent.

Children whose parents have separated prior to the date of approval of this Act shall be subject to the provisions hereof if no sound arrangements have been made for their care and maintenance.

Article 13. Whenever the court recognizes the need, as indicated by the county public presecutor, a parent or a close relative of the children, for a review of the arrangements for the care of the children, it shall reconsider its previous decision. In such cases, the court may transfer the care of the children to any person it deems fit, but the cost of their maintenance shall in any event be borne by the party specified by the court.

[8] The period laid down under Islamic Law during which a divorced or widowed woman may not remarry.

Article 14. Any man, who, being already married, wishes to marry another wife must apply for permission of the court to do so. The court shall give such permission only after ascertaining, by the appropriate means and, wherever possible, by inquiring from the existing wife, the man's financial ability and his ability to treat both wives equitably.

A husband who marries another wife without applying for the permission of the court shall be sentenced to the penalty laid down in article 5 of the Marriage Act of 1310-1316.

Article 15. A husband may, subject to confirmation by the court, prohibit his wife from engaging in an employment detrimental to the family interests or to the standing of either spouse.

Article 16. In cases involving the following matters, the decision of the court of original jurisdiction shall be final:

(1) The grant of a decision of incompatibility;

(2) The assessment of alimony for the "eddeh" period and of the cost of children's maintenance;

(3) The care of the children;

(4) The right of the father, mother or first degree relatives of an absent or deceased parent to visit the children;

(5) The permission referred to in article 14.

In other cases, the decision of the appellate court shall be final.

Article 17. The provisions of article 11 shall be included as conditions in the marriage contract. The contract shall state clearly the wife's inalienable power of attorney for the purpose of obtaining a divorce under article 11.

Such a divorce shall be final in accordance with the provisions of the Civil Code.

Article 18. Either or both of the parents may request the court to consider the question of the care, present condition or maintenance of the children immediately and to issue a decision in the matter before entering into the substance of the case.

Upon receiving such a request, the court shall be required to consider the matter. Its interim decision concerning the care or maintenance of the children shall be final and shall be immediately enforced.

Article 19. After the entry into force of this Act, notaries public shall no longer be empowered to pronounce or register divorce without an order of the court or a court decision of incompatibility, as the case may be. Violators shall be liable to disciplinary penalties in class 4 and above.

Note. The term of validity of a decision of incompatibility shall be three months from the date of issue.

Article 20. Family cases shall be heard by the court in private.

Article 21. The decision of the court shall be enforced in accordance with the general regulations.

Article 22. The regulations governing the application of this Act shall be drawn up by the Ministry of Justice within three months from the date of approval of this Act and shall enter into force following their approval by the Council of Ministers.

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IRAQ

NOTE [1]

During 1967, the following laws relating to human rights were promulgated:

1. Act No. 84 of 2 July 1967 introducing a second amendment to Act No. 125 of 1963 ensuring dwellings to citizens (*Waqayi' al-Iraqiya.* No. 1445, of 31 July 1967). The English translation of the Act appears in *The Weekly Gazette of the Republic of Iraq.* No. 6 of 7 February 1968.

2. Act No. 134 of 21 September 1967 ratifying ILO Convention No. 89 of 1926 concerning night work of women employed in industry (*ibid.*, No. 1484 of 9 October 1967). The English translation of the Act appears in *The Weekly Gazette of the Republic of Iraq,* No. 14 of 3 April 1968.

3. Act No. 90 of 16 July 1967 annulling the acquisition of agricultural pumps, implements and tools and designating the owners' rights thereof (*ibid.*, No. 1445 of 31 July 1967). The English translation of the Act appears in *The Weekly Gazette of the Republic of Iraq,* No. 17 of 24 April 1967.

4. Rehabilitation Act No. 3 of 10 January 1967 repealing Rehabilitation Act No. 93 of 1963[2] and the amendment thereto (Act No. 70) of 1966 (*ibid.*, No. 1366, of 31 January 1967). The English translation of the Act appears in *The Weekly Gazette of the Republic of Iraq,* No. 24 of 14 June 1967. Articles 1, 2 and 3 of the Act read as follows:

"Article 1. (*a*) Any person sentenced for a crime or misdemeanour degrading honour or for a non-political crime, the maximum punishment for which exceeds five years, shall be forfeited of the following rights;

"(1) The right to vote and nominate in public elections and in elections of local and municipal councils, associations, boards of directors and bodies;

"(2) The right to be appointed or employed in official or semi-official posts;

"(3) The right to a pension, if the judgement relates to an offence degrading the honour of a public official;

"(4) The right to carry arms;

"(5) The right to guardianship, tutorship and proxy;

"(6) The right to carry medals;

"(7) Any other rights to be decided by law;

"(8) For the purposes of the present Act and the Act on Pensions, the provisions of this article shall not apply to juveniles or to persons sentenced on probation.

"Article 2. (*a*) An offence is considered political if it has been committed for political and not for merely selfish reasons infringing upon the public or political rights of the individual. The following crimes shall not be considered political:

"(1) Murder;

"(2) The maltreatment of individuals or properties by setting on fire, destroying, spoiling or drowning; and

"(3) Offences degrading honour, such as theft, embezzlement, forgery, breach of trust and rape.

"(*b*) In its judgement, the Court shall state whether an offence is political, ordinary, degrading or not degrading honour. Its decision shall be subject to legal ways of objection.

"...

"(*c*) If a judgement has been passed before or after the enforcement of this Act and the court concerned has failed to indicate the category of the offence, a request for its definition may be submitted to the Public Prosecutor or his assistant, who will refer the request, together with a statement of opinion regarding the category of the offence, to the court for its decision. The court's decision is subject to legal ways of

[1] Note based upon texts furnished by the Government of Iraq.

[2] For extracts from Rehabilitation Act, No. 93 of 1963, see *Yearbook on Human Rights for 1963*, p. 166.

objection within fifteen days as from the date of its serving. . . .

"Article 3. (*a*) A convicted person shall be rehabilitated by judicial decision on the following conditions:

" (i) That he has served his punishment or that the punishment has been legally omitted.

" (ii) That he has executed his financial obligations in respect of the person in whose favour the court decision has been rendered or has reached a settlement regarding those obligations.

"(iii) That he has commercially been rehabilitated, if he has been sentenced for an offence of bankruptcy.

"(iv) That he has behaved well in prison and after his release. . .".

5. Act No. 11 of 25 February 1967 introducing a fourth amendment to the Foreigners' Residence Act (No. 36) of 1961 (*ibid.*, No. 1377 of 25 February 1967). The English translation of the Act appears in *The Weekly Gazette of Iraq,* No. 31 of 2 August 1967. Article 1 of the Act provides that the text of article 25 of the Foreigners' Residence Act of 1961 be considered paragraph (1) of that article, and that thereto a paragraph (2) be added, *inter alia,* stating that the period spent by a foreigner in Iraq without a residence permit or without a renewal thereof shall be regarded as illegal residence.

6. Act No. 29 of 22 February 1967 ratifying ILO Convention No. 23 of 1926 concerning the repatriation of seamen (*ibid.*, No. 1390 of 19 March 1967). The English translation of the Act appears in *The Weekly Gazette of the Republic of Iraq,* No. 33 of 16 August 1967.

7. Act No. 9 of 28 January 1967 amending the Social Security Act (No. 140) of 1964 (*ibid.*, No. 1376 of 22 February 1967). The English translation of the Act appears in *The Weekly Gazette of the Republic of Iraq,* No. 43 of 25 October 1967.

8. A new National Assembly Electoral Law (No. 7 of 1967), *inter alia,* granting Iraqi women for the first time the right to vote and to be elected for membership of the National Assembly.

Article 1 of the Law provides that in order to be eligible to vote in National Assembly elections, every male and female must meet the following qualifications:

(1) Be a citizen of Iraq;

(2) Be not less than eighteen years of age;

(3) Not be sentenced for one year or more for any non-political offence or misdemeanour degrading honour until he or she has been rehabilitated.

Article 20 states that males and females, who possess the following qualifications, shall be eligible for election or nomination to the National Assembly:

(1) They must be citizens of Iraq of Iraqi parentage and meet the qualifications enumerated in article 1;

(2) They must be mentioned by name in the electoral registration tables;

(3) They must not be less than thirty years of age;

(4) They must be able to read and write adequately;

(5) They must be faithful to the principles and objectives of the Revolution of 14 July.

IRELAND

NOTE [1]

A. LEGISLATION

1. The Criminal Procedure Act, 1967

The Criminal Procedure Act, 1967, replaces the former preliminary investigation of indictable offences by a simpler and more expeditious procedure which, apart from exceptional cases, dispenses with the necessity for taking depositions. The new procedure is based on the views expressed in the reports of the Committee on Court Practice and Procedure.

The Act also extends considerably the former powers of prohibiting publication of proceedings on the preliminary examination. Various enactments relating to the grant of bail are repealed and re-enacted with amendments in this Act.

A new provision in the law enables the Attorney General to obtain from the Supreme Court, by way of case stated, a final determination of the law in a case where, in the opinion of the Attorney General, a trial judge was wrong in law in directing the jury to return a verdict in favour of the accused. The decision of the Supreme Court does not prejudice in any way the decision of the trial judge in favour of the accused.

2. The Landlord and Tenant (Ground Rents) Act, 1967

The statutory law on landlord and tenant has been amended in a number of respects by the Landlord and Tenant (Ground Rents) Act, 1967. The right to purchase the fee simple is given to certain householders and yearly tenants who hold their property subject to a ground rent. Leaseholders who have to collect ground rents from neighbouring leaseholders for payment to the landlord are given the right to have the total rent apportioned and paid separately by each leaseholder.

The Act also establishes a simplified arbitration procedure to settle disputes, including disputes as to the purchase price of the fee simple, arising from these matters.

3. The Redundancy Payments Act, 1967

The Redundancy Payments Act, 1967, provides for a scheme of redundancy payments for workers in employment which is insurable for all benefits under the Social Welfare Acts, who lose their employment because the jobs in which they were employed have ceased or are about to cease. It also provides for a scheme of resettlement allowances for redundant and other unemployed workers who may have to move from their home areas to secure employment.

There is provision for the establishing of a Redundancy Fund financed by contributions from employers and workers out of which weekly payments may be made to redundant workers, and employers may be refunded in part for lump sum payments made by them to workers.

An employee will not be entitled to benefit under the Act if he unreasonably refuses an offer of suitable alternative employment by his employer.

4. The Industrial Training Act, 1967

A new industrial training authority with wide powers to deal with all aspects of industrial training has been established under the Industrial Training Act, 1967. It is the duty of the new authority to provide, and to promote the provision of, training for persons for any activity of industry. An "activity of industry" includes an activity of commerce or of a trade or occupation but does not include agricultural or professional occupations.

The Act repeals the Apprenticeship Act, 1959, and places under the control of the new authority the functions formerly exercised by an apprenticeship board. The new authority also has power to provide for adult retraining to skilled level, operative training and retraining, training of unemployed and redundant workers who have the aptitude to acquire new skills, refresher training for workers whose skills need to be improved,

[1] Note furnished by the Government of Ireland.

training of workers for new industrial projects and training of instructors, supervisors and technicians.

5. THE SOCIAL WELFARE (MISCELLANEOUS PROVISIONS) ACT, 1967

The main purpose of this Act is to increase social assistance payments from the beginning of August 1967, to increase the rates of social insurance benefits and contributions from the beginning of January 1968, and to extend the period over which unemployment benefit may be drawn.

The Act also contains a number of miscellaneous provisions designed to improve and extend the schemes of social insurance and social assistance.

B. INTERNATIONAL INSTRUMENTS

In 1967, Ireland ratified the International Labour Organisation Convention concerning Employment Policy (No. 122) which was adopted by the General Conference of the Organisation at its forty-eighth session in 1964.

ISRAEL

HUMAN RIGHTS IN 1967 [1]

I. LEGISLATION

1. The Protection of Holy Places Law 5727—1967

Although the Mandatory Government of Palestine was not infrequently compelled to deal with questions concerning the Holy Places in the country, it never enacted comprehensive legislation on the subject. The Palestine (Holy Places) Order-in-Council 1924 withdraw jurisdiction as to the Holy Places from the local courts but provided no alternative way of deciding legal questions that might arise. The Palestine (Western or Wailing Wall) Order-in-Council 1931 purported to regulate the rights of ownership in and access to one of the Holy Places. Chapter XVI of the Criminal Code Ordinance 1936 forbids the disturbance of religious worship[2] (whether at one of the Holy Places or not), the trespass of burial grounds, and the destruction or damaging of any public buildings.

Since the establishment of the State, Holy Places of all religions in Israel have been under the *de facto* care and protection of the Ministry of Religious Affairs. In 1967 a Law on the protection of holy places was enacted which is here reproduced in full:

> "1. The Holy Places shall be protected from desecration and any other violation and from anything likely to violate the freedom of access of the members of the different religions to the places sacred to them, or their feelings with regard to those places.
>
> "2. (*a*) Whosoever desecrates or otherwise violates a Holy Place shall be liable to imprisonment for a term of seven years.
>
> "(*b*) Whosoever does anything likely to violate the freedom of access of the members of the different religions to the places sacred to them, or their feelings with regard to those places, shall be liable to imprisonment for a term of five years.
>
> "3. This Law shall add to, and not derogate from, any other Law.
>
> "4. The Minister of Religious Affairs is charged with the implementation of this Law, and he may, after consultation with, or upon proposal of, representatives of the religions concerned and with the consent of the Minister of Justice, make regulations as to any matter relating to such implementation.
>
> "5. This Law shall come into force on the date of is adoption by the Knesset."[3]

2. Penal Law Reform (State Security, Foreign Relations and Official Secrets) Law 5717—1957 (1967 Amendment)

This Law, as originally enacted under the name Penal Law Reform (State Security) Law, contained in section 24(*a*) a much debated provision:

> "A person who maintains contact with a foreign agent without having a reasonable explanation for his so doing shall be deemed to have delivered secret information without being authorized so to do."

The presumption contained in this provision was criticized by the Supreme Court in the criminal appeal *Cohen* v. *Attorney-General*.[4]

> "I agree ... that, where the accused has no reasonable explanation for his contact with a foreign agent ... it is natural and self-evident to assume that they did not keep contact to talk about the weather. In this sense the presumption is nothing but the legislative expression of the natural and normal experience of life. But

[1] Note furnished by Dr. Ernst Livneh, Research Fellow of the Institute for Legislative Research and Comparative Law of the Hebrew University, Jerusalem, and government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Cf. article 18 of the International Covenant on Civil and Political Rights: freedom to manifest one's religion in worship etc.

[3] i.e., 27 June 1967.

[4] (1962) 16 Piskei-Din III. 2257 at 2263-64.

does the experience of life teach us also that in the talks between the accused and the foreign agent the latter was given *secret* information . . . ?"

In fact, contact with a foreign agent might be kept for many different purposes, legal or illegal, from violation of currency restrictions to planning murder or riots within the country, but in the terms of the Law as it was at the date of the trial

"if the court . . . rejects the accused's explanation of this contact, it has no choice but to convict the accused of delivering secret information . . . even though it is convinced that no such information was passed on. This result, which is under the Law inevitable, appears intolerable . . .".[5]

On the other hand, there was no reason militating against making dangerous contacts as such criminal. The amending Law of 1967 did this by providing:

"A person who knowingly maintains contact with a foreign agent without having a reasonable explanation for his so doing is liable to imprisonment for a term of fifteen years."

But at the same time, the amendment Law adds a new defence: even though the accused cannot give a reasonable explanation of his contact with the foreign agent, he may still be acquitted if he satisfies the court that he did not, nor intended to do, anything prejudicial to the security of the State.

The amending Law also revised the provisions on publication of official information by public servants. On the one hand, a public servant may now give such information without special authorization if it has already lawfully been made public. On the other hand, the general prohibition of publishing official information is extended to former public servants, but in respect of information which does not concern the security of the State or its foreign relations nor prejudice other public or private interests, the prohibition is restricted to a period of five years after leaving the public service.

3. The Amnesty Law 5727—1967

Article 6.4 of the International Covenant on Civil and Political Rights stipulates the right to seek pardon in cases of death penalty. The Palestine Order in Council provided for the possibility of pardon in respect of all crimes, and the State of Israel has continued along this line. The Prison Ordinance of the Mandatory Government prescribed automatic remission of one third of most sentences of imprisonment. The Penal Law Reform (Modes of Punishment) Law 1954, however, introduced a more individual system, chiefly based on decisions of a parole board.

Apart from pardons in individual cases, a general amnesty was granted by Law in 1949 at the end of the War of Liberation and the period of transition from the Provisional Government to the full democratic régime. In recent years, popular suggestions were made for the granting of a general amnesty, inspired by religious, historical and traditional motivations. In the summer of 1967, circumstances appeared to justify, if not a general pardon to all offenders, at least an act of grace on a large scale. The details are too complicated to be set out in this report. In effect, the amnesty covers the greatest part of all offences for which no penalty of ten years imprisonment or more is provided by law and it reduces many sentences for remaining crimes by one quarter.

4. Emergency Labour Service Law 5727—1967

This Law introduces no new principles but rather consolidates emergency legislation enacted at the time of the establishment of the State though little applied. It comes within the frame of article 8.3(*c*)(iii) of the International Covenant on Civil and Political Rights which exempts from the prohibition of "forced or compulsory labour":

"any service exacted in cases of emergency or calamity threatening the life or well-being of the community."

Labour service, i.e., compulsory service under the Law, is subject to two general restrictions; it may be required only at a time when army reserves have been called up, and it is to be performed only in "essential enterprises" (section 1.). A permanent resident may be called up for service until he reaches retirement age (65 years for men and 60 for women), but pregnant women and women during the first year after giving birth are absolutely exempted (as are soldiers and policeman); other mothers are entitled to consideration and additional groups may be exempted by Regulations (section 3.). Persons liable to service may upon prior notice be called up for training for not more than three days during one year, and such call-up is to be adjusted to any call-up for military reserve duty or for civil defence to which the same person may be liable (sections 9-13.).

Differently from military service, labour service is regulated by rules of contract law between the person called up and the enterprise (sections 23, 25), but neither party is free to terminate the service at will (section 19, 21) and the legal restrictions of working hours do not apply (section 26).

The Law also sets up boards composed of a judge or another independent lawer and assessors proposed by organizations of management and labour to decide on objections to call-up, pay, etc. (sections 28-33).

5. The Execution Law 5727—1967

Article 11 of the International Covenant on Civil and Political Rights 1966 prescribes that no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. In 1957, a bill was submitted to the Israel legislature which went far beyond the requirements of the Covenant; it was designed to improve the efficiency of execution of judgements with a view

[5] *Ibid.*

to dispensing with imprisonment for debts of any kind and particularly for recurrent debts such as those arising from maintenance obligations. Public opinion on this far-reaching project was divided, a large majority favouring the retention of imprisonment as a means of exacting payment of judgement debts.

The new Law (which replaces an Ottoman Law and several enactments of the Mandatory Government) does not express the principle laid down in Article 11 of the Covenant in so many words but it is arranged in such a way as to comply with its requirements or even to go beyond them. Sections 67-74 of the Law oblige the Chief Execution Officer, before ordering the arrest of the debtor, to hold an inquiry into his ability to fulfil his obligation under the judgement, except in the case of a debt for maintenance of the debtor's wife, a minor or invalid child of his or one of his parents. Thus imprisonment for mere inability is prohibited not merely in the case of a contractual obligation as stipulated under the Covenant, but also in respect of a debt for tort compensation and for maintenance outside the circle of immediate relatives.

Although the new Law provides for imprisonment only within the limits sanctioned by the International Covenant, it underwent, even before coming into force, severe criticism for not abolishing this way of execution altogether. In the recent case *The Official Receiver* v. *Valensi*,[6] J. Cohn evaluated the provisions of the Law as follows:

> "To our great sorrow and shame even the new Execution Law of 1967 failed to abrogate imprisonment for failure to pay debts, and this blot on our statute book remains. But at least an empoverished debtor is now given a right of appeal, both against the decision on his ability to pay and against the order of imprisonment. In addition, he must now within three days of his arrest be brought before the Chief Execution Officer—apparently in order to let the latter see the effect of his order and to give him an opportunity of correcting it."

II. JUDICIAL DECISIONS

1. Force, under Municipal Law, of International Instruments, Especially of the United Nations Declaration and Covenants on Human Rights

(*a*) *Kurtz* v. *Kirshen*[7]

(In the Supreme Court, sitting as a Court of Civil Appeals. Judgement of 27 June 1967.)

(*b*) *The American European Beth-El Mission* v. *Minister and Ministry of Social Welfare*[8]

(In the Supreme Court, sitting as a High Court of Justice. Judgement of 12 October 1967.)

In the first case, *Kurtz* v. *Kirshen*, the Supreme Court had to decide the question of what is, for matters of inheritance, the personal law of a stateless person domiciled abroad.

Per Cohn, J.:

> "In my view the answer is found in the Convention relating to the Status of Stateless Persons, which was concluded in 1954 in the United Nations and to which Israel acceded by ratification on 23 December 1958. Article 12.1 of that Convention, provides:
>
> " 'The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.'
>
> "This provision is identical with (and in fact copied from) Article 12 (1) of the Geneva Convention relating to the Status of Refugees of 28 July 1951 (also acceded to and ratified by Israel), except for the term 'refugee' which appears in the latter-mentioned Convention instead of the term 'stateless person' of the former one.
>
> "It is true that this Convention as such does not possess the force of binding law (C.A. 25/55; 145/55, 148/55;[9] the courts do not enforce an international agreement 'except and to the extent that it, or the rights and duties which flow from it, have been embodied in the law of the land and have acquired the force of binding law. In such circumstances the Court would then refer not to the Treaty as such but to the law which alone gives it validity for domestic purposes.'
>
> (*loc. cit.*, p. 7, *per Berinson, J.*).
>
> "This doctrine however applies only in the case of a provision contained in any treaty, not in conformity with the municipal law nor reflecting international common law as accepted by the organized majority of nations of the world. It is different with a provision which does not conflict with municipal law and which reflects international law accepted as aforesaid: in that case the fact that the provision is part of an international agreement and that Israel acceded to it and undertook obligations under it, will not defeat it but, on the contrary, give it additional force and meaning."
>
> "It is a long-established rule that our courts will judge according to principles of international law, if other civilized nations have agreed thereto in a manner which must lead to the assumption that [those principles] have become also part of our own law (Motion 41/49).[10] And where the courts construe the municipal law, they will do it—unless the contents and the language require a different

[6] Judgement of 18 January 1968. (1968) 22 Piskei-Din, I. 23. Excerpt: *Jerusalem Post* of 30 January 1968 (to be reported in detail in this *Yearbook for 1968*).

[7] (1967) 21 Piskei-Din II. 20 at 25-27.

[8] (1967) 21 Piskei-Din II. 325 at 333; English excerpts in the *Jerusalem Post*, 31 October and 2 November 1967.

[9] *Custodian of Absentees' Property* v. *Samra*. English excerpts: (1955) *International Law Reports* 5 at 7.

[10] *"Shimshon" Ltd.* v. *Att.-Gen.* (1950). English translation in *Selected Judgments of the Supreme Court of Israel*, I. 290 at 293.

interpretation—according to the rules of international law (see Eichmann's appeal)."[11]

"The Israel legislature has seen no reason or necessity to pass an enactment of its own in order to give Article 12 of the Convention —a provision of [International] common law *par excellence*—the force of binding law. And rightly so. That provision has met with general consent among the nations of the world. It even does not matter for our purpose whether or not they formally acceded to it, for it is a fact that this Convention was drafted by and with the consent of legal experts from all parts of the world, both internationalists and representatives of the various legal systems prevailing the world over, and none made any objection or reservation. Moreover the fact that this very provision has now been laid down for a second time in an international convention testifies to its being a well-known and well-accepted rule of international law. And if we add to all this the observation—in my view the decisive one—that our local law is deficient just in this particular point of a stateless person's personal law—then I see no escape from the conclusion that the provision of this Convention, reflecting as it does an accepted rule of international law, fills the void and is designed to fill it...."

These considerations were repeated, and partly referred to, in quite a different context in the *Beth-El Mission* case (above under (*b*)). That case itself will be reported below under No. 4 in connexion with problems of freedom of religion and education. Concerning the authority of United Nations instruments and their effect on municipal laws the following quotations from the *Beth-El Mission* judgement appear relevant.

Per Witkon, J.:

"These instruments are of great moral if not legal importance for this Court, but there was no need to invoke them in order to convince us that the principle of religious freedom indeed exists in the State of Israel."

Per Cohn, J.:

"I agree with petitioners' counsel that regulations which contradict basic notions of religious freedom or other rights of man, recognized in the law of nations, will be considered by this Court as unreasonable and therefore invalid. For such a rule I need no express authority; precedents have laid down that the rules of international law, in so far as they are accepted by the majority of nations of the world and do not conflict with any Law enacted by the Knesset, constitute part of the law in force in Israel... The principles of religious freedom, like the other rights of man as defined in the Universal Declaration of Human Rights 1948 and in the Covenant on Civil and Political Rights 1966, are today the common property of enlightened peoples, whether members of the United Nations Organization or not; for they were drafted by legal experts from all parts of the world and laid down by the United Nations Assembly which comprises the vast majority of the peoples on earth."

[11] *Eichmann* v. *Att.-Gen.* English translation in *International Law Reports*, 5, 281.

2. RIGHT TO BE ELECTED[12]

(*a*) *Arbiv and another* v. *Dnino*;[13]

(*b*) *Ben Aharon* v. *Chairman of Local Council Pardessiya*[14]

(In the Supreme Court sitting as a High Court of Justice. Orders of 24 January 1967 and of 22 May 1967.)

Basic Law: the Knesset denies a citizen the privilege to be elected to parliament if "a court has deprived him of that right by virtue of any Law". No law has, however, yet been enacted to that effect.

The matter is different in respect of local elections. Under the Local Authorities (Elections) Law 1965 a person is deprived of the privilege of election, if he was convicted of a criminal offence involving moral turpitude, until five years have expired since the judgement. A person already elected loses his seat if he is convicted of such an offence. Thus the question what is "moral turpitude" is of considerable importance for the exercise of political rights.

In the two instant cases an additional aspect of human rights was involved—free speech. In the first case a local councillor was found guilty of "disorderly behaviour in a public place" by uttering at a pre-election meeting exceedingly rude words against another candidate. The second case concerned slander uttered at a meeting of the local council. In both the question was whether moral turpitude attaches to the offences concerned, either generally or in the circumstances of the case.

In the first case the court took the view that a candidate's right to address the voters is so important that its gross violation by a rival bore the character of moral turpitude and rendered the latter unfit to be elected.

In the latter case the court endeavoured to view the question in a wider context. The term "moral turpitude" appears not only in election laws and it was obvious to the court that it has to be construed uniformly wherever it is met. Finding similar provisions, e.g., in the Judges Law, the State Service (Discipline) Law and the Chamber of Advocates Law, the court asked itself if a conviction for uttering rude words would justify the removal of a Judge from his office, the dismissal of a State employee or the refusal to admit a lawyer to the Bar. In the scale of types of misbehaviour provided in those laws crimes of moral turpitude occupy the last place of disciplinary offences and lead to the most severe measures of discipline known to the law. The court had therefore to decide whether misde-

[12] International Covenant on Civil and Political Rights, art. 25.

[13] (1967) 21 Piskei-Din. I., 73.

[14] (1967) 21 Piskei-Din. I., 561; digested in (1968) 3 Is.L.R. 148.

meanours such as "disorderly behaviour in a public place" and "defamation" were meant to lead to those severe consequences.

One member of the Supreme Court indeed took that view:

"... Not the standard of the market of municipal politics determines the proper standard of behaviour which the legislator had in view in the relevant section, but the Court lays down the standard by its interpretation of the law as it does in other cases, e.g. the standard of diligence required in damage suits, where the Court does not hesitate to deviate from accepted but unsuitable habits ... There is nothing wrong in the court ... fulfilling also an educational function. Here we have a useful sanction to remove an unworthy representative of the public, and it is to be hoped that the operation of this sanction will warn others to be guarded in their language."

The majority of the Court, however, while accepting the educational task of the courts, viewed the question in another light.

"... We are bound to 'go and see what ordinary people are doing' and not to be too delicate and disgusted by rude words. Since these people are accustomed to express themselves and to quarrel among themselves in sharp language, they are entitled to express themselves and to quarrel in the same way also in an election campaign....

"[To be sure—] a meeting of an elected council is different from an election meeting, and not everything that may be excused in the heat of elections is excusable in everyday and routine discussions. But we are not dealing here with ... the delimitation between permissible and forbidden recrimination; our question is 'moral turpitude' in the case of unlawful recriminations.... The questions is whether the petitioners, having been convicted and punished, are still, and will for five years from the day of their convictions be, tainted with moral turpitude, so as to be unfit to act as members of the local council....

"The yardstick according to which the Court has to judge a case like this is the feeling and the approach of the 'reasonable' voter who considers, by whom he will be efficiently and faithfully reprensented on the local council, and not the feeling of world reformers or the deliberations of enlightened judges. Use of rude and insulting language (and that in one single instance) is not enough to detract from the potential loyalty and efficiency of the elected representative as a member of the local council, and no reasonable voter would for that reason alone withhold his vote from him —evidence that he is indeed not tainted with moral turpitude."

3. Election Propaganda—Municipal Employee Candidate in Municipal Elections—Equal Right of Free Expression

Altheger v. Municipal Council of Ramat Gan[15]

(In the Supreme Court sitting as a High Court of Justice. Orders of 14 December 1966 and 17 April 1967.)

The petitioner was dismissed from his post as editor of the respondent's information bulletin after having unsuccessfully run as a candidate in the election for the Municipal Council.[16] One of the reasons put forward for the dismissal was, that the petitioner had, by making personal attacks on the mayor and his deputies, created an atmosphere which made it impossible to continue the co-operation between himself and the Council as was necessary in his office as spokesman of the municipality. The petitioner maintained that this reason for his discharge constituted a violation of his right to conduct his election campaign as he saw fit, and also an unjustified discrimination as against other citizens who were not subject to such restrictions. The Supreme Court rejected his argumentation:

[17]"It is true that a municipal employee is not prevented by law from offering himself as a candidate for election to the local authority for which he works.... The petitioner was also free to conduct election propaganda for himself and for his list....[18] But though there was no legal prohibition, still logic and considerations of good government demand that the election propaganda of a municipal employee, who appears as a candidate and who may, on failing to be elected, be compelled to continue in his employment, should remain quiet and objective and ought not to touch the honour of the heads of the municipality who are the candidate's superiors.... Especially is this the case with a senior employee of the municipality whose task it is to serve as the spokesman of the corporation in its publication organ and who has to work in harmony and understanding with those responsible for shaping its views and policy. There is already a saying of wisdom: every constitution requires good sense. Thus, while the law permits a municipal employee to participate in the election campaign, still, the special position in which he finds himself obliges him, on going to war, to act with consideration and self-restraint and to choose his means of attack with care. Participation in the election campaign is free but not all means are right.

[19]... freedom of expression is one of the citizen's basic rights, but even that right cannot exist without limits. Freedom turns into anarchy unless it be accompanied by a sense of proportion and by self-restraint of the free-been citizen.... Just as the law makes a distinction between citizens by denying some of them the right to be elected[20]—and that of course

[15] (1966) 20 Piskei-Din, IV. 720; (1967) 21 Piskei-Din, I. 415.

[16] See prior proceedings: *Yearbook on Human Rights for 1966*, p. 213.

[17] (1966) 20 *Piskei-Din*, IV. 720 at 724.

[18] Israel law knows some restrictions on such propaganda and the Court pointed out that they did not apply in this case.

[19] (1967) 21 *Piskei-Din*, I. 415 at 418.

[20] e.g. army officers and certain high civil servants.

with a view of preserving other values, dearer even than that basic civil right—so also some indirect discrimination is created between the petitioner and other citizens of Ramat Gan who did not perform so sensitive tasks in the municipality. He was free, within the confines of the law of libel, to say about the mayor all that was on his mind; but it ought to have been clear to him that after the lack of self-restraint shown by him he could not return to his former place of work if the same mayor returned to the government of the town. For one can hardly expect from the mayor, who is after all a man of flesh and blood, to swallow his pride and to co-operate, as though nothing had happened, with a man who insulted him and displayed towards him hostility. These matters are not written in any law and no legislator can be expected to put them on the statute book, for they are not capable of being defined in the language of legal paragraphs. But if the petitioner relies on general notions of freedom of expression and freedom of election propaganda, he cannot complain if the court subjects his pleadings to the test of common-sense."

4. Freedom of Religion and Religious Teaching—Religious Education of Children—Liberty of Parents

The American-European Beth-El Mission v. *Minister of Social Welfare*[21]

(In the Supreme Court sitting as a High Court of Justice. Judgement of 12.10.1967.)

Two Welfare Laws reported upon in this *Yearbook for 1966* came up for scrutiny by the High Court of Justice under the aspect of religious freedom—the Capacity and Guardianship (Amendment) Law 1965[22] and the Homes (Supervision) Law 1965.[23] The first of these Laws, like article 18.4 of the International Covenant on Civil and Political Rights, permits parents to change their minor children's religion in conformity with their own but not otherwise.[24] The second Law authorizes the Minister of Social Welfare to prescribe conditions for licences to conduct (i.a.) Homes for children under 14 years. One of the standard conditions of such licences is that Homes in which religious instruction is given shall receive only children of the same religion. (A welfare inspector may permit an exception from this rule where the welfare of a child requires this, e.g., if no other Home suitable for the particular needs of this child is available, but no such question arose in the present case).

The petitioner objected to the restriction of the licence. He argued:

(*a*) That the matter of religious instruction does not concern social welfare and thus falls outside the Minister's competence;

(*b*) That the restriction of the licence curtails the freedom of choosing a religion;

(*c*) That it conflicts with the natural right of parents to decide on the religious upbringing of their children;

(*d*) That it denies the right to manifest religion by teaching it to others.

(*a*) As to the competence of the Minister of Social Welfare to prescribe conditions concerning religious instruction, the Court found that the Minister had not attempted to interfere with the contents and quality of the instruction given in the Home; what he was concerned with was to prevent diversity of religion between the children's home environment and the Home where they were educated. Such a conflict, the Court held, was a legitimate concern of the Minister charged with the execution of the Homes (Supervision) Law:

> "In a Law designed to impose controls on institutions, among them children's Homes, the educational aspect, in its widest meaning, cannot be considered an external matter. Had the legislator's concern been directed only towards the conditions of the premises, hygiene, cleanliness etc., one may doubt if there would have been sufficient reason to enact a Law....
>
> "A close connexion exists between the supervision of Homes and the mental welfare[25] of young children who are wards therein; the care of these children is naturally included in the purpose of supervision. Thus it cannot be maintained that the Minister transgressed his powers under the Law by laying down that an institution, whose whole purpose is religious instruction of a definite denomination, should accept only children of that denomination."

The Court, relying on the basic rule that in matters of children their welfare is the paramount consideration, went on to refer to the afore-mentioned Capacity and Guardianship (Amendment) Law 1965:

> "The provision prevents the conversion of a minor to a religion different from that of his parents or of one of them. From this the general conclusion can be drawn that also religious instruction which tends towards such conversion is not for the child's good. I call it 'general', for it is the rule that thus a conflict is likely to be created in the child's heart between the religion he is taught in the institution and the environment in which he is to spend his life. From the point of view of the child's welfare it is not important to what religion he belongs; what is important is that his religious education shall not bring him in mental and social conflict with his family and surroundings before he reaches an age at which he is able to choose his way of life."

[21] (1967) 21 *Piskei-Din*, II. 325. English excerpts: *Jerusalem Post* 31 October and 2 November 1967.

[22] *Yearbook on Human Rights for 1966*, p. 199 sub (*f*).

[23] *Ibid.* p. 198 sub (*b*).

[24] Section 13 A (*c*) of the principal Law.

[25] The Court speaks throughout of the mental or emotional welfare of children. What is termed "spiritual welfare" is not the object of the judgement.

(*b*) Freedom of choosing a religion cannot in the view of the Court be touched by the conditions of the licence, since children under the age of 14 years, to whom licensing of Homes is restricted, are incapable of such choice. "At that age", the Court said, "one has to assume that the child is still dependent on the opinion of others, and if he joins another religion, that is not the result of his own choosing".

(*c*) As to the parents' right to decide on the religious education of their children the Court held that the conditions of the licence did not affect it more than is warranted by the Capacity and Guardianship (Amendment) Law. Not only strangers such as the petitioner but also the parents were forbidden to bring small children in mental conflict by creating a diversity of religion within the family. "It is difficult to imagine", remarked one of the judges, "that parents should do this for purely ideological reasons".

The Court took note that article 18.4 of the International Covenant on Civil and Political Rights too restricts the parents' choice of a religion for their children to "religious... education... *in conformity with their own conviction*". Nor did it overlook the somewhat different formula contained in the draft of an International Convention for the Prevention of Religious Intolerance: "in the religion and belief of their choice". But as J. Cohn was able to point out:

> "This involves no modification of the original conception, but an expression of the same original conception in a somewhat wider and more elastic form with a view to covering, for instance, also a case of agnostic parents deciding to give their children a religious education or vice versa. But the rule is that where the parents have 'chosen' a religion for themselves, that choice is good for their children as well and they are not allowed to make another choice unless they decide to change their own religion."

(*d*) Lastly the Court came to the conclusion that the petitioner could not complain of an undue restriction of its freedom to teach and propagate its religion.

> "Just as it is the right of every person in Israel to change his own religion, so it is the right of every person in Israel, be his religion whatever it may, to preach and disseminate his religion in public by whatever legal means are proper in his eyes—including education and instruction. But to whom does all that relate? To a grown-up competent person who is capable of weighing the various religious doctrines one against the other. Such a person is able, and therefore entitled, to change his religion for another as he desires. But from the positive rule flows its negative: a person who for reasons of minority or other incapacity is unable to weigh the various religious doctrines is unable, and for that reason not entitled, to change his religion. And since such a person is lacking the capacity, and therefore, the right, to change his religion, there can be no right in another person, of a different religion, to educate him and convince him that he ought to change his religion.... You are not allowed to utilize the right of education and instruction which you possess, in order to bring about a change of religion of a person who is incapable and therefore not entitled to change it, for otherwise you would open the flood-gates for conversion of people who are not able and not permitted to [change their religion]. Here an important and fundamental difference exists between the religious and missionary and the legal view. For whereas just the reception of small children, innocent souls who have not experienced sin, into the fold of a missionary faith is a great religious duty for those receiving them and a great religious privilege for those received, yet in the eyes of the law any intervention in the life of the mind of children (and that includes their faith) on the part of agents not authorized by law constitutes a major wrong which the arm of law is ready to prevent."

5. Right to Choose Defence Counsel

Kahwaji v. *Commissioner of Prisons*[26]

(In the Supreme Court sitting as a High Court of Justice. Judgement of 28 August 1967.)

Article 14.3 (*d*) of the International Covenant on Civil and Political Rights which stipulates a person's right "to defend himself... through legal assistance of his own choosing", is restricted to the case of "the determination of any criminal charge". The above case concerns security detention under the Defence (Emergency) Regulations 1945, to which article 14 of the Covenant does not apply. Nevertheless under Israel law the High Court of Justice has extended the freedom of choosing defence counsel also to those cases.

Generally any advocate is entitled under section 22 of the Chamber of Advocates Law 1961 to represent his client before any public authority or body, except where an enactment regulating representation before it provides otherwise. Such special enactments exist e.g. in respect of religious courts and also courts-martial as well as the ordinary courts in matters involving the security of the State. In the last-mentioned two instances counsel must have the authorization of a committee composed of a judge of the Supreme Court, two members of the Chamber of Advocates chosen by this body (which is independent of any public authority), the Attorney-General and the Military Advocate-General.[27] Applications in matters of security detention are, however, brought before a special board, representation before which is not regulated by any enactment as aforesaid.

Following the petitioner's detention counsel charged by his father to act on his behalf asked the respondent for permission to interview his client but the respondent refused, relying on Directions under which access to the place of detention was virtually restricted to the same circle of advocates who were authorized to appear

[26] (1967) 21 *Piskei-Din*, II. 183.

[27] Military Justice Law 1955, sections 137, 138; Criminal Procedure Law 1965, section 12.

before a court-martial (and to which petitioner's counsel did not belong). "Directions as to the internal management of, and otherwise in connection with, any place of detention ... and as to the discipline of all persons detained therein" may indeed be given under the Defence (Emergency) Regulations, but in the present case they had the effect of restricting the choice of counsel without being "an enactment regulating representation" before the board dealing with matters of detention, as required by section 22 of the Chamber of Advocates Law.

The High Court, in ordering the respondent to give counsel access to the place of detention (subject to appropriate security measures), pronounced:

"The citizen's right to be represented before the State authorities by an advocate is undeniably an important right. And considering the relationship of confidence between advocate and client it consists not only of the right to be represented by an advocate but comprises the right to be represented by counsel of one's own choice....

"The right of counsel to see his client ... is essential for the realization of the main right ... i.e. the right of representation, for effective representation is not possible without prior consultation between advocate and client.

"I am convinced that [the Defence (Emergency) Regulations] give no authority ... to frustrate or annul the detained person's right of representation by counsel, not even indirectly by preventing counsel from meeting him for the purpose of receiving instructions."

6. The Right to Work—Just and Favourable Conditions of Work

Cavillo v. *Hatzor Local Council*[28]

(In the Supreme Court sitting as a High Court of Justice. Judgement of 28 August 1967.)

Article 6 of the International Covenant on Economic, Social and Cultural Rights recognizes a general "right to work", and article 2 guarantees under four heads "just and favourable conditions of work". But neither the general right nor the four basic conditions give any protection against arbitrary dismissal.

In Israel the question of a just order of dismissal is given great attention in collective labour agreements, though it is not regulated by law. It is often summarized in the catch phrase "first in, last out".

In the instant case the petitioner, on being discharged from his employment with the respondent Local Council, complained that there were other workers with less seniority who ought to have been discharged in his place. But the collective agreement concluded between the Centre of Local Authorities and the appropriate labour union prescribed a threefold test: suitability of the worker, the number of years of his employment with the same Authority and his family situation. In addition to this test it also required consent of the workers' committee, which was given. Since all three aspects of the test had been duly considered, the petitioner's objection to his discharge was rejected by the Court.

7. Right and Freedom of Work—Discrimination—Administrative Policy

(*a*) *Matsrawah* v. *Ministry of Transport and others*[29]

(*b*) *Anuno* v. *Ministry of Transport and others*[30]

(In the Supreme Court sitting as a High Court of Justice. Orders of 20-21 March and of 10 December 1967.)

These cases, in themselves of a mere routine character, illustrate an important problem of public administration—discrimination in the case of a change of policy. Has an applicant a right to be granted a licence because others before him had obtained one and he has incurred expenses in the expectation of being treated likewise? Does the principle of non-discrimination bind the authorities for ever to continue granting such licences, even when they come to the conclusion that their former policy ought to be changed?

In both of the above-mentioned cases the petitioners had bought a truck from a person who used it for the transportation of passengers by virtue of a licence issued by the licensing Department of the respondent Ministry, but the licence was not renewed for the petitioners. They considered the refusal as discriminatory and, on applying to the High Court of Justice, were granted an order *nisi* against the respondents, to show cause why the latter should not confirm the transfer of the licence for the transportation of passengers or provide the petitioners with a new licence for the same purpose.

The respondents explained that until a few years ago they had been quite liberal in issuing licences for the transport of passengers in trucks but in recent years had changed this policy and had not renewed licences except where the truck had changed hands before a certain date.

The Court stressed that there was no magic in the word "policy", so as to open for the authorities the door to innovations according to every whim; they ought to be able to explain to the Court the data on which their policy was based. In the first case, however, the petitioner had complained only of discrimination, so that the reasonableness of the new policy as such was not in issue. Since the respondents' explanation showed that the refusal to renew the licence was based on a new but general principle, the allegation of discrimination was refuted and the order *nisi* had to be discharged.

In the second case it turned out that the Ministry had not at all times enforced its new policy with equal consistency. There was a period after its introduction when exceptions were made in favour of persons who had bought trucks from holders of licences for passenger transportation,

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[28] (1967) 21 *Piskei-Din*, II. 204 at pp. 211-213; excerpts: *Jerusalem Post*, 21 September 1967.

[29] (1967) *Piskei-Din*, I. 334.

[30] (1967) *Piskei-Din*, II. 710.

particularly in the case of a large Arab village, several of whose inhabitants made a living out of conveying labourers to and from town. The question arose what exactly was that period of temporary relaxation and whether it comprised the time when the present petitioners had applied for their licence. The Court found as a fact that the Ministry had fixed the date of a return to the strict observance of the new policy more than six months *post factum.*

Per Halevy, J.:[31]

"Were the respondents at liberty to distinguish in their policy between an applicant who had acquired his vehicle before October 1965 and one who acquired it in the first half of November 1965? It seems to me that the respondents were entitled to change their policy from any date onwards, but not backwards. In light of the fact we cannot accept their contention that their policy as such never changed and that all that happened in October 1965 was a single exception concerning pre-October 1965 purchases.... The distinction between vehicles acquired before and after the beginning of October 1965 was not created before the second part of 1966 and did not exist [at the time of the petitioners' application]. The formulation of the final policy as it appears in... the affidavit in reply, that is to say, that all depends on the date of purchase of the vehicle, contains some arbitrary innovation in respect of the past. During the first half of November 1965... the new policy had not yet been firmly re-established. The petitioners acquired their truck during a period of no policy or of a deficient policy; thus their application could not be rejected for reasons of policy."

8. Protection of the Family and of Dependent Children—Consideration Pertinent for Adoption

Unnamed Adopters v. *Attorney General*[32]

(In the Supreme Court sitting as a Court of Appeal. Judgement of 24 October 1967.)

The appellants wished to adopt their daughter's children who had been living with them for years, ever since she had been widowed and had married again. The children 10 and 13 years of age as well as their mother consented to the proposed adoption; the welfare officer's report was generally favourable; nevertheless she advised against the adoption and the court below rejected the application, because the grandfather hoped to obtain thereby family allowances, tax reductions and on retiring from work a higher pension. It also became known that the grandfather's employer, a large semi-public enterprise, offered to contribute to the boys' education if he would be allowed to adopt them.

The Supreme Court reversed the decision and made the adoption order prayed for. The following excerpts from the judgement[33] throw some light on the approach of the Court to matters of adoption in general.

"The learned District Court judge was not convinced that the financial benefits which were to accrue to the petitioners from the making of the adoption order, are 'essential for the minors'. On the other hand he apprehended from the making of an adoption order for material ends and from purely material considerations a 'negative influence on the minors education',... agree that the improvement of the applicants' financial position is not 'essential' for the welfare of the children: even without them they enjoy at the hands of the applicants all those material benefits which good and devoted parents bestow on their children. But I fail to see why the adoption should have a negative influence on them. On the contrary—all indications point at a positive influence to be expected from the legalization of the position which exists in fact and which the children wish to exist; while the refusal to legalize it, and an express disapproval by the court of the relations which actually exist between the children and the petitioners, may well have a negative educational effect.

"It is not without reason that the Law instructs the court 'where the adoptee is able to understand the matter' first to make sure whether or not he desires to be adopted. We have found that these boys... are both able to understand the matter and indeed understand it quite well with all its pros and contras...; they appear to attach the greatest importance to the recognition of that family home which they found after the break-up of their natural parents' home, so that they have legally recognized parents like other children. As against this important aspect no importance attaches to the fact that recognition by the court may entitle the adopters to an enlarged income—just as it would be of no importance if such recognition would lead to a diminution of income.

"... The motives [of the adopters], even though materialistic, are by no means improper; they do not constitute a consideration for the decision on the application in one or another sense. The application... is to be decided upon exclusively from the aspect of the welfare of the children..."

9. Expropriation and Compensation

Tel Aviv-Yaffo v. *Abu Dayak*[34]

(In the Supreme Court sitting as a Court of Civil Appeals. Judgement of 16 November 1966.)

While the Covenants on Human Rights are silent on matters of ownership and article 17 of the Universal Declaration does not expressly speak of compensation for compulsory purchase of property, the Israel Supreme Court shows a tendency to view compensation as a "basic right".

[31] (1967) *Piskei-Din,* II. 710 at pp. 716-17.

[32] (1967) 21 *Piskei-Din,* II. 403.

[33] *Ibid,* at pp. 405, 406.

[34] (1966) 20 *Piskei-Din,* IV. 522. See Elman, Compulsory Acquisition in Israel Law: (1968) 17 *International and Comparative Law Quarterly Review,* 215.

The above judgement is remarkable for revealing the mutual influence of the judiciary, the legislative and legal science.

The main law on the subject, the Land (Acquisition for Public Purposes) Ordinance 1943, recognizes the principle of compensation but permits "gratuitous expropriation" of one quarter of a piece of land for purposes of road construction; similar provisions are contained in some special laws, e.g. on town planning. Criticism by the Supreme Court[35] had already induced the legislature to prevent excessive use of the right of gratuitous expropriation.[36]

In the instant case the question arose whether the right of compensation is subject to the general rules of prescription. The Court came to the conclusion that those rules apply to civil debts and not to compensation for compulsory purchase. Part of the Court's reasoning was based on the universal and fundamental character of the right of compensation. Relying on Professor Mann's study *Outlines of a History of Expropriation*[37] the Court traced the recognition of a kind of "basic right" to compensation for property acquired for public purposes in European as well as in Anglo-American laws; but it added also Jewish sources from medieval Spain as well as Ottoman 19th century legislation. The Court summed up its conclusions as follows:

> "... not only does the right to compensation bear to-day a universal character ... but it also carries the status, or almost so, of a fundamental right irrespective of its being tied to any constitutional provision that vests it with such status, and even though in some places it is recognized by (ordinary) statute alone.[38]

In Israel, where the legislature is not "tied to any constitutional provisions", a somewhat elastic régime prevails. The Planning and Building Law 1965[39] on the one hand enlarges the possibility of gratuitous expropriation, but on the other hand forbids expropriation, gratuitous or otherwise, at all, if the value of the remainder were to decrease as a consequence thereof. This restriction was not known under the previous law. Moreover, under the old and the new law the Minister of the Interior has power to order the Local Planning and Building Commission to pay compensation in cases of hardship. Here again the mutual influence of statute and judge-made law comes into play. For the Supreme Court had already pronounced in the following terms on such powers:

> "This discretionary power is not one that the competent authority may or may not exercise, according to whim; it is a power on which fundamental rights of the citizen are depending, because it is the only safeguard provided by the legislator against expropriation without compensation."[40]

Elastic arrangements were considered necessary, among other reasons, because acquisition of land for development purposes is often a boon rather than a loss for the owner of the remaining part of the same property, and the justification of payment can be judged only according to the circumstances of the case; but the precedent quoted heretofore shows clearly when and how the "discretion" is to be exercised.

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[35] See *Yearbook on Human Rights for 1961*, p. 186.

[36] See *Yearbook on Human Rights for 1964*, p. 150, No. 8; *Secretary-General's triennial report on civil and political rights* (1 January 1963—30 June 1965) E/CN. 4/892/Add. 21, p. 4, No. 3.

[37] (1959) 75 *Law Quarterly Review*, 188.

[38] (1966) 20 *Piskei-Din*, IV. 522 at 546.

[39] For an English translation see Gouldman, *Legal Aspects of Town Planning in Israel* (Jerusalem 1966).

[40] *Biderman* v. *Minister of Communications* (1961) 15 *Piskei-Din*, II. 1681 at 1690; *Yearbook on Human Rights for 1961*, pp. 186, 187.

ITALY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS IN 1967 [1]

In 1967, two important provisions concerning the crime of genocide, one of constitutional and the other of ordinary law, were adopted to give effect to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

The Chamber of Deputies and the Senate of the Republic approved Constitutional Act No. 1 of 21 June 1967 (*Gazzetta Ufficiale,* No. 164 of 3 July 1967), promulgated by the President of the Republic, which introduces an amendment to the Constitution permitting extradition for crimes of genocide. The "sole article" of which the Act consists reads as follows: "The last paragraph of article 10 and the last paragraph of article 26 of the Constitution shall not apply to crimes of genocide . . . ". The two paragraphs of the Constitution referred to prohibit, respectively, the extradition of aliens and citizens "for political offences". With this Constitutional Act, Italy has conformed to the provision of article VII of the Convention on the Prevention of Genocide, approved on 9 December 1948 by the United Nations General Assembly.

Subsequently, by Act No. 962 of 9 October 1967 (*Gazetta Ufficiale,* No. 272 of 30 October 1967), a series of regulations was issued concerning the prevention and punishment of the crime of genocide.

Italy had already acceded, in March 1952, to the Convention on the Prevention and Repression of the Crime of Genocide,[2] but had not yet issued the necessary regulations to give effect to it, as required by article V of the Convention. This omission was rectified by the aforementioned Act. In the report submitted to the Senate together with the draft Act, "genocide, or even attempted genocide or incitement to genocide" was described as "a shameful act of war which mankind cannot permit but must prevent and punish adequately". It should be pointed out that the Act recently promulgated in Italy covers, in addition to the cases indicated in the Convention, the crime of deportation, which is not explicitly dealt with in the Convention and which, to cite the aforementioned report, "must be included because deportation is in fact one of the most frequently used methods of committing genocide. No one can fail to recognize the exceptional gravity of the crime of genocide, which cannot be regarded as a common crime to be punished with common penalties. It is not a crime against interests and rights within a nation, but against international law, against the conscience of mankind, against every elementary notion of liberty in the true sense of the term."

Article 1 of the Act of 9 October 1967 deals with the most serious cases of genocide: "Anyone who, with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such, commits acts designed to cause serious bodily harm to members of the group shall be liable to rigorous imprisonment (*reclusione*) for a term of ten to eighteen years. Anyone who, with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such, commits acts designed to cause the death of or very serious bodily harm to members of the group, shall be liable to rigorous imprisonment for a term of twenty-four to thirty years. The same penalty shall apply to anyone who, with the same intent, subjects members of the group to conditions of life calculated to bring about in whole or in part, the physical destruction of the group."

Article 2 provides a penalty of rigorous imprisonment for a term of fifteen to twenty-four years for the deportation, with intent to commit genocide, of members of a national, ethnical, racial or religious groups. The penalty of rigorous imprisonment for life (*ergastolo*) becomes applicable (article 3) if any of the acts mentioned in

[1] Note prepared by Dr. Maria Vismara, Director of Studies and Publications of the Italian Association for the United Nations, Chief Editor of *La Communità Internazionale*, a publication of that Association, and government-appointed correspondent of the *Yearbook on Human Rights*. Translation by the United Nations Secretariat.

[2] See *Yearbook on Human Rights for 1952*, p. 158.

the two previous articles results in the death of one or more persons. Article 4 deals with the crime of genocide by the limitation of births within one of the aforementioned groups, which is punishable with rigorous imprisonment for a term of twelve to twenty-one years. Genocide by the abduction of children under fourteen years of age belonging to one of the groups in question (article 5) is punishable with rigorous imprisonment for a term of twelve to twenty-one years.

Article 6 deals with the offence of compelling people to carry distinctive marks or signs indicating membership of the persecuted community, which is punishable with imprisonment for a term of four to ten years, the penalty being increased to imprisonment for twelve to twenty-one years when the offence is committed with intent to bring about the destruction of the group in whole or in part. Lesser penalties (rigorous imprisonment for terms of three months to one year) are applicable under article 7 to anyone who enters into a conspiracy to commit any of the crimes of genocide enumerated in the Act, even if the crime is not committed. The promoters of such a conspiracy are liable to heavier penalties. Under article 8, public incitement to commit the specified crimes of genocide and public defence of such crimes are punishable with rigorous imprisonment for a term of three to twelve years. Jurisdiction to try the crimes enumerated in the Act (article 9), whether actually committed or only attempted, belongs to the Assize Court.

Under resolution S/232, approved on 16 December 1966, the United Nations Security Council adopted a number of economic sanctions against Southern Rhodesia, where in November 1965 a régime claiming dominion over the indigenous inhabitants was installed by unilateral declaration of independence from the United Kingdom. In pursuance of that resolution, the Italian Government promulgated Decree No. 222 of 24 April 1967 (*Gazzetta Ufficiale,* No. 106 of 28 April 1967, introducing Regulations for the Prohibition of Economic Relations with Southern Rhodesia. The Decree was made a formal law by Act No. 457 of 22 June 1967, sole article (*Gazzetta Ufficiale,* No. 160 of 27 June 1967.)

It should be pointed out here that the policies of the racist and illegal régime in power in Southern Rhodesia were considered by the United Nations General Assembly to constitute "a crime against humanity" (resolution 2262 (XXII) operative paragraph 2), and that the Assembly has on several occasions, in its resolutions concerning Southern Rhodesia, affirmed the legitimacy of the struggle which the indigenous inhabitants of that Territory are waging to obtain the rights set forth in the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples (see, e.g., resolution 2022 (XX)). In the report to the Chamber of Deputies introducing the Bill for the formal enactment of the Decree, it was stated that the Italian Government had decided to impose sanctions against Southern Rhodesia on the basis of Article 25 of the Charter of the United Nations "in deference to the obligations it had assumed, and in conformity with its policy of support for the movement initiated by the United Nations to bring to independence those countries which do not yet enjoy it...".

The Act concerning sanctions against Southern Rhodesia covers all the prohibitions laid down by Security Council resolution 232 and incorporates in an organic whole all the measures adopted to give effect to that resolution. Article 1 lists the products which may not be imported from or exported to Southern Rhodesia and all the economic and financial operations which may not be carried out in respect of that Territory; the same article also declares void any contracts relating to the prohibited operations, even if they were entered into before the date on which the Decree came into effect; the execution of such contracts must therefore be discontinued. Only one exception is made; for shipment contracts whose execution was begun before the date on which the Decree went into effect these being understood to be limited to shipments already under way on the said date. The prohibitions set forth apply to anyone operating in the territory of the Italian Republic and to Italian citizens or corporations.

Article 2 lays down the penalties applicable to persons (including citizens operating outside the national territory) offending against these prohibitions: rigorous imprisonment for a term of not more than two years and a fine of not more than four times the value of the economic operation in question.

Of particular interest in connexion with the implementation of the principle of freedom of movement set forth in article 13 (2) of the Universal Declaration, is Act No. 1185 of 21 November 1967 (*Gazzetta Ufficiale,* No. 314 of 18 December 1967), introducing Regulations concerning passports. With this Act, it was the intention of the legislative body to lay down up-to-date and consistent organic rules covering all matters connected with the issue of passports for travel abroad, bringing them into line with constitutional principles, in particular articles 16 and 35 of the Constitution.[3] (Report to the Senate.)

Article 1 of the Act provides that "every citizen is free, subject to compliance with legal obligations, to leave the territory of the Republic, using a passport or a document of equivalent validity under the laws in force, and to re-enter". Under article 2, passports are valid for all countries whose Governments are recognized by the Italian Government, with the exception laid down in the Act to cover special circumstances or to ensure the protection of migrant workers (considerations of international, internal or State security, cases where the life, freedom, economic interests or health of citizens might be in grave danger in certain countries; article 9). At the request of

[3] Article 16 of the Constitution: "... Every citizen is free to leave the territory of the Republic and to re-enter, subject to compliance with legal obligations."

Article 35 of the Constitution: "The Republic ... recognizes freedom of emigration, subject to the requirements specified by the law in the general interest, and it protects Italian labour abroad."

the person concerned, a passport may be validated for individual countries whose Governments are not recognized.

Article 3 lists the personal circumstances on the basis of which the competent authorities have the right to deny a passport on specific grounds of a criminal, social or military nature. The list is limitative. Under this article, passports may not be issued: (*a*) to persons subject to paternal authority or guardianship or entrusted to the care of another person, unless they have the authorization of the person exercising authority or, failing that, of the guardianship judge; (*b*) to parents with minor children who do not obtain the authorization of the guardianship judge, unless the applicant has the assent of the other legitimate parent, such parent not being legally separated from the applicant and residing in the territory of the Republic; (*c*) to any person against whom a provisional warrant of arrest has been issued or against whom criminal proceedings are pending in respect of a crime for which a final warrant of arrest has been granted, save with the authorization of the judicial authorities and subject to certain exceptions . . . ; (*d*) to persons required to serve a sentence of deprivation of liberty or to pay a fine, save in the latter case, with the authorization of the judicial authorities; (*e*) to persons subject to precautionary, restrictive or preventive measures . . . ; (*f*) to persons liable to compulsory military service or subject to special military obligations . . . ; (*g*) to persons residing abroad who apply for a passport after 1 January of the year in which they reach the age of twenty and who have not regularized their position in respect of the duty of military service.

The subsequent articles lay down regulations designed to facilitate the procurement of passports, set out the procedure for appeal against the denial or withdrawal of a passport and specify the content and format of ordinary individual passports (maximum validity, five years) and special passports (collective, for groups of five to fifty persons). Regulations for diplomatic and service passports are to be issued within six months from the date of publication of the Act.

Penalties are provided for persons leaving the territory of the State without holding a passport or equivalent document. No changes are made with regard to the movement and residence of citizens of States members of the European Economic Community (cf. Decree of the President of the Republic No. 1656 of 30 December 1965).

General regulations for the employment of minors, incorporating, completing and extending those already in force, were introduced by Act No. 977 of 17 October 1967 (*Gazzetta Ufficiale*, No. 276 of 6 November 1967), Protection of the Employment of Children and Adolescents. The Act is designed primarily to ensure that employed minors, in accordance with the second and third paragraphs of article 37 of the Constitution,[4] receive protection fully corresponding to the rapid economic and technological progress recently achieved. It is also designed to bring domestic legislation more into line with the international commitments entered into by Italy, in particular, by the ratification of the ILO Conventions concerning the age for admission of children to employment in agriculture (No. 10), the restriction of night work of children and young persons employed in industry (No. 90) and in non-industrial occupations (No. 79), medical examination for fitness for employment of children and young persons in industry (No. 77) and non-industrial occupations (No. 78), and the weekly rest (No. 14). Lastly, and of particular importance, Act No. 977 was intended by the legislative body to curb the evasions which, despite the increased vigilance of the Labour Inspectors, have become particularly frequent in recent times, and which have their roots mainly in the state of economic depression which still exists in certain parts of Italy. Obviously, this recent Act does not claim to solve so great a problem, but it is essentially designed to widen the sphere of protection of minors and to ensure the most scrupulous observance of the law. (Report to the Senate.)

The Act extends the scope of the protection of employed minors by including certain previously excluded categories. The exclusions still retained concern certain categories of workers whose relations with their employers are governed by special regulations, such as persons employed on board ship and persons employed in State, Regional, Provincial or Communal offices or concerns. The Act applies in part to domestic workers and to persons working at home.

Apart from these exceptions, the new Act deals (articles 1 and 2) with the employment of children (under fifteen years of age) and young persons (between fifteen and eighteen years of age). The requirements regarding age and education are set out in articles 3 to 7: the minimum age for employment, even in the case of apprentices, is fixed at fifteen years, or in agriculture and domestic service fourteen years, subject to the requirements of health and compulsory school attendance. In non-industrial employment, children of fourteen years of age may be employed on light work, subject to the requirements of health and compulsory school attendance, and provided that they are not employed at might or on official holidays. Special authorizations and safeguards are required in the case of children and young persons employed in theatrical and cinematographic performances. Children and young persons under sixteen years of age and women under eighteen years of age may not be employed on dangerous, tiring or unhealthy work, nor on cleaning or servicing engines and transmission gear of machines while in operation. There are other restrictions relating to itinerant occupations, underground work, lifting and hauling weights on hand-carts (except within certain limits specified in article 14), open-cast mining work in quarries, mines and peat-bogs,

[4] Article 37 of the Constitution: ". . .The law shall specify the minimum age for paid employment. "The Republic shall protect the employment of minors by special regulations and guarantee them the right to equal pay for equal work."

and furnace-room loading and unloading in the Sicilian sulphur mines, employment in cinemas, moving and hauling wagons, and the retail sale of alcoholic beverages. Children and young persons must be employed in satisfactory working conditions ensuring their health, physical development and good morals.

Articles 8 to 13 provide for preventive and periodical medical examinations, adapting the regulations already in force concerning medical examinations for fitness for employment to the new requirements concerning the employment of minors and the principles laid down in ILO Conventions Nos. 77 and 78. Articles 15 to 17 deal with night work. Children and young persons may not be employed on night work (night hours being defined as 10 p.m. to 6 a.m. for children under sixteen, or 5 a.m. for children over sixteen years of age, or 10 p.m. to 8 a.m. for children liable to compulsory school attendance). Working hours (articles 18 and 19) may not exceed seven a day and thirty-five a week for children not liable to compulsory school attendance, and eight hours a day and forty hours a week for young persons. A rest interval must be provided (articles 20 and 21) after more than four and a half hours of work; in the case of dangerous and heavy work, the Labour Inspector may order a rest period after three hours of work. The weekly rest (article 22) is governed by the relevant regulations in force; in any event, minors must be given a continuous rest period of twenty-four hours from Saturday midnight. There must be an annual holiday (article 23) of not less than thirty days for children under sixteen years of age and twenty days for those aged sixteen or more. Children of any age, even if employed in contravention of the minimum age regulations under this Act, have the right (article 24) to the insurance benefits provided by the regulations in force concerning compulsory social insurance.

Children of fourteen years of age may be permitted by the Employment Office to attend vocational training courses providing a first introduction to work (article 25). Article 26 lays down monetary penalties for breaches of the Act; these are higher than in the past, in order to provide a more effective deterrent to evasions of the regulations for the protection of employed children and young persons. Responsibility for supervising the implementation of the Act (article 29) is assigned to the Ministry of Labour and Social Security, acting through the Labour Inspectorate, except in matters which are the responsibility of the police.

On the question of social security (Universal Declaration, article 25 (1)), legislative measures have been promulgated with a view to consolidating the vast body of regulations already in force and filling some gaps in the system.

Of particular importance is Act No. 658 of 27 July 1967 (*Gazzetta Ufficiale,* No. 199, *Supplemento ordinario,* of 9 August 1967), concerning the reorganization of social security for seamen. The Act consists of 101 articles, sub-divided into a " general section" and three "chapters" concerning, respectively, the seamen's administration, the special administration, and some general regulations relating to the two aforementioned administrations. The aim of this Act was to provide an organic solution to the urgent problem of reforming the system of social security for seamen, which no longer corresponded, in its technical and financial structure and the methods it provided for the calculation of benefits, to the requirements of social security protection for seafaring workers.

Agricultural workers have been dealt with in two legislative measures, one designed to remove the last traces of the past differentiation between self-employed workers and employees with regard to social security protection and welfare, and the other designed to extend the benefit of sickness insurance to agricultural pensioners and to the unemployed:

Act No. 585 of 14 July 1967 (*Gazzetta Ufficiale,* No. 189 of 29 July 1967), which provided for the extension of family allowances to small-holders (*coltivatori diretti*), share-croppers (*mezzadri*), tenant farmers (*coloni*) and family co-participants, is based on the principle that "the extension to self-employed workers in the agricultural sector of the system of family allowances" is "an instrument for the equalization and redistribution of the income produced by the labour of all and as a measure of high social justice which has established itself widely as a conquest of the world of labour". (Report to the Senate.)

Act No. 369 of 29 May 1967 (*Gazzetta Ufficiale,* No. 146 of 13 June 1967) concerns sickness benefits for pensioners in the categories of tenant farmer (*coloni*), share-cropper (*mezzadri*) and small-holder (*coltivatori diretti*) and for unemployed workers and workers suspended from employment. The purpose of this Act is to fill the gap in existing welfare services both for the categories of pensioners listed, in relation to other categories of pensioners, and for unemployed or suspended workers, by ensuring them full medical treatment in the event of illness.

II

TREATIES AND CONVENTIONS RELATING TO HUMAN RIGHTS WHICH BECAME OPERATIVE IN ITALY IN 1967

Convention on the Political Rights of Women, adopted at New York on 31 March 1953. Accession to this Convention was authorized and given effect by Act No. 326 of 24 April 1967 (*Gazzetta Ufficiale,* No. 136 of 1 June 1967).

By Act No. 344 of 24 April 1967 (*Gazzetta Ufficiale,* No. 140 of 7 June 1967) accession was authorized to the following Conventions adopted by the International Commission on Civil Status:

Convention concerning the issue of certain extracts from civil status records to be sent abroad, signed at Paris on 27 September 1956;

Convention concerning the free issue and exemption from legalization of civil status

records, and appendix, signed at Luxembourg on 26 September 1957;

Convention concerning the international exchange of information on civil status, signed at Istanbul on 4 September 1958;

Convention concerning the changing of first names and surnames, signed at Istanbul on 4 September 1958;

The same Act authorized the ratification of the following Conventions adopted by the International Commission on Civil Status:

Convention extending the competence of the authorities qualified to register the recognition of illegitimate children, signed at Rome on 14 September 1961;

Convention concerning the recognition of the maternal filiation of illegitimate children, signed at Brussels on 12 September 1962.

The same Act gave effect to the six Conventions mentioned above.

ILO Convention No. 105 concerning the Abolition of Forced Labour, adopted at Geneva on 25 June 1957. Ratified and given effect by Act No. 447 of 24 April 1967 (*Gazzetta Ufficiale,* No. 158 of 26 June 1967).

Protocol No. 5 amending articles 22 and 40 of the European Convention on Human Rights and Fundamental Freedoms, adopted at Strasbourg on 20 January 1966. Ratified and given effect by Act No. 448 of 19 May 1967 (*Gazzetta Ufficiale,* No. 158 of 26 June 1967).

Convention concerning the exchange of information on the acquisition of nationality, signed at Paris on 10 September 1964. Ratified and given effect by Act No. 465 of 11 June 1967 (*Gazzetta Ufficiale*, No. 162 of 30 June 1967).

III

In decision No. 114, dated 26 June 1967, the Constitutional Court reaffirmed both the right to freedom of peaceful association and the right to individual property set forth in articles 20 and 17 respectively of the Universal Declaration. (It is interesting to note that this decision confirms, *inter alia,* the principle that not only laws antedating the Constitution, but also, in certain cases, laws which have been abrogated are subject to the test of constitutionality.)

The Court of Cassation—in the course of civil proceedings before the joint civil divisions of the Court, between the Trades Council of Sannicandro Garganico and Mrs. A.F., on the one hand, and the State Treasury Department on the other—had, in an order dated 20 January 1966, raised the question of the constitutionality of articles 215 and 210 of the consolidated text of the Public Security Laws (promulgated by royal decrees in 1926 and 1931 respectively), in the light of articles 18 and 42 of the Constitution.

Article 215 of the consolidated text of 1926 recognized the competence of the Prefect to "decree the dissolution of associations, organizations and institutions constituted or operating in the Kingdom which carry out any activity contrary to the national order of the State", and, at the same time to order "the confiscation of the property of such bodies". The same rule is laid down in the aforementioned article 210 of the consolidated text of 1931, with the single difference that the legal interest protected is no longer "the national order of the State", but that resulting from "the political institutions of the State".

The case which gave rise to the proceedings was the following: the Prefect of Foggia, in a decree dated 14 May 1928 promulgated under the aforementioned article 215 of the consolidated text of 1926, announced the dissolution of a workers association which had been formed under the title of the Trades Council of Sannicandro Garganico, on the ground that it had carried out activities contrary to the national order, and consequently also ordered the "confiscation" of a building erected by the association which had been used under the name of "*Casa del Popolo*", for meetings of its members. Under the prefectoral decree, the "*former Casa del Popolo*" was transferred to the public domain. Subsequently, on 1 January 1948, the building was occupied by the local Trades Council. On 10 September 1954, however, the Treasury Department instituted proceedings against the Trades Council before the Court at Bari, petitioning the Court to order the association to leave the building.

The Trades Council pleaded that the building had been erected on land owned by Mr. D.F., who had acquired the property by inheritance, and whose heir, Mrs. A.F., now appeared in his place. In a decision dated 6 July 1960, the Court declared the intervention of the heir inadmissible and granted the Treasury Department's petition. The Court's decision was upheld by the Bari Court of Appeal, in a judgement handed down on 4 May 1962 without examining the challenge to the constitutionality of article 215 raised by the Trades Council of Sannicandro in the court of original jurisdiction.

By order dated January 1966, the Court of Cassation stated that the power conferred on the Prefect by the two challenged regulations did not appear to be "easily reconcilable" either with article 18 of the Constitution, which affirmed the right of citizens "to associate freely, without authorization, for any purposes not prohibited to individuals by criminal law", or with article 42 of the Constitution, under which "private property is recognized and guaranteed by law" and which permits expropriation only "in the general interest" and "subject to compensation". The confiscation permitted under the two challenged articles of law, the Court of Cassation held, was in the nature "of a political and administrative sanction designed to restrain the activities of associations after their dissolution and consequently to impede the freedom of association recognized and guaranteed under article 18 of the Constitution". The Court of Cassation further rejected the Administration's contention that no constitutional challenge could be raised against provisions of an ordinance which had already had their effect and had been executed under an

earlier constitutional order and whose legitimacy was therefore unquestionable. That contention, the Supreme Court pointed out in its decree, had on more than one occasion been rejected by the Constitutional Court, which had declared that not only laws promulgated before the entry into force of the Constitution but also laws which had been abrogated were subject to the test of constitutionality, where there persisted situations which were of sufficient importance constitutionally to justify the application of that test.

The State Advocate's Office—representing and defending the Ministry of Finance, which entered an appearence—confined itself, in the arguments which it presented in the constitutionality proceedings, to certain considerations; it did not propose its own conclusions, declaring that it "deferred to the justice of the Court".

The Constitutional Court, declaring itself substantially in agreement with the Court of Cassation—which had rejected the plea that questions of constitutionality could not be raised in connexion with regulations which had had their effects during a period in which, under a different constitutional order, the legality of the regulations themselves could not be called in question—declared that the challenge was well-founded.

Since the two contested the regulations, the Constitutional Court used the same arguments to demonstrate their unconstitutionality.

The contested regulations—the Court ruled—were issued with the obvious aim of prohibiting the exercise of any activity, by a group of persons, which the Prefect considered contrary "to the national order of the State" or "to the political institutions of the State". It is evident, therefore, that "they are inconsistent with the new constitutional order, with its underlying spirit and with its fundamental principles; and, in particular, with article 18, which guarantees freedom of association and prohibits only secret associations and those which pursue, even indirectly, political aims by means of organizations of a military character.... The aim of the contested regulations was and is to prevent the existence of associations which carry out "any" activity contrary "to the national order" or "to the political institutions of the State". In a free State, however, such as that founded by our Constitution, even the activities of associations which pursue the goal of changing the existing political order are permissible, provided that that goal is pursued democratically, by means of free discussion and without direct or indirect resort to violence."

The Court therefore affirmed that the unconstitutionality of the contested regulations also renders "invalid those provisions which permit the Prefect to order 'the confiscation of the property [of such bodies]'". That was illegal "because, together with the power of dissolution, it necessarily helped to prevent the exercise of the fundamental freedom of association". And it did so to such an extent that even the provision of compensation for the property confiscated would not be sufficient, as in the case under consideration, to render such action legitimate.

For those reasons, the Constitutional Court declared unconstitutional article 215 of the consolidated text of the Public Security Laws, approved by Royal Decree No. 1848 of 6 November 1926, and article 210 of the later consolidated text of the same laws, approved by Royal Decree No. 773 of 18 June 1931.

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The right of every individual, in a position of full equality, to a fair and public hearing by the competent tribunal, proclaimed in article 10 of the Universal Declaration, was confirmed by decision No. 70 of the Constitutional Court, dated 1 June 1967. The case related to a defendant residing abroad.

In an order dated 21 January 1966, the *pretore* of Castiglione dello Stiviere, after allowing an objection entered by defence counsel for Mr. P.P., the accused, cited the first paragraph of article 3 and the second paragraph of article 24 of the Constitution[5] in order to raise the question of the constitutionality of that part of article 177 *bis* of the Code of Criminal Procedure which provides that the formality of serving notice of proceedings on an accused person "shall not suspend or delay the procedings."[6] His point was that an accused person resident abroad would be at an unfair disadvantage and would be handicapped in his defence, since under the contested provision he might, in extreme cases, receive notice of the proceedings against him when the subpoena to appear in court had already been issued or indeed when the preliminary hearing had already been concluded.

The Constitutional Court did not consider that the challenged provision (article 177 *bis* of the Code of Criminal Procedure) violated the first paragraph of article 3 of the Constitution. The provision was in fact legitimate, since residence abroad placed "the accused person in an objectively different situation which, given the principle of territorial jurisdiction, makes it impossible to serve the documents on him in the usual manner

[5] Article 3 of the Constitution, first paragraph: "All citizens are of equal social dignity and are equal before the law, without distinction as to sex, race, language, religion, political opinions or personal and social status."

Article 24 of the Constitution, second paragraph: "The right of defence at every stage and level of juridical proceeding is inviolable."

[6] Code of Criminal Procedure, article 177 *bis*: "If the documents of the case contain exact information on the place of residence abroad of the accused, the *pubblico ministero* or the *pretore* shall communicate to him, by registered letter, notice of the proceedings initiated against him, inviting him to state or elect domicile for service of the documents in the place where the case is to be tried. This formality shall not suspend or delay the proceedings.

"If the residence abroad is not known or if the accused fails to state or elect domicile or if he does so in incomplete or inappropriate form, the judge or the *pubblico ministero* shall issue the decree provided for in article 170.

"The above provisions shall not apply in cases in which the issue of a warrant of arrest is mandatory."

and therefore requires the legislator to make discretionary provision for special procedure permitting the exercise of the right of defence".

In so far as it related to the second paragraph of article 24 of the Constitution, however, the question, the Court held, was "*partially*[7] founded". The Court considered legitimate the part of article 177 *bis* challenged in the order—the part which affirms, in substance, that "an act depending exclusively on the will of the accused person cannot have a negative influence on the course of the proceedings". In point of fact, the Court stated, incontrovertible procedural necessities make it impossible for the investigation and the gathering of evidence to be suspended, with damage to other accused persons, if any, who may even be in custody awaiting trial, pending the election of domicile by the accused person.

On the other hand, the Court pointed out that the notification of proceedings and invitation to elect domicile was not a mere formality, but was designed to produce specific effects, namely, to establish a meeting place in the national territory between the authority instituting the proceedings and the accused person, in order to allow the latter to exercise his right of defence. Since that process might take a long time, because of the distance of the defendant's foreign State of residence, "it is evident that a judge, while suspending the preliminary examination proceedings, cannot, without frustrating the purposes of the notification, *immediately*[8] issue the decree that the accused cannot be traced ... and embark on proceedings at which the accused would have had the right to be present". The Court therefore held that a time-limit must be set in order to "avoid the occurrence, in extreme cases, of the difficulties deplored in the order, to the serious detriment of the right of defence guaranteed by the Constitution". For these reasons, the Constitutional Court declared article 177 *bis* of the Code of Criminal Procedure "unconstitutional in the light of the second paragraph of article 24 of the Constitution, in so far as it permitted the judge to issue the decree" that the accused cannot be traced "before the expiry of an adequate period for his election of domicile".

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The criminal division of the Court of Cassation, in a decision pronounced on 21 April 1967 (*La Giurisprudenza Italiana,* 1968, II, pages 197 *et seq.*; *Il Foro Italiano*, 1968, II, pages 148 *et seq.*), confirmed an important interpretative principle of Act No. 75 of 20 February 1958 (known as the "Merlin Act", from the name of the Senator who introduced it), which laid down measures to prevent the exploitation of the prostitution of others[9] and gave effect to article 4 of the Universal Declaration by eliminating regulated prostitution, the last vestige of servitude still in existence in Italy at that time. According to that principle, which is now undisputed in Italian judicial practice, article 3 of the aforementioned Act does not establish any relationship of equivalence or alternativity between the cases mentioned; consequently, the offences of exploiting and promoting prostitution may conceivably occur concurrently, since the facts which are the substance of the two obviously differ: whereas in the case of exploiting prostitution the aim must necessarily be lucrative, the aim in the case of promoting prostitution must be to facilitate prostitution.

In the case under consideration, the accused woman had been charged with the offences of operating a brothel, promoting the prostitution of others and exploiting the prostitution of others. The original court (the Court of Rimini) found the accused not guilty on the first count, "because the fact does not constitute a crime", and convicted her of the other two offences. In the appeal court, the appellant entered an alternative plea that only the offence of exploiting the prostitution of others should be considered, since it included the offence of promoting prostitution. The Bologna Court of Appeal, in a ruling dated 27 January 1963, decided to regard the two offences as having been committed concurrently.

The Court of Cassation, in the decision which now stands, declared the Appeal Court's ruling correct and in conformity with the traditional practice of the Supreme Court, and therefore upheld the ruling. The Supreme Court based its interpretation of the Act of 20 February 1958 not only on doctrinal arguments, but also on article 81 of the Criminal Code, which provides that if more than one law is violated by a single act or omission, more than one offence is committed (formal concurrence of offences).

It is of particular interest to note in this connexion—reads the decision—that article 3 of the Merlin Act mentions a number of acts, listed in successive sub-paragraphs or in the same sub-paragraph, constituting the prohibited offence —"opening a brothel, recruiting another person to engage in prostitution, incitement to prostitution, promoting or exploiting the prostitution of others", and so on—but does not establish any relationship of equivalence or alternativity between the various cases. Such a relationship must also be excluded in the two cases referred to in article 3 (8) in the phrase "any person who in any way promotes or exploits the prostitution of others". The conjunction "or" is used in the legislative text in a disjunctive sense, separating the two types of offence (promotion and exploitation of the prostitution of others), which are materially distinct and may occur independently of each other, just as they may occur concurrently.

This is confirmed by the fact that other cases which may include an element of promotion and are associated with the latter by a relationship of causality, criminal progression or complexity, are considered separately in other sub-paragraphs of article 3; and each of them may occur concurrently with the offence of exploitation, which is a radically different case because of its materiality, reflected in the disproportionate and ignoble profit

[7] Author's italics.

[8] Author's italics.

[9] See *Yearbook on Human Rights for 1958*, pp. 122-123.

derived by the agent. The offence of exploiting the prostitution of others can occur concurrently with any other offence mentioned in article 3, including not only the offence of promotion as such, without any motive of profit, but also that of operating a brothel, which does not necessarily bring the owner a gain disproportionate to his expenses. Although promotion of the prostitution of others, as such, may occur concurrently with exploitation, it cannot occur concurrently with other variously defined forms of abetting prostitution—such as, for example, operating a brothel, engaging in public procuring, habitual tolerance of prostitution in places open to the public—because it is included in them through absorption, progression, a special relationship, etc.

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* *

The right to freedom of opinion and expression proclaimed in article 19 of the Universal Declaration has been once again confirmed by the Court of Cassation in decision No. 3003 of 21 December 1967 (*Il Foro Italiano,* 1968, I, pages 644 *et seq.*). According to the principle deriving from this decision—which, it may be noted, is consistent with the general trend of Italian legal practice—in the exercise of the right to express one's own opinion, no civil liability is incurred, in the case of a criminal offence causing damage, if there is substantial truth in the facts related and if there is no intent to libel, or in the case of a civil offence, if the facts are true and their disclosure is in the public interest.

The case in question concerned a letter to a newspaper which made a charge of improper negligence on the part of a commercial firm. The managers of the firm (a retail fish shop) issued a summons against the author of the letter, Professor C.B., complaining that the opinions and conclusions he had uttered about their shop were remote from the facts and devoid of objectivity, and that their business had suffered serious damage. They therefore claimed damages. The defendant appeared in court and stated that in writing his letter he had not been motivated by any intent to libel the managers of the shop, but only by the wish to correct an improper situation arising from the poor maintenance of the fish shop, which was located in a building owned by the Commune.

The Court, in a first decision, declared Professor C.B. liable for the injury caused, and in a second decision, after investigating that injury, ordered the defendant to pay a specified sum as damages, together with costs. The defendant appealed against both decisions, calling for the rejection of the claim, while the managers of the shop in their turn lodged a counter-appeal, charging that the damages granted were inadequate.

The Trieste Court of Appeal, in a judgement dated 15 April 1964, set aside the challenged decision, rejecting the claim entered by the managers of the shop and declaring that the costs of both proceedings should be met by the parties. The Court held that Professor C.B.'s action entailed no liability either as a criminal offence causing damage, since the charges made in the letter had proved true and there was no intent whatsoever to libel in the text published, or as a civil offence, since no element of blame could be observed in the behaviour of the author of the letter.

The managers of the shop lodged an appeal with the Court of Cassation, arguing, *inter alia,* that the freedom to report events must be subject to limitations. C.B. lodged a counter-appeal.

In its decision, the Court of Cassation ruled that the objections raised by the appellants against the judgement of the appeal court were unfounded. "The right to express personal views freely in word, in writing or by any other means of communication is guaranteed by article 21 of the Constitution, and on the basis of that right, any person may have recourse to the press to criticize situations, facts and actions. That right cannot be interpreted in an absolute sense, as exempt from any limitation; it has to be exercised in such a way as not to harm the reputation, dignity or prestige of others, and in such a way as to reflect either an intent to serve the interests of the community or the need for the reporting of the facts and circumstances."

The trial court, the decision continued, had examined the letter complained of on the basis of those premises, and had found that the abuses charged were substantially true—so that the Commune had arranged to correct some of them and the managers of the shop others—and that the author of the article had acted not with intent to libel but only for the good and dignity of the city. The trial court had also considered whether, in the case in question, any civil liability resulting from negligence existed, and had decided in the negative, holding that C.B. not even be reproached with negligent or frivolous conduct. Since it had been determined that the author of the article had acted within his rights in reporting to the mayor and to public opinion, by means of the press, facts which were substantially true, in order to remove a serious nuisance detrimental to the dignity of the city and to public health, and that thanks to his action the situation had been corected, it was inconceivable that such liability should attach to Professor C.B.

On those grounds the Supreme Court dismissed the appeal.

JAPAN

NOTE[1]

I. LEGISLATION

1. Basic Register of Residents Law (Law No. 81 of 25 July, 1967)[2]

This Law aims at the promotion of the convenience of residents of a city, town or village (including special wards of Tokyo), and the rationalization of the administrative business of the State and local public entities by establishing the system of basic registers of residents to be kept by the office of the city, town or village, in order to make such registers serve as the basis for handling business concerning residents, such as the public certification of their residential status and their enrolment in the electors' lists, and also to contribute to the simplification of business concerning the notification of residence to the city, town or village office, etc.

As a result of the enforcement of this Law, the enrolment of residents in the electors' lists and the notification to public offices of persons insured under the systems of National Health Insurance and National Pension, all of which used to be handled under different procedures, are now handled by a uniform procedure, and consequently, the people's electoral rights and their rights to receive benefit from social insurance, have become more fully protected.

2. Law for Partial Amendment to the Law for the Welfare of Physically Handicapped (Law No. 113 of 1 August 1967)

While formerly the Law for the Welfare of Physically Handicapped, legislated in 1949, did not go further than prohibiting the State and local public entities, and the people in general from giving discriminatory treatment to physically handicapped persons, this amendment law obligates the State and local public entities to strive for assisting the rehabilitation of physically handicapped persons as well as for enforcing protective measures necessary for their rehabilitation, and it also obligates the people in general to co-operate with physically handicapped persons in their efforts to rehabilitate themselves and to return to society.

This Law also increases facilities for the rehabilitation of and for providing aid to physically handicapped persons, and for establishing a system of consultants and home helpers for physically handicapped persons, and as a result measures for the rehabilitation and protection of physically handicapped persons have become intensified and strengthened.

3. Fundamental Law for Countermeasures to Public Nuisance (Law No. 132 of 3 August 1967)

While on the one hand, pursuant to the high-pitched economic growth of Japan in recent years, the modernization of industrial facilities and the formation of new industrial areas have been in progress at an unexpected speed, on the other hand public nuisance such as air pollution and water contamination, noise, bad smell, etc., occurs in many places. This has been caused by the delay in providing facilities for preventing such nuisance, and also in providing social or public facilities, as well as by the lack of appropriate care as to the location of industry and the methods of the utilization of land. The nuisance has become a menace to the health of the people and their living environments and a serious social problem. In order to eliminate it, the Government has hitherto taken special financial and taxation measures for controlling the sources of air pollution and water contamination, and for promoting the adequate provision of facilities for preventing public nuisance, but it cannot yet be said that satisfactory results have been attained.

The Fundamental Law for Countermeasures to Public Nuisance was legislated for the purpose

[1] Note furnished by Mr. Tsuneo Horiuchi, Director, Civil Liberties Bureau, Ministry of Justice, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] The Residents Registration Law (Law No. 218 of 1941) was superseded by this Law.

of carrying out such countermeasures to public nuisance, which hiberto had been taken individually by various departments, systematically from an over-all standpoint. It provides for general rules for various countermeasures to public nuisance, and makes clear the responsibilities of private enterprises, the State and local public entities for the prevention of public nuisance. By establishing basic measures for the prevention of public nuisance, it aims at protecting the health of the people and at preserving their healthy living environments, while at the same time, such environments are being kept in harmony with the sound development of the national economy.

The gist of this Law, which includes four chapters consisting of 29 articles, is as follows:

Firstly, it makes clear the responsibilities of private enterprises, the State, local public entities and residents for the prevention of public nuisance.

Secondly, it provides for the basic obligation of the Government to stipulate certain standards of sanitary environments of residents in respect of air pollution and water contamination and noise, and provides that the countermeasures to public nuisance should be taken systematically, efficiently and appropriately with a view to securing such standards.

Thirdly, it provides for the measures to be enforced by the State and local public entities and, with respect to certain special areas, it makes clear that plans for preventing public nuisance should be established and be prosecuted with a view to securing the synthetic effect of the said measures.

Besides the above, it provides for the consolidation of the remedial system for the damages caused by public nuisance and for the bearing of expenses and financial measures for the prevention of public nuisance, and also for the establishment of the Public Nuisance Countermeasure Council and the Public Nuisance Countermeasure Deliberative Council as administrative organs for this purpose.

4. Environmental Health Loan Public Corporation Law (Law No. 138 of 19 August 1967)

With a view to improving and promoting the public health, this Law provides for the establishment of the Environment Health Loan Public Corporation as an organ for loaning funds to those businesses which are closely tied to the daily life of the people in respect of environmental health, such as restaurants, tea shops, barber shops, laundries, etc., for raising the level of their sanitary conditions and for promoting the modernization of such businesses in cases where it is difficult for them to raise such funds from ordinary banking agencies.

5. Ratification of International Labour Organisation Convention

Japan ratified on 24 August 1967 the International Labour Organisation Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

6. Ordinance concerning Regular Number of Civil Liberties Commissioners

(Ministry of Justice Ordinance No. 12 of 14 March 1967.)

The Civil Liberties Commissioners, who have the mission of protecting fundamental human rights of the people and of disseminating and promoting the thought of freedoms and human rights, are posted in cities, towns and villages (including special wards of Tokyo). The total number of these Civil Liberties Commissioners had been so fixed by law that only a definite number of Commissioners could be assigned by Ordinance to each city, town or village. However, as much migration of residents had been taking place among cities, the distribution of the numbers of Civil Liberties Commissioners had become unbalanced in relation to the number of residents. Under these circumstances, this Ordinance corrects such imbalance by amending the method of distribution of Civil Liberties Commissioners so that they may fluctuate depending upon the population of respective cities, towns or villages.

II. JUDICIAL DECISIONS

1. *A court decision which held that the person who constructed an illegal building in violation of the Construction Standard Law in a residential area far from the centre of a city and obstructed his neighbours from enjoying sunshine and wind was liable for damages which he inflicted on them by such act (decision of the Tokyo High Court on 26 October 1967).*

In this decision, the court holds that securing sushine and wind in one's house is an interest which one has in one's living, both sunshine and wind being necessary and indispensable for enjoying a comfortable and healthy life, and accordingly legal protection must be given this interest as far as possible, taking into consideration the harmony thereof with other interests protected by law; however, this does not mean that the court has gone so far as to recognize the co-called "right to the enjoyment of sunshine" since it has recognized that only when an act of obstructing a person's right to enjoy sunshine goes beyond the limits of damages to be endured by the person concerned as judged from common sense generally accepted in society, is that act to be considered constituting a tort and illegally obstructing someone's life.

2. *A court decision which held that the freedom of expression guaranteed by the Constitution was applicable to aliens as well, and which stayed the effect of the administrative disposition which had prohibited them from holding a mass demonstration under the Tokyo Metropolitan Public Safety By-law (decision of the Tokyo District Court on 27 November 1967).*

In this case, the Public Safety Commission made a decision whereby it denied an application made to the Commission by a certain organization of aliens for permission to hold a mass demonstration under the Tokyo Metropolitan By-law No. 44 (By-law concerning Assemblies, Demon-

stration Marches and Mass Demonstrations, which is commonly called the "Public Safety By-law"), on the ground that the mass demonstration concerned came under "those cases in which it is clearly recognized that the preservation of public peace will thereby be endangered" as prescribed by the By-law.

As regards the above disposition, the District Court took a very careful attitude towards the restriction of freedom of expression, and denied the decision of the said Commission on the ground of inadequacy of presumptive proof, and further, with respect to the contention of the Commission that the mass demonstration in question would exceed the limits of political activities permitted to aliens, the Court held that the freedom of expression guaranteed by the Constitution should as a matter of course be respected in the case of aliens as well, and it decided to stay the effect of the disposition of the Commission to prohibit the demonstration.

III. MAIN TRENDS

1. System of Civil Liberties Commissioners

The Civil Liberties Commissioners are appointed for all cities, towns and villages throughout the country, and are engaged vigorously in the activities for the protection of human rights in their respective communities. The actual number of the Civil Liberties Commissioners as of 31 December 1967 is 9,198 and the number of female Commissioners among them is 1,004 constituting 11 per cent of all the Commissioners.

The main activities of the Civil Liberties Commissioners in 1967 are illustrated by 3,780 cases of infringement on human rights which they reported to the authorities or investigated, and by 96,398 human rights consultation cases. Besides the above, they freqently held lecture and discussion meetings at public halls, schools, etc., to encourage respect for human rights among the residents of the communities.

2. Human Rights Week

The week from 4 December 1966 ending on Human Rights Day, 10 December of the same year, was designated as "Nineteenth Human Rights Week". During that week, various programmes for the education and publicity regarding respect for human rights were carried out throughout the country.

3. Legal aid system

The achievements in the legal aid business of the Legal Aid Association, which is an incorporated foundation, are annually on the upward trend. The number of cases in which legal aid was applied for in the 1967 fiscal year, was 4,493 of which the Association decided to give legal aid in 1,902 cases.

In the 1967 fiscal year, primary stress was placed on the relief of victims of traffic accidents, and besides giving legal aid positively in such cases, the Association carried out, in various places throughout the country, legal consultation services concerning traffic accidents in co-operation with various other organs concerned.

The subsidy from the National Treasury to the legal aid business, in the 1967 fiscal year, amounted to 85,778,000 yen, the sum being divided into 70,000,000 yen for expenses for aiding the poor in law suits, and 15,778,000 yen for expenses for legal consultation services. This means that there was an increase of 25,778,000 yen compared with the subsidy in the previous fiscal year.

4. Trend of human rights problems

One of the characteristic trends of the human rights problems is that infringements on human rights are becoming large-scale. This may be seen in the number of damages inflicted by the rapid increase of traffic accidents and by exhaust gas from automobiles due to the lavish use of automobiles in recent years, or in the so-called public nuisance by industrial facilities, such as foul water or poisonous gas vomited from factories, mine pollution, etc. The solution of these problems is no longer possible with the efforts of individuals alone; it requires all-round strong measures of the State or local public bodies.

Also, viewed from the cases of human rights violation, about which members of the Diet put questions to the Director of the Civil Liberties Bureau of the Ministry of Justice, many of the human rights problems centred around social, economic or cultural rights. Out of the 20 cases in total questioned by the Diet members, five concerned civil or political rights, and the others were related to social, economic or cultural rights.

The number of human rights violation cases received by the Civil Liberties Bureau of the Ministry of Justice and the Civil Liberties Commissioners throughout the country in 1967 is 9,148, which shows an increase of 401 cases compared with the number of the previous year. Of this number, violations by public servants were 754, and those by private persons 8,394. The fact that the cases of human rights violation among private persons were overwhelmingly many, may demonstrate that, while the people are becoming much more conscious of their rights than before, they are still apt to disregard the rights of others.

The number of cases brought to the attention of human rights consultation services in 1967 was 206,496, of which consultations concerning traffic accidents amounted to 8,391, being on an increasing trend year by year.

5. Preparation for the International Year for Human Rights

For the preparation of commemorative events for the International Year for Human Rights, the Civil Liberties Bureau of the Ministry of Justice sponsored a liaison conference and invited the officials of the Ministries and other government offices concerned at the Prime Minister's Office in April 1967.

According to the results of the above conference, the Ministries and other government offices concerned planned to observe a ceremony in commemoration of the twentieth anniverary of the Universal Declaration of Human Rights and various other commemorative events which would be suitable to the International Year for Human Rights, and called upon various non-governmental organizations positively to participate in these programmes.

The main activities performed in 1967 for the preparation of the commemorative events for the International Year for Human Rights were as follows:

(*a*) The Co-operative Association for the Protection of Human Rights was established as an incorporated foundation for the purpose of assisting the Government, etc., in the organization of commemorative events for the International Year for Human Rights and of contributing to the activation of human rights activities and to the improvement of the system of Civil Liberties Commissioners in Japan.

(*b*) The above Association tried to publicize the International Year for Human Rights by distributing medals commemorative of the International Year for Human Rights.

(*c*) For the purpose of making the International Year for Human Rights widely known to the people, the Ministry of Justice and the National Association of Civil Liberties Commissioners made a numerous number of posters and stickers and displayed them in the offices of the national and local governments, on the streets, and inside buses, taxis, etc.

(*d*) The Prime Minister announced a message on 10 December 1967, i.e. on Human Rights Day, and called upon the people all over the country positively to participate in commemorative events for the International Year for Human Rights.

JORDAN

NOTE [1]

In accordance with its practice in previous years, the Ministry of Social Affairs and Labour has made every endeavour to promote the application of human rights texts and awareness of their significance. The Ministry's departments and institutes co-operated with regional federations of benevolent associations, trade unions and co-operative associations in celebrating Human Rights Day, stressing the importance of human rights, condemning racial discrimination and urging that it be combated in any form. Racial discrimination does not exist in Arab society, because the culture, heritage and religious beliefs rule out the emergence of any kind of racial or religious discrimination.

Moreover, article 6 of the Constitution of the Hashemite Kingdom of Jordan states that all Jordanians are equal before the law and have the same rights and obligations, regardless of differences of race, language or religion. The Constitution also guarantees personal freedoms, freedom of worship and belief, freedom of opinion and the provision of work for all citizens as an obligation of the State.

In addition, article 3 of the Ministry of Social Affairs and Labour Act states that the basic objective of the Ministry is to provide comprehensive social security, ensure production efficiency and co-ordinate social services for all citizens at all stages of life and to organize the exploitation of the country's human resources in the interests of national production. On the basis of these principles the Ministry of Social Affairs and Labour has enacted laws and regulations to ensure prosperity and stability and to provide the fullest possible social services for all citizens without exception and has established numerous institutes for the care, lodging, education and vocational training of infants, young people, the aged, the disabled and the blind.

This Ministry has made great efforts to provide social services for all citizens and has tried to train as many of the indigent and disabled as possible, in order to enable them to become self-reliant and support their families, instead of relying on assistance. The Government and private organizations have co-operated in seeking to raise the level of these services and to perfect and integrate them so as to reach all citizens in urban and remote agricultural and desert areas.

The Government encourages private voluntary efforts in the sphere of social service by the establishment of social institutes and the provision of technical and material aid.

With regard to the social and economic circumstances to which Jordan was exposed following Israel aggression against its territory on 5 June 1967, when Jordanian nationals were rendered homeless—a further 361,000 persons emigrated from the West Bank to the East Bank, in addition to 38,000 emigrants from the Gaza Strip, bringing the total number of those emigrating to the East Bank following the Israel aggression to 399,000—this Ministry has given special attention to the emigrants, especially orphans, young people and the disabled, providing them with all the social and health services it can and endeavouring to accommodate them in its social institutes and foundations. The Ministry has co-operated with private benevolent associations in providing care for abandoned children by placing them either in foster families, which are paid monthly cash grants, or in social institutes or foundations. There are twenty-eight such institutes, eight of them belonging to the Ministry and the remainder to private organizations, and they provide care for over 3,000 children a year. The aim in these institutes is to give the children a sound upbringing which will enable them to participate in building their society. At the same time, the Ministry of Health is making great efforts to provide preventive and curative health and medical services for all citizens and is constantly seeking to expand and improve these services by setting up more clinics, hospitals and maternal and child care centres. The State also provides medical treatment through a co-operative scheme

[1] Note furnished by the Government of Jordan.

for civil servants, their dependents, retired civil servants, employees of private companies and institutions and all persons contributing to the Health Insurance Fund. This scheme provides for free treatment and medicines.

With regard to prison inmates, article 38 of the Prisons Act, No. 23 of 1953, provides as follows:

> "No punishment shall be imposed on a prisoner until he has been given an opportunity to hear the charge and the evidence against him and to make his defence."

This Ministry devotes special attention to prison inmates and gives their dependent families assistance in cash or in kind at the beginning or the end of the prison term. It also cares for the children of male and female prisoners in nurseries and social institutes and foundations or in foster families, organizes recreation and education programmes for prisoners and supplies prisons with books, magazines and radios. Private benevolent associations also participate in providing various forms of assistance to prison inmates and their families. There are no political prisoners in the prisons and prison camps, despite differences in political attitudes and views.

The Government supports the trade-union movement, gives it material aid and acts as a mediator in the amicable settlement of labour disputes. The Labour Act provides protection and safeguards for all workers of both sexes. It lays down fair working conditions and provides for a decent work environment, adequate health and safety precautions and the introduction of an adequate system of insurance against accident, disablement, old age, illness and unemployment and safeguards against oppressive conditions of work. Jordan is a member of the International Labour Organisation and has ratified a number of international conventions.

After the Ministry had completed the social security scheme for civil servants, which entered into effect on 10 April 1966 and proved of obvious value and utility, an urgent need was felt for the preparation of a similar social security scheme for workers in general. The International Labour Organisation, in response to a request from the Ministry, sent an expert for this purpose, who began work on 9 July 1968.

Since the future of the co-operative movement depends on the continuation of State support, this Ministry has done everything in its power to develop and promote the co-operative movement in urban, rural and desert areas. It has given a great deal of attention to labour and consumer co-operatives, with a view to increasing the income and raising the economic and social level of the people.

Desiring to enable persons of limited income to obtain and own suitable accommodation at a price commensurate with their income, the State established the Housing Institute, which has undertaken housing projects for this income group in urban, agricultural and desert areas.

So far as education is concerned, the Education Act is designed to help male and female students alike, physically, mentally and socially, to become citizens with a sense of personal and social responsibility and respect for democratic freedoms and institutions. The Act provides for nine years of compulsory education, during which period the Ministry supplies students with all books free of charge. There are many centres which provide meals for school children, and secondary, advanced and university educational establishments and industrial, agricultural and commercial vocational training facilities are open to all. In addition, the Ministry is engaged on a project of adult education and eradication of illiteracy —which is now in its fourth year—since this is of vital importance for economic and social development.

The Jordanian Government continues strictly to enforce the Abolition of Slavery Act, which came into effect in 1929, and, in support of United Nations resolutions for the combating of policies of racial discrimination, this Ministry celebrates Anti-Discrimination Day on 21 March every year, just as it celebrates the anniversary of the Universal Declaration of Human Rights.

With a view to safeguarding human rights in all parts of the world, and in response to the memorandum of the General Secretariat of the League of Arab States, this Ministry has decided that there is a need to study the question of setting up regional human rights committees, bearing in mind the fact that Jordan has a representative on the International League for the Rights of Man, Mr. Ruks ibn Za'id al-'Azizi.

. . .

KENYA

THE PUBLIC SECURITY (CONTROL OF MOVEMENT) REGULATIONS 1967 [1]

. . .

3. The Minister or any person authorized by him in writing to act under this regulation may, if he considers it expedient for the preservation of public security so to do, by order direct that all members of any one or more of the specified tribes living in any particular area shall do all or any of the following things, that is to say:

(*a*) within a specified period move from the area in which they are living to such other area as may be specified in the order;

(*b*) remain within the limits of such area as may be specified in the order;

(*c*) live in such part (hereafter in these Regulations referred to as a residential part) of the area specified in the order, and remain in such part during such hours or at such times as may be specified in the order.

4. A movement control order may:

(*a*) provide for any absolute or conditional exemptions from the operation of the order or any part thereof;

(*b*) contain such conditions regarding reporting to the police or otherwise as the person making the movement control order may deem expedient;

(*c*) such incidental and supplementary matters as the person making the order may deem expedient.

5. Where a movement control order applies to any person, it shall also apply to his family residing with him, unless the order otherwise expressly provides.

6. A movement control order shall be effective for such period as may be specified therein or, if no period is so specified, until it is revoked.

7. So long as the movement control order is effective, no person affected thereby shall:

(*a*) leave or be outside the area to which he has been ordered to move, or as the case may be, in which he has been ordered to remain;

(*b*) if required thereby to live in a residential part, live elsewhere; or

(*c*) if required thereby to remain in a residential part during specified hours or at specified times, leave or be outside such residential part during such hours or at any such time,

save under and in accordance with the conditions of a permit in writing issued by the Minister or any person authorized by him in writing in that behalf.

8. Any person to whom a movement control order applies and who:

(*a*) fails to comply with the order; or

(*b*) contravenes any condition contained in the order; or

(*c*) contravenes regulation 7 of these Regulations,

shall be guilty of an offence.

9. Any person to whom a movement control order applies and who is at any time outside any area, or is outside a residential part of any area, specified in the order, in contravention of regulation 7 of these Regulations, may be removed to such area or such residential part, as the case may be, by any administrative officer or police officer, and for the purpose of effecting such removal any such officer as aforesaid may detain such person in custody during such removal and for such period as may be necessary to make arrangements for such removal, and may use such force as may be reasonably necessary.

10. Any person who resists or obstructs any administrative officer or police officer in the exercise of his powers under these Regulations or evades or attempts to evade removal under regulation 9 of these Regulations shall be guilty of an offence.

11. These Regulations and any movement control order made thereunder shall have effect notwithstanding anything to the contrary con-

[1] Published as Legal Notice No. 43 in *Kenya Gazette Supplement No. 14*, *Special Issue*, *Legislative Supplement No. 9*, of 21 February 1967.

tained in any other law for the time being in force, and notwithstanding any rights or obligations under any contract to which any person affected by a movement order is a party:

Provided that, where a person affected by a movement order is employed under a subsisting contract of service and as a result of compliance with the movement order is deprived of the benefit of such contract, he shall be entitled to such compensation from the Government as the Minister or any person authorized by him in writing in that behalf may determine to be reasonable, not exceeding the amount which be would (if he had, on the date on which he was deprived of the benefit of the contract, received due notice from his employer to terminate the contract) have earned as wages in cash in such employment during the period of such notice.

12. Any person who is guilty of an offence under these Regulations shall be liable to imprisonment for a term not exceeding two years.

13. Offences under these Regulations shall be cognizable.

. . .

THE CRIMINAL PROCEDURE CODE (AMENDMENT) ACT 1967

Act No. 13 of 1967, assented to on 14 June 1967 and entered into force on 16 June 1967 [2]

. . .

2. There shall be substituted for section 213 of the Criminal Procedure Code (hereinafter referred to as the Code) a new section as follows:

213. The prosecutor or his advocate and the accused and his advocate shall be entitled to address the court in the same manner and order as in a trial under this Code before the High Court.

3. There shall be inserted in the Code, immediately after section 348 thereof, a new section as follows:

348A. When an accused person has been acquitted on a trial held by a subordinate court, or where an order refusing to admit a complaint or formal charge, or an order dismissing a charge, has been made by a subordinate court, the Attorney-General may appeal to the High Court from such acquittal or order on a matter of law.

4. There shall be inserted in the Code, immediately after section 389 thereof, a new section as follows:

389A. (1) Where, by or under any written law (other than section 29 of the Penal Code), any goods or things may be (but are not obliged to be) forfeited by a court, and such law does not provide the procedure by which forfeiture is to be effected, then, if it appears to the court that the goods or things should be forfeited, it shall cause to be served on the person believed to be their owner notice that it will, at a specified time and place, order the goods or things to be forfeited unless good cause to the contrary is shown; and, at that time and place or an any adjournment, the court may order the goods or things to be forfeited unless such cause is shown by the owner or some person interested in the goods or things:

Provided that, where the owner of the goods or things is not known or cannot be found, the notice shall be advertised in a suitable newspaper and in such other manner (if any) as the court thinks fit.

(2) If the court finds that the goods or things belong to some person who was innocent of the offence in connexion with which they may or are to be forfeited and who neither knew nor had reason to believe that the goods or things were being or were to be used in connexion with that offence and exercised all reasonable diligence to prevent their being so used, it shall not order their forfeiture; and where it finds that such a person was partly interested in the goods and things it may order that they be forfeited and sold and that such person shall be paid a fair proportion of the proceeds of sale.

. . .

[2] *Kenya Gazette Supplement No. 47 (Acts No. 7)* of 16 June 1967, printed by the Government Printer, Nairobi.

THE KADHI'S COURT ACT 1967

Act No. 14 of 1967, assented to on 14 June 1967 [3]

...

3. For the purposes of section 179 (1) of the Constitution, there shall be such number of Kadhis, in addition to the Chief Kadhi, as may be prescribed by the President by order, being in any case not less than three and not more than twelve.

4. (1) In pursuance of section 179 (3) of the Constitution of Kenya, there are hereby established six Kadhi's Courts.

...

(3) Each of the Kadhi's Courts shall be a court subordinate to the High Court and shall be duly constituted when held by the Chief Kadhi or a Kadhi.

(4) A Kadhi's Court may be held at any place within the area of jurisdiction of the court.

5. A Kadhi's Court shall have and exercise the following jurisdiction, namely the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion; but nothing in this section shall limit the jurisdiction of the High Court or of any subordinate court in any proceeding which comes before it.

6. The law and rules of evidence to be applied in a Kadhi's Court shall be those applicable under Muslim law:

Provided that:

(i) all witnesses called shall be heard without discrimination on grounds of religion, sex or otherwise;

(ii) each issue of fact shall be decided upon an assessment of the credibility of all the evidence before the court and not upon the number of witnesses who have given evidence;

(iii) no finding, decree or order of the court shall be reversed or altered on appeal or revision on account of the application of the law or rules of evidence applicable in the High Court, unless such application has in fact occasioned a failure of justice.

7. Every Kadhi's Court shall keep such records of proceedings and submit such returns of proceedings to the High Court as the Chief Justice may from time to time direct.

8. (1) The Chief Justice may make rules of court providing for the procedure and practice to be followed in Kadhi's Courts.

(2) Until rules of court are made under subsection (1) of this section, and so far as such rules do not extend, procedure and practice in a Kadhi's Court shall be in accordance with those prescribed for subordinate courts by and under the Civil Procedure Act.

[3] *Kenya Gazette Supplement No. 47 (Acts No. 7)* of 16 June 1967, printed by the Government printer, Nairobi.

THE JUDICATURE ACT 1967

Act No. 16 of 1967, assented to on 4 July 1967 [4]

...

3. (1) The jurisdiction of the High Court and of all subordinate courts shall be exercised in conformity with:

(*a*) the Constitution;

(*b*) subject thereto, all other written laws; including the Acts of Parliament of the United Kingdom cited in Part I of the Schedule of this Act, modified in accordance with Part II of that Schedule;

(*c*) subject thereto and so far as the same do not extend or apply, the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the 12th August 1897, and the procedure and practice observed in courts of Justice in England at that date:

Provided that the said common law, doctrines of equity and statutes of general application shall apply so far only as the circumstances of Kenya

[4] *Kenya Gazette Supplement No. 53 (Acts No. 8), Special Issue*, printed by the Government Printer, Nairobi.

and its inhabitants permit and subject to such qualifications as those circumstances may render necessary.

(2) The High Court and all subordinate courts shall be guided by African customary law in civil cases in which one or more of the parties is subject to it or affected by it, so far as it is applicable and is not repugnant to justice and morality or inconsistent with any written law, and shall decide all such cases according to substantial justice without undue regard to technicalities of procedure and without undue delay.

4. (1) The High Court shall be a court of admiralty, and shall exercise admiralty jurisdiction in all matters arising on the high seas, or in territorial waters, or upon any lake or other navigable inland waters in Kenya.

(2) The admiralty jurisdiction of the High Court shall be exercisable:

(*a*) over and in respect of the same persons, things and matters, and

(*b*) in the same manner and to the same extent, and

(*c*) in accordance with the same procedure,

as in the High Court in England, and shall be exercised in conformity with international laws and the comity of nations.

(3) In the exercise of its admiralty jurisdiction, the High Court may exercise all the powers which it possesses for the purpose of its other civil jurisdiction.

(4) An appeal shall lie from any judgment, order or decision of the High Court in the exercise of its admiralty jurisdiction within the same time and in the same manner as an appeal from a decree of the High Court under Part VII of the Civil Procedure Act.

...

THE MAGISTRATE'S COURTS ACT 1967

Act No. 17 of 1967, assented to on 4 July 1967 [5]

...

Part II

Resident Magistrate's Court

3. (1) There is hereby established the Resident Magistrate's Court, which shall be a court subordinate to the High Court and shall be duly constituted when held by a Senior Resident Magistrate or a Resident Magistrate.

(2) The Resident Magistrate's Court shall have jurisdiction throughout Kenya.

4. The Resident Magistrate's Court shall have and exercise such jurisdiction and powers in proceedings of a criminal nature as are for the time being conferred on it by:

(*a*) the Criminal Procedure Code; or

(*b*) any other written law.

5. Subject to any other written law, the Resident Magistrate's Court shall have and exercise jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter in dispute does not exceed three thousand shillings, or six thousand shillings where the court is held by a Senior Resident Magistrate, except proceedings of the kind referred to in section 10 (1) (*a*) of this Act:

Provided that the Chief Justice may, by notice in the Gazette, increase the limit of jurisdiction of any particular Resident Magistrate or Senior Resident Magistrate to such sum, not exceeding ten thousand shillings, as he may think fit.

Part III

District Magistrates

6. The office of District Magistrate is hereby prescribed, in pursuance of subsection (3) (*g*) of section 185 of the Constitution, as an office to which that section applies.

7. A District Magistrate shall have power to hold a magistrate's court of such class as is designated by the Judicial Service Commission.

Part IV

District Magistrate's Court

8. (1) There is hereby established for each district a District Magistrate's Court, each of which shall be a court subordinate to the High Court and shall be duly constituted when held by a District Magistrate who has been assigned to the district in question by the Judicial Service Commission.

...

9. (1) A District Magistrate's Court shall have and exercise such jurisdiction and powers in proceedings of a criminal nature as are for the time being conferred on District Magistrate's Courts by:

[5] *Kenya Gazette Supplement No. 53 (Acts No. 8), Special Issue*, printed by the Government Printer, Nairobi.

(a) the Criminal Procedure Code; or
(b) an order under subsection (2) of this section; or
(c) any other written law.

(2) The Chief Justice may, by order, empower magistrate's courts of the third class to deal with particular offences in addition to those which such courts may deal with by virtue of paragraphs (a) and (c) of subsection (1) of this section:

Provided that such an order shall not be made unless a draft thereof has been laid before the National Assembly and approved by resolution of the Assembly.

10. (1) A District Magistrate's Court shall have and exercise jurisdiction and powers in proceedings of a civil nature where either:
(a) the proceedings concern a claim under customary law; or
(b) the value of the subject matter in dispute does not exceed one thousand shillings, or two thousand shillings where the court is constituted by a District Magistrate having power to hold a magistrate's court of the first class.

Part V

APPEALS FROM CERTAIN DISTRICT MAGISTRATE'S COURTS

11. (1) Any person who is convicted of an offence on a trial held by a magistrate's court of the third class, or where a person charged with an offence has been acquitted on such a trial the Attorney-General, may appeal against his conviction or sentence, or both, or against the acquittal, as the case may be, to the Resident Magistrate's Court:

Provided that no appeal shall lie in the case of a person who pleaded guilty and was convicted on that plea, except as to the legality or extent of the sentence.

(2) An appeal shall be by way of petition, specifying the grounds of the appeal, and shall be entered within a period of fourteen days after the date of the decision or order appealed against:

Provided that the higher court may for good reason extend the period either before or after it has expired.

12. (1) Any person who is aggrieved by an order of a magistrate's court of the third class made in proceedings of a civil nature may appeal against the order to a magistrate's court of the first class.

(2) An appeal shall be by way of petition, specifying the grounds of the appeal, and shall be entered within a period of twenty-eight days after the date of the order appealed against:

Provided that the higher court may for good reason extend the period either before or after it has expired.

. . .

THE PENAL CODE (AMENDMENT) ACT 1967

Act No. 24 of 1967, assented to on 18 August 1967 and entered into force on 25 August 1967 [6]

. . .

4. There shall be substituted for sections 43 and 44 of the Code three new sections as follows:

43. Any person who, not owing allegiance to the Republic in Kenya or elsewhere commits any act or combination of acts which, if it were committed by a person who owed such allegiance, would amount to the offence of treason under section 40 of this Act, is guilty of a felony and is liable to imprisonment for life.

43A. Any person who, with intent to help the enemy, does any act which is designed or likely to give assistance to the enemy, or to interfere with the maintenance of public order or the Government of Kenya, or to impede the operation of the disciplined forces, or to endanger life, is guilty of a felony and is liable to imprisonment for life.

44. Any person who, without lawful authority, carries on, or makes preparation for carrying on, or aids in or advises the carrying on of, or preparation for, any war or warlike undertaking with, for, by or against any person or body or group of persons in Kenya, is guilty of a felony and is liable to imprisonment for life.

5. There shall be substituted for section 56 of the Code a new section as follows:

56. (1) A seditious intention is an intention:
(a) to overthrow by unlawful means the Government of Kenya as by law established; or
(b) to bring into hatred or contempt or to excite disaffection against the person of

[6] *Kenya Gazette Supplement No. 67 (Acts No. 11)*, of 27 August 1967, printed by the Government Printer, Nairobi.

the President or the Government of Kenya as by law established; or

(*c*) to excite the inhabitants of Kenya to attempt to procure the alteration, otherwise than by lawful means, of any matter or thing in Kenya as by law established; or

(*d*) to bring into hatred or contempt or to excite disaffection against the administration of justice in Kenya; or

(*e*) to raise discontent or disaffection amongst the inhabitants of Kenya; or

(*f*) to promote feelings of ill-will or hostility between different sections or classes of the population of Kenya:

Provided that an intention shall not be taken to be seditious by reason only that it intends:

(i) to show that the Government have been misled or mistaken in any of their measures; or

(ii) to point out errors or defects in the Government of Kenya as by law established or in any written law or in the administration of justice, with a view to the remedying of such errors or defects; or

(iii) to persuade the inhabitants of Kenya to attempt to procure by lawful means the alteration of any matter in Kenya as by law established; or

(iv) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will or hostility between different sections or classes of the population of Kenya,

so long as the intention is not manifested in such a manner as to effect or be likely to effect any of the purposes specified in paragraphs (*a*) to (*f*) inclusive of this subsection.

(2) In determining whether the intention with which any act was done, any words were spoken or any document was published was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and in the circumstances in which he so conducted himself.

(3) A seditious publication is a publication containing any word, sign or visible presentation expressive of a seditious intention.

. . .

THE IMMIGRATION ACT 1967

Act No. 25 of 1967, assented to on 18 August 1967 [7]

. . .

PROHIBITED IMMIGRANTS

3. (1) In this Act, a prohibited immigrant means a person who is not a citizen of Kenya and who is:

(*a*) incapable of supporting himself and his dependants (if any) in Kenya;

(*b*) a mental defective or a person suffering from mental disorder;

(c) a person who:

(i) refuses to submit to examination by a medical practitioner after being required to do so under section II (1) (*d*) of this Act; or

(ii) is certified by a medical practitioner to be suffering from a disease which makes his presence in Kenya undesirable for medical reasons;

(*d*) a person who, not having received a free pardon, has been convicted in any country, including Kenya, of murder or of any offence for which a sentence of imprisonment has been passed for any term and who, by reason of such conviction, is considered by the Minister to be an undesirable immigrant;

(*e*) a prostitute, or a person who is living on or receiving, or who before entering Kenya lived on or received, the proceeds of prostitution;

(*f*) a person who, in consequence of information received from any government or from any other source considered by the Minister to be reliable, is considered by the Minister to be an undesirable immigrant;

(*g*) a person, or a member of a class of persons, whose presence in Kenya is declared by the Minister to be contrary to the national interests;

(*h*) a person who, upon entering or seeking to enter Kenya, fails to produce a valid passport to an immigration officer on demand or within such time as that officer may allow;

(*i*) a person who was, immediately before the commencement of this Act, a prohibited immigrant within the meaning of the former Immigration Act (now repealed) by reason

[7] *Kenya Gazette Supplement No. 68 (Acts No. 12), Special Issue*, of 25 August 1967, printed by the Government Printer, Nairobi.

of paragraph (*f*) or paragraph (*g*) of section 7 (2) of that Act;

(*j*) a person whose presence in or entry into Kenya is unlawful under any written law other than this Act;

(*k*) a person in respect of whom there is in force an order made or deemed to be made under section 8 of this Act directing that such person shall be removed from and remain out of Kenya;

(*l*) a dependant of any of the persons mentioned in the foregoing paragraphs of this subsection.

(2) Subject to subsection (3) of this section, the entry into and presence in Kenya of a prohibited immigrant shall be unlawful, and a person seeking to enter Kenya shall, if he is a prohibited immigrant, be refused permission to enter Kenya, whether or not he is in possession of any document which, were it not for this section, would entitle him to enter Kenya.

(3) An immigration officer may in his discretion issue a prohibited immigrant's pass to a prohibited immigrant, permitting him to enter and remain temporarily in Kenya for such period and subject to such conditions as may be specified in that pass.

ENTRY AND REMOVAL OF IMMIGRANTS

4. (1) Subject to this section, no person who is not a citizen of Kenya shall enter Kenya unless he is in possession of a valid entry permit or a valid pass.

(2) Subject to this section, the presence in Kenya of any person who is not a citizen of Kenya shall, unless otherwise authorized under this Act, be unlawful, unless that person is in possession of a valid entry permit or a valid pass.

(3) This section shall not apply to:

(*a*) the accredited representative to Kenya of the government of any Commonwealth country, and the wife and any child of such representative;

(*b*) the accredited envoy to Kenya of a foreign sovereign State, and the wife and any child of such envoy;

(*c*) a person upon whom the immunities and privileges set out in Part II of the Schedule of the Diplomatic Privileges (Extension) Act have been conferred under that Act, and the wife and any child of any such person;

(*d*) a person upon whom the immunities and privileges set out in Part III of the Schedule of the Diplomatic Privileges (Extension) Act have been conferred under that Act, and the wife and any child of any such person;

(*e*) the accredited diplomatic or consular staff of the persons referred to in paragraphs (*a*) and (*b*) of this subsection, and the wives and any children of any such accredited diplomatic or consular staff;

(*f*) the official staff of the persons referred to in paragraphs (*a*) and (*b*) of this subsection, and the wives and any children of any such official staff;

(*g*) the domestic staff of the persons referred to in paragraphs (*a*), (*b*) and (*c*) of this subsection, and the wives and any children of any such domestic staff;

(*h*) any person, or class or description or persons, exempted by the Minister from the provisions of this section by notice in the Gazette.

(4) Where any person ceases to be a person to whom subsection (3) of this section refers, then, after the expiration of such reasonable period following that cessation as an immigration officer may in his discretion allow for the departure of that person from Kenya, his presence in Kenya shall, unless otherwise authorized under this Act, be unlawful.

. . .

8. (1) The Minister may by order in writing direct that any person whose presence in Kenya was, immediately before the making of that order, unlawful under this Act, or in respect of whom a recommendation has been made to him under section 26A of the Penal Code, shall be removed from and remain out of Kenya either indefinitely or for such period as may be specified in the order.

. . .

ADMINISTRATION, OFFENCES AND LEGAL PROCEEDINGS

10. (1) There shall be such number of immigration officers as may be necessary for the purposes of this Act.

(2) In the performance of their functions under this Act, immigration officers shall act in accordance with such instructions as may be given by the Minister.

11. (1) For the purposes of any of his functions under this Act, an immigration officer shall have power:

(*a*) to board, or enter, and search any ship, aircraft, train or vehicle in Kenya;

(*b*) to require any person seeking to enter Kenya to answer any question or to produce any document in his possession for the purpose of ascertaining whether that person is or is not a citizen of Kenya and, in the case of any person who is not a citizen of Kenya, for the purpose of determining whether that person should be permitted to enter Kenya under this Act;

(*c*) to require any person seeking to enter or leave Kenya to produce to him a valid passport and any form of declaration that may be prescribed;

(*d*) to require any person seeking to enter Kenya to submit to examination by a medical practitioner.

(2) An immigration officer investigating any offence or suspected offence under this Act shall have all the powers and immunities conferred by law on a police officer for the purpose of such investigation.

12. (1) Any immigration officer or police officer who has reasonable cause to suspect that a person has committed an offence under this Act,

or is unlawfully present in Kenya, may, if it appears to him to be necessary to do so in order to secure that the purposes of this Act shall not be defeated, arrest that person without warrant; and sections 33 and 36 of the Criminal Procedure Code shall apply to any such arrest as if the reference in the said section 33 to a police officer included a reference to an immigration officer.

(2) Any person other than a citizen of Kenya who, having been ordered to be deported from any country, enters Kenya on his way to his final destination, may be arrested without warrant by any immigration officer or police officer and may be detained in prison or in police custody for so long as is necessary for arrangements to be made for his departure from Kenya, and shall be deemed to be in lawful custody while so detained.

(3) A person who is not a citizen of Kenya shall, on being required to do so by an immigration officer or a police officer:

(*a*) declare whether or not be is carrying or conveying any documents;

(*b*) produce to the officer any documents which he is carrying or conveying;

and an immigration officer or police officer may search any such person, and any baggage belonging to him or under his control, in order to ascertain whether that person is carrying or conveying any documents, and may examine, and may detain for such time as he thinks proper for the purpose of examination, any documents produced to him or found on such a search.

(4) An immigration officer may by summons in writing require any person other than a citizen of Kenya to attend at his office and to furnish to that officer such information, documents and other particulars as are necessary for the purposes of determining whether that person should be permitted to remain in Kenya.

...

THE IMMIGRATION REGULATIONS 1967

Entered into force on 1 December 1967 [8]

...

Part I

Reports of entry and departure

3. (1) Every person, other than an excluded person or an exempted person shall, immediately on arrival in Kenya, present himself in person and report his entry into Kenya to the nearest immigration officer and, if so required by an immigration officer, complete an entry declaration form ... and deliver the same to an immigration officer.

(2) Where any ship enters Kenya, the person in charge of the ship or the agent thereof shall:

(*a*) immediately on arrival provide the nearest immigration officer with a list in duplicate of the names of every person disembarking; and

(*b*) prevent the disembarkation of every person to whom paragraph (1) of this regulation applies until such time as an immigration officer may authorize disembarkation.

(3) Where any aircraft enters Kenya, the person in charge of the aircraft or the agent thereof shall:

(*a*) immediately on arrival provide the nearest immigration officer with a list in duplicate of the names of every person disembarking; and

(*b*) prevent any person to whom paragraph (1) of this regulation applies from leaving the precincts of the airport until authorized by an immigration officer.

(4) Where any train or vehicle enters Kenya, the person in charge or the agent thereof shall, if so required by an immigration officer, provide a list in duplicate of every person disembarking.

(5) Where any ship or aircraft enters Kenya carrying any person from outside Kenya whose destination is also outside Kenya but who fails to continue his journey in such ship or aircraft, in circumstances which raise a reasonable presumption that the person has remained in Kenya, the person in charge or agent of such ship or aircraft shall, as soon as possible, notify the nearest immigration officer of the failure of the person to continue his journey.

(6) Any person who fails to comply with this regulation shall be guilty of an offence.

4. (1) Every person, other than an excluded person or an exempted person, shall, immediately before his departure from Kenya, complete a departure declaration form ... and if such person intends to leave Kenya by ship or aircraft, deliver the same to an immigration officer or person in charge or agent of such ship or aircraft and, in any other case, deliver the same to an immigration officer.

[8] Published as Legal Notice No. 235 in *Kenya Gazette Supplement No. 88, Special Issue, Legislative Supplement No. 52,* of 10 November 1967.

(2) Where any ship or aircraft leaves Kenya, the person in charge or agent thereof shall, before its departure:

(*a*) provide the nearest immigration officer with a list in duplicate of the names of every person embarking thereon and leaving Kenya; and

(*b*) prevent the embarkation of any person who intends to leave Kenya in such ship or aircraft until he has complied with the provisions of paragraph (1) of this regulation.

(3) Where any train or vehicle leaves or is about to leave Kenya, the person in charge or agent thereof shall, if so required by an immigration officer, provide a list in duplicate of the names of every person who leaves or is about to leave Kenya by means of that train or vehicle.

(4) Any person who fails to comply with this regulation shall be guilty of an offence.

. . .

LEBANON

REPORT ON HUMAN RIGHTS IN LEBANON [1]

Protective legislation is not sufficient; the protection of human rights should not be purely theoretical. It is therefore essential that effective supervision should be exercised at the implementation stage so that the principle of protection embodied in the law is actually given practical effect.

This supervision may be designed to ensure that the law is in conformity with the higher principles enshrined in the Constitution or in declarations of human rights, or that persons adversely affected by the promulgation of the law are granted compensation.

Furthermore, supervision is exercised over those responsible for administering the law and it is on that level that the Council of State plays a primarily protective role.

I. SUPERVISION OF THE IMPLEMENTATION OF THE LAW

Although the law is the guardian of civil liberties, it may cause damages, and there are very strict regulations for the reparation of damages under Lebanese law.

(1) Firstly, article 2 of Code of Civil Procedure prohibits the courts from reviewing the constitutionality of laws. This prohibition is applied to the letter in every case, with the result that once a law has been adopted, it is immune from challenge in the courts. (See for example C.E. No. 1348, of 2 December 1966, *Rec.* 1967,[2] page 73.)

(2) The only way—and it is a very indirect way—to counteract the adverse effects of a law is to invoke the theory that the public authorities have a responsibility because of the law.

Thus, in its judgement No. 1280 of 14 July 1965 (*Rajeh, Rec.* 1965, page 162), the Council of State considered that the responsibility incumbent on the public authorities because of legislation arises from the special and serious damages caused by that legislation to the legal status of individuals, provided that the damages are serious and are sustained by a particular group and not by the whole population.

This theory of responsibility no longer applies when the law itself rules out any kind of compensation—the Council of State's decision in the case of *Fawaz* (C.E. No. 564 of 28 April 1964, *Rec.* 1964, page 117) states that although the State is responsible for damages arising from its "legislative action" in certain circumstances, the responsibility no longer exists if the law causing the damage specifically provides that there will be no compensation or if it is apparent from provisions of the law that it did not intend that the principle of compensation should apply.

II. SUPERVISION OF THE ADMINISTRATIVE AUTHORITIES

The supervision exercised by the judiciary over the conduct of those administering the law is of cardinal importance because it sets a standard by which to measure whether the individual actually enjoys freedom and therefore, whether democracy is actually practised in the society.

Firstly, the liberal influence of the judiciary is reflected in the development of general principles of law and in the progressive abandonment of the theory of acts of State. Specific examples of this trend as it affects a number of fundamental human rights will be given below.

1. General principles of law

General principles of law have a place of honour in Lebanese law, where they are on the same level as the law itself and the executive

[1] Note prepared by Mr. Hassan-Tabet Rifaat, State Counsellor, Doctor of Laws, lecturer at the Lebanese University and the Beirut Faculty of Law and Economic Sciences, and government-designated correspondent to the *Yearbook on Human Rights*.

[2] The abbreviation "Rec." refers to the "*Recueil Administratif*" edited by Mr. Joseph Chidiac.

power is therefore bound by them (C.E. No. 890 of 16 July 1964, *Rec.* 1964, page 225).

(i) *The principle of equality*

(*a*) The law of 10 July 1962 empowers the Director of the *Sûreté-générale* to order the deportation of any alien whose residence in Lebanon constitutes a threat to public order and public security. In this regard, while the administrative authorities have discretionary powers and there is nothing to prevent them from deporting an alien against whom his creditor has obtained a court order restricting his right to travel, in accordance with the principle of equality in staving the public financial burden, the creditor should not have to bear the entire burden for the damages arising from a perfectly lawful and legally justified security measure taken in the general interest. Consequently, the administrative authorities are bound to provide reparation for the damage suffered by the creditor (C.E. No. 1242, of 8 November 1966, *Rec.* 1967, page 17).

(*b*) No one can operate a petrol station without prior authorization. Here the administrative authorities enjoy discretionary powers, delimited by the Council of State to prevent them from being exercised arbitrarily.

The question arose in connexion with refusal to authorize the construction of a petrol station "close" to a hospital on the legal grounds that article 5 of decree No. 9826 of 23 June 1962 provided that hospitals should not be "close" to petrol stations to obviate all kinds of unpleasantness—noise, car-washing, odours, fumes, etc.

As the text did not specify the minimum distance which should separate a hospital from a petrol station, the administrative authorities assumed the right to decide in each individual case whether the station should be regarded as "close" to the hospital.

The Council of State disapproved of this attitude, and after reviewing the authorizations granted since the promulgation of the above-mentioned decree No. 9826, worked out an average which the administration might regard as the minimum distance required for avoiding the inconveniences resulting from the proximity of a petrol station to a hospital "close by".

However, although it refused authorization to the applicant, the administrative authorities subsequently authorized the construction of a rival petrol station, although, as the authorized station and the site where the applicant intended to construct his station were not separated by the required minimum distance, it was no longer legally possible to grant him the necessary authorization.

The high administrative court (*Conseil d'Etat*) quite rightly considered that by abusing its discretionary powers, the administrative authorities had violated the principle of equality which should apply to all those who enjoyed the same legal status, and, consequently, had acted *ultra vires*. Since the applicant could no longer be granted the authorization he had requested, the administrative authorities were ordered to pay full compensation for the damage (C.E. No. 1960, of 31 October 1967, *Rec.* 1967, page 237).

(*c*) In Lebanon, taxis carry a metal licence plate of which only a fixed number can be issued. This means that the plate has a market value apart from the value of the vehicle to which it is affixed.

Laws which in practice result in an increase in the number of taxis in circulation understandably warrant attention. For example, a law of 6 February 1953 regulated the use of private motor cars as taxis and stipulated, in article 4, that to obtain a taxi plate for a car, the owner must prove that it is in good working order and that it was registered with the motor car service before 15 December 1952.

The applicant met all the requirements and had submitted his request within the specified time-limit. When his request was turned down, he appealed to the Council of State, which declared the administrative decision void. When ordered to execute the judgement of the Council and, consequently, to issue a taxi-plate to the applicant, the administrative authorities pointed out that they could not implement the Council of State's decision, since the quota of taxi licence plates to be issued had been exhausted and it was both materially and legally impossible to issue another plate.

The applicant again appealed to the Council of State, which invoked the principle of equality and ordered the administrative authorities to compensate the applicant for the difference between the price of the plate on the market and the amount he would have paid them to obtain it (C.E. No. 1029, of 17 June 1967, *Rec.* 1969, page 204).

(ii) *Non-retroactivity of the law*

In a decision of 14 July 1967, the Council of State recalled that retroactivity of a law was a derogation from the general principle of law involved and should therefore be subject to restrictive interpretation (C.E. No. 1297 of 14 July 1967, *Rec.* 1967, page 221).

(iii) *Separation of powers*

The Higher Council of the judiciary is responsible for measures concerning the functioning of the judicial services. When such measures are not concerned with the administration of justice, they come under the supervision of the Council of State. But in keeping with the principle of the separation of powers, the administrative authorities are not empowered to consider measures relating to the administration of justice (C.E. No. 1426 of 16 December 1966, *Rec.* 1967, page 75).

2. PROGRESSIVE ABANDONMENT OF THE THEORY OF ACTS OF STATE

It is well known that the judiciary will refuse to hear cases involving acts of State and will reject appeals to have administrative decisions in that category overruled as actions *ultra vires*.

It is also true that the judiciary will refuse to grant compensation when the damages claimed

by the applicant are caused by an administrative act regarded as an "act of State". The administrative authorities enjoy full latitude to grant compensation; however, compensation cannot be obtained through the courts.

Dangers

One cannot fail to note this anomalous situation, which is not subject to judicial review, and the danger of a decision regarded as an act of State over which the judiciary has no direct control—the power to rescind it—nor indirect control—the power to grand compensation. Nevertheless, such decisions are still considered administrative acts. To paraphrase a saying dear to the traditional liberal, the situation is governed exclusively by the goodwill of the administrative authorities.

We shall use examples from Lebanese law to illustrate the theory of acts of State.

(i) C.E. No. 363 of 17 March 1964, *Henri Pharaon, Rec.* 1964, page 110, *Section du Contentieux* (Administrative Appeals Section).

Non-compliance with a court ruling does not constitute an act of State. Even though, for security reasons, the administrative authorities cannot execute the court decision ordering the destruction of huts built on the applicants' land by occupants who have no legal title to the land, or the expulsion of the occupants, it must nevertheless pay compensation to the owners.

(ii) C.E. No. 338 of 19 February 1963, *Ayache, Rec.* 1964, page 15.

A certain law gave members of the internal security forces holding a law degree the right to a special allowance, the amount of which was to be fixed by decree. The decree was promulgated, but did not provide for the allowance: that would constitute an act of State.

(iii) The same principle as in C.E. No. 1198 of 6 December 1962, *Héchaimé, Rec.* 1963, page 123.

In virtue of a decree issued in pursuance of article 58 of the Constitution, members of the internal security forces are entitled to two exceptional administrative civil service grades, provided they meet certain requirements.

The requirements under the old law before the new provisions came into force were advantageous to Mr. Héchaimé and he requested the Council of State to rescind the decree issued in pursuance of article 58 of the Constitution.

The Council of State rejected his appeal on the grounds that it jeopardized the relationship between the executive and legislative powers.

(iv) C.E. No. 454 of 15 October 1962, *Ghiryafi, Rec.* 1965, page 3.

Mr. Ghiryafi contested the decree commuting the sentence of the two men convicted of the murder of his brother to 1,000 Lebanese pounds on the grounds that it was *ultra vires*. The Council of State rejected the claim not because the decree of clemency was an act of State, but because it refused to recognize the administrative nature of the decision, maintaining that the decree could not be regarded as having been issued by an administrative authority.

(v) Important Judgement No. 381 of 2 March 1965, *Ali Osseyran, Rec.* 1965, page 117 (Administrative Appeals Section).

Mr. Osseyran obtained a licence to import two tankers from Sweden and a licence to re-export them to Poland at a cost of 16 million Lebanese pounds.

The Ministry of Foreign Affairs had interceded with the honorary Lebanese Consul in Stockholm to facilitate the purchase, and the Ministry had countersigned the authorization given by the Ministry of Economic Affairs.

After the matter had been settled, and a month after his first cable to the honorary Consul, the Minister for Foreign Affairs again cabled the Consul requesting him to take no further part in the matter on the grounds that he had not been aware that strategic materials would be re-exported behind the iron curtain.

The Council of State unanimously ordered the administrative authorities to pay a total of £15,000 plus interest to make good the loss and cover the outlay.

This remarkable decision reflects a bold policy in the supervision of the conduct of the administrative authorities.

Consequently:

(*a*) Acts affecting international relations are regarded as acts of State;

(*b*) But decisions arising from them are subject to judicial review.

It can be seen that the judicial authorities take pains not to allow the administrative authorities to jeopardize the rights of individuals by invoking the very expedient theory of acts of State. They decide whether an administrative ruling constitutes an act of State. It should be stressed again that the 1965 Osseyran decision was handed down by the Administrative Appeals Section and that it was a unanimous decision.

(vi) Important Judgement No. 6 of 6 January 1968, *Hatem* (*Revue Judiciaire Libanaise,* 1968, page 375).

This judgement is important for more than one reason, but comments will be confined to two aspects:

(*a*) The Council of State broadened its supervision of the conduct of the administration and decided that, in cases involving civil liberties, it should verify not only the accuracy of the material facts, but the legal category in which they belonged.

(*b*) Legal practice had been to regard the suspension of publications ordered under decree No. 3080 of 21 April 1925 as an act of State. However, the Hatem judgement of 1968 rescinding the High Commissioner's decision of 17 February 1938 to suspend the newspaper *Al-Raya* does not regard that suspension as an act of State.

3. Judgements published in 1967 concerning some fundamental rights

A. *Associations*

The Law on associations is extremely liberal. It does not require authorization before they can

be formed and it states that they can only be dissolved in a very specific limited number of cases. The administrative authorities apply the law just as liberally.

For example, a decision rendered on 4 October 1966 states that an association can only be dissolved by decree if the activities in which it is engaged are contrary to the purposes for which it was formed (C.E. No. 1080 of 4 October 1966, *Rec.* 1967, page 13). Moreover, in a judgement dated 22 May 1967, the Council of State considered that an association exists as a legal entity as soon as it is formed and the role of the administrative authorities is merely to issue a certificate of registration, which is simply an act of publicity.

It follows that any action to invalidate the certificate should be rejected, because the certificate does not constitute a decision of the administration giving the grounds for appeal, because the association existed before the certificate was issued and because the injury did not arise from the issuance of the certificate (C.E. No. 912 of 22 May 1967, *Rec.* 1967, page 137).

B. *Posting of bills*

When special penalties are provided for violations of the law on the posting of bills, the administrative authorities are acting *ultra vires* by ordering the removal of advertising posters which have been authorized in advance instead of invoking the penalties in cases where violation has been established. Consequently, they must compensate the applicant for any loss (C.E. No. 1170 of 26 October 1966, *Rec.* 1967, page 18).

C. *Professional organizations*

Only the law courts are empowered to rule on the regularity of measures taken by professional organizations. The Council of State therefore was justified in rejecting, on grounds that it was not competent to decide, the claim brought by an unsuccessful candidate that the elections held by the journalists' association were irregular (C.E. No. 65, 20 March 1967, *Rec.* 1967, page 96).

D. *Literacy and artistic property; private property*

It is a crime subject to prosecution in the law courts, and not by the administrative authorities, for the administration of the national broadcasting service to broadcast a play without the author's permission (C.E. No. 1361, of 5 December 1966, *Rec.*, 1967, page 48). The law courts are still the guardians of private property (C.E. No. 557 (Administrative Appeals Section) of 6 March 1967, *Rec.* 1967, page 92).

E. *Rights of religious communities*

Lebanese law recognizes the special rights of the Christian, Moslem and Jewish religious communities, particularly with regard to personal status. This respect for the autonomy of religious denominations and this dislike of measures taken to ensure uniformity in all areas which might be prejudicial to the equality of the various groups which comprise the community, are reflected in the Council of State's judgement of 4 October 1966. When called upon to rule on the legality of measures taken to implement decree No. 18 of 13 January 1955 on the Moslem Wakfs organization, that high administrative tribunal stated that it had no competence to rule because the principle of the autonomy of religious denominations required that such cases should be settled in the religious courts (C.E. No. 1091 of 4 October 1967, *Rec.* 1968, page 4).

F. *Freedom of commerce and industry*

While the administrative authorities have discretionary powers to grant or refuse authorization to form a company, they have no authority to violate acquired rights deriving from authorization which has already been granted. They are also prohibited from creating encumbrances and impediments in restriction of freedom which are not provided by law.

These principles are reflected in a judgement rendered by the Council of State on 7 November 1967 *sub*-No. 1676. The applicants had been authorized to form a company and the decree authorizing them to do so did not fix a time-limit for its establishment. Further more, since the code of mercantile law contains no provision requiring the founders to form a company within a specified period, and the absence of restrictions shows that the principle of free choice is applicable.

However, almost sixteen months after deciding to authorize formation of the company, the administrative authorities adopted a decision tacitly amending their previous action and requiring the founders to take steps to bring the company into existence within six months under penalty of revocation of the authorization.

The Council of State regarded that move as a violation of the principle of freedom, since only the law could place restrictions on that freedom (C.E. No. 1676 of 7 November 1967, *Rec.* 1967, page 217).

LESOTHO

EMPLOYMENT ACT 1967

Act No. 22 of 1967, assented to on 1 June 1967 [1]

(EXTRACTS)

PART II

ADMINISTRATION

4. There shall be a Labour Commissioner and there may be such other officers as may be necessary for the purposes of the administration of this Act, whose offices shall be offices in the public service.

5. The Minister may make provision for testing the skills of persons engaged in such trades as he may by notice in the *Gazette* prescribe and for the issue of certificates denoting the result of such tests and may prescribe fees in relation to such tests.

6. The Labour Commissioner may with the consent of the Minister delegate in writing to any person the exercise of any of his powers and the performance of any of his duties either in Lesotho as a whole or in any part thereof in relation to any matter or thing provided for by this Act.

7. (1) In addition to other powers conferred upon him under the provisions of this Act, the Labour Commissioner may, with the consent of the Minister, by notice in writing, require any employer to furnish in writing returns and statistics, whether periodical or otherwise, as to the number of employees employed by him in any particular employment, their rates of remuneration and the conditions generally affecting their employment or otherwise with a view to ascertaining the social or civil condition of the wage-earning population of Lesotho.

(2) An employer shall keep such records, books, accounts and statistics in respect of employees employed by him as the Minister may by notice in the *Gazette* prescribe and shall whenever so required by a labour officer produce such records, books, accounts and statistics for examination and removal.

(3) The Labour Commissioner shall cause returns and statistics collected in pursuance of the provisions of this Act to be compiled, analysed and tabulated and may, subject to the provisions of this Act and the directions of the Minister, cause statistics or abstracts thereof to be published with or without observation thereon and in such manner as he may determine:

Provided that, except for the purpose of prosecution under this Act or with the previous consent of the employer furnishing the return or statistics, no individual return or part thereof, made for the purposes of this Act, shall be published, admitted in evidence in any civil or criminal proceedings or disclosed to any person other than a person employed in the execution of a duty under this Act, including the compilation, analysis and tabulation of returns and statistics under the provisions of this subsection:

Provided further that nothing in this subsection shall prevent or restrict the publication of any such statistics or abstracts without consent where the particulars furnished in such return or statistics enable identification merely by reason of the fact that the particulars relate to an undertaking or business which is the only undertaking or business within its sphere of activities but in no case shall such particulars enable identification of the costs of production, the capital employed or profits arising in any such undertaking or business.

[1] *Government Gazette*, No. 207 of 16 June 1967, Supplement. The text of the Act in English and a translation thereof into French have been published by the International Labour Office as *Legislative Series*, 1967—Les.1.

(4) Any person—

(*a*) being a person employed in the execution of a duty under this Act, who divulges or communicates to any person otherwise than in the ordinary course of such employment any information furnished in pursuance of the provisions of this Act; or

(*b*) being in possession of any information which to his knowledge has been disclosed in contravention of any provision of this Act, who publishes or communicates such information;

shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding 200 rands or to imprisonment for a period not exceeding six months or both.

8. (1) The Minister may cause concise summaries of this Act or any part thereof to be printed in the English or Lesotho language and shall make such summaries available to employers and employees.

(2) The Labour Commissioner may, by notice in writing, require any employer to post and maintain in conspicuous places specified in such notice any such concise summaries of this Act as may be specified.

9. (1) In addition to any other powers conferred on him by this Act a labour officer may, for the purpose of satisfying himself that the provisions of this Act and any other written law relating to employment are being duly observed at all reasonable times, whether by day or night, and without previous notice—

(*a*) enter freely, inspect and examine any land, building, camp, aircraft or vehicle, or any place, structure or article whatsoever where or about which or in the vicinity of which any employee or recruited person is employed, housed or transported or there is reason to believe that any employee or recruited person is employed, housed or transported;

(*b*) enter, inspect and examine any hospital or dispensary or any latrines or other sanitary arrangements used or intended to be used by employees or recruited persons in any place or building or any water supply available for the use of employees or recruted persons;

(*c*) enter, inspect and examine kitchens and places in which food for the use of employees and recruited persons is stored, prepared or eaten and inspect and examine all such food;

(*d*) take for the purposes of analysis samples of materials and substances used or handled by employees and any food, water or drink provided for consumption by employees or recruited persons;

(*e*) carry out any examination, test or inquiry which he may consider necessary and in particular—

(i) interrogate, alone or in the presence of witnesses, any employer or recruiter, any person acting on behalf of an employer or recruiter or any employee or recruited person on any matter concerning the application of this Act or any other written law relating to employment and may question any other person from whom he considers useful information may be obtained;

(ii) require the production of any records, books, accounts, statistics or other documents relating to the employment of any employee or the recruitement of any recruited person and, if he considers such a course to be expedient, remove such records, books, accounts, statistics or other documents;

(iii) enforce the posting of concise summaries of this Act and any other notices the posting of which is required by this Act or any other written law relating to employment.

(2) In the exercise of the powers conferred by subsection (1) the following provisions shall be observed:

(*a*) the labour officer or other officer shall not enter or inspect a private dwelling house or any land or building occupied in connection therewith without the consent of the occuper thereof nor during the hours of darkness;

(*b*) no person shall be required to answer any questions tending to incriminate himself;

(*c*) on the occasion of a visit of inspection, the labour officer or other officer shall notify the employer or his representative of his presence unless he has reasonable grounds for believing that such notification may be prejudicial to the performance of his duties.

(3) No labour officer or other officer exercising powers under this section shall—

(*a*) have any interest, direct or indirect, in any business or undertaking under his supervision;

(*b*) reveal, whether during his employment in the public service or subsequently, any manufacturing or commercial secret or working process which shall come to his knowledge in the course of his duties;

(*c*) reveal to any person other than the Minister or, for the purpose of instituting or carrying on a prosecution for any offence under this Act or under any other written law relating to employment, to the Director of Public Prosecutions or other legal officer of the Government, the source of any complaint by which any contravention of the law has been brought to his notice;

(*d*) reveal to any employer the fact that any inspection of a place of employment was made in consequence of the making of a complaint that a breach of the law appeared to have been committed.

(4) Any labour officer and any other officer authorised to exercise powers under this section who contravenes any of the provisions of subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine of 200 rands or to imprisonment for six months or both.

(5) Every labour officer or other officer authorised to exercise powers under this section shall be furnished by the Labour Commissioner with a certificate of his appointment or authority so to act and when so acting, shall, if so required by any person affected, produce the certificate.

10. Every person who—

(*a*) wilfully delays or obstructs any labour officer or other officer while such officer is exercising any power or performing any duty conferred or imposed by this Part;

(*b*) who fails without lawful excuse to comply with any lawful direction, requirement or demand or to answer any question of such officer made or given in pursuance of any powers conferred upon him by this Act; or

(*c*) who conceals or prevents any person from appearing before or being examined by such officer or who attempts so to conceal or prevent any person; or

(*d*) who furnishes for the purpose of this Act or any regulations made thereunder any return or any information which he knows to be false in any material particular,

shall be guilty of an offence and liable to a fine not exceeding 200 rands or in default of payment to imprisonment for a term not exceeding six months.

[Other provisions of the Act deal with contracts of service; special contracts; recruiting and labour agents; protection of wages; health, safety and housing; forced labour; and disputes and court proceedings.]

LIECHTENSTEIN

INDIVIDUAL FREEDOMS EFFECTIVELY GUARANTEED BY THE LIECHTENSTEIN CONSTITUTION (INCLUDING THE STATUS OF REFUGEES) [1]

In the Constitution of the Principality of Liechtenstein, as in the constitutions of other modern States, one chapter is devoted to individual freedoms. It is to these freedoms that article 104 of the Constitution and article 11 (1) of the High Court Act of 15 November 1921[2] refer when they speak of the rights guaranteed by the Constitution; thus, respect for these rights is guaranteed by the State. Any one who believes that one of his individual freedoms has been violated by a judicial or administrative decision may appeal to the High Court, sitting as a constitutional court, even when the violation arises from the erroneous application of a law or its unconstitutionality or the illegality of a decree.

The category of persons whose individual freedoms are guaranteed is specified in the relevant articles of the Constitution. Articles which do not refer specifically to nationals, and those which define in general terms the category of persons to which they apply guarantee the same rights to aliens and stateless persons as human rights.

Equality before the law

The principle of equality before the law is applicable only to citizens of Liechtenstein. This is the effect of the word "*Landesangehörige*"[3] and of article 31 (2) of the Constitution, which distinguishes between the rights of nationals and the rights of foreigners. The principle is binding not only on judicial and administrative authorities but also on the legislators.[4] The legislator is required to translate into law only rules which are equally binding on all nationals; in other words, he must ensure that every act of legislation has the same consequences for all, without exception. The prohibition of unequal treatment of nationals is, however, applicable only to arbitrary differentiation for which there is no reasonable justification. In practice, the principle of equality before the law can only mean treating equals alike and unequals differently. Persons or things which are inherently different cannot be made the same by applying the principle embodied in the Constitution: what is unequal cannot be made equal.[5]

In the application of the laws, no difference in the treatment of citizens is tolerated. It might be inferred that the principle that laws must be applied to all in the same manner means that any violation of the law which is prejudicial to a citizen is by that token an infringement of the principle of equality. However, the mere breaking of the law is still not a violation of the principle; this occurs only in the case of an arbitrary act, that is to say, a particularly flagrant injustice or a violation of the law.[6] Similarly, an error made by an administrative authority in implementing a law does not justify a similar erroneous application of that law in another case.[7]

The body of legal precedents built up by the High Court shows that arbitrary action is deemed to occur, *inter alia,* when the competent authority fails to take into account the substantive rule applicable to the case concerned, and substitutes its own judgement. In the case of violation of a procedural rule, an act is arbitrary if the violation results in a denial of justice, as, for example, when the right to a hearing has been denied.

The provision of the Constitution stating that the public service shall be open to all nationals,

[1] Note prepared by Mr. Walter Kieber and furnished by the Government of Liechtenstein.

[2] Judgement of the High Court, 30 May 1942; report of the Government of the Principality on its Administration, 1942, p. 55.

[3] Literally "nationals" (author's note).

[4] Advisory opinion of the High Court, 1 September 1958; *Reports of Judgements* 1955-1961, p. 129.

[5] Advisory opinion of the High Court, 11 August 1960, *Reports of Judgements* 1955-1961, p. 177.

[6] Judgement of the High Court, 12 June 1961, AHC 1961/1.

[7] Judgement of the High Court, 4 December 1947, *Reports of Judgements* 1947-1954, p. 245.

within the limits prescribed by law, is a logical corollary of the principle of equality. This provision precludes the introduction of any requirements other than those prescribed by law for entry into the public service when the notice of competitive examinations is posted. When a candidate is excluded on the ground that he fails to meet requirements which have not been prescribed by law, a right guaranteed him by the Constitution has been violated.[8]

With universal suffrage, the principle of equality has been widely applied in the field of political rights (democratic rights). Universal suffrage means that the people have the right to vote and to elect, irrespective of differences among citizens, the word "people" signifying all eligible citizens. Consequently, the term "the people", within the meaning of the Constitution, refers to a privileged group within the total population and among the nationals of Liechtenstein.[9]

The equality among eligible citizens inherent in universal suffrage means that all votes cast have the same value, without regard for any subjective considerations.[10]

Freedom of establishment and right to acquire property

Article 28, first paragraph, of the Constitution provides:

"Every Liechtenstein national shall be entitled to establish himself anywhere in the national territory and to acquire property of any description, subject to observance of the law."

The two rights protected by this article, freedom of establishment and the right to acquire property, are subject to restriction by appropriate legislation. The legislature may promulgate restrictive legislation.[11] Restrictions of this kind are to be found, for example, in criminal law, in social welfare legislation or tenant protection provisions and in public health regulations.

Aliens may not claim the right of establishment. They are subject to the legislation on the control of aliens. Persons recognized as refugees in accordance with the Convention relating to the Status of Refugees are subject to the special provisions of that Convention.[12]

The right to acquire property has been severely restricted by the Act on property transfers.[13] Under this Act, the acquisition and transfer of real estate is invalid without administrative approval, which may be withheld for the reasons specified in the Act.

Personal liberty

The Austrian civil code, which has been in force in the Principality of Liechtenstein since 1812, declares that every person is endowed with inherent rights, which are recognized as such by the doctrine of natural law, and prohibits slavery and servitude.[14] Article 32 of the Constitution proclaims this principle by recognizing that every individual is a free person possessing legal capacity. The protection of the liberty of the person is a safeguard against arbitrary imprisonment or detention. Accordingly, it refers exclusively to physical liberty.

Thus, while any infringement of personal liberty—protected by the Constitution—committed by private persons is punishable under the penal code, the State must have the power to intervene by making arrests whenever the maintenance of public order so requires. Nevertheless, it may intervene only in circumstances and in the manner prescribed by law. The legislation on this subject is contained in the code of criminal procedure[15] and in the General Administration Act.[16]

Articles 7 and 56 exempt the Sovereign and his deputies from any restriction of their personal liberty. The law of international treaties similarly exempts persons enjoying the privilege of extraterritoriality.[17] Persons arrested unlawfully or when manifestly innocent, and those convicted in error are entitled to full reparation from the State.

The inviolability of the home

Article 32 of the Constitution guarantees the inviolability of the home and protects it from arbitrary search or search rendered unlawful by the methods employed. Search of the home is permissible only in specified cases and in accordance with rules prescribed by law. An apartment or the premises attached thereto may be searched in the course of a search for persons or articles whose whereabouts are unknown. The searching of homes is regulated by the code of criminal procedure. As a general rule, a search may be carried out only on the order of a magistrate accompanied by a statement of reasons and in the presence of the examining magistrate.

In the interests of the prosecution of criminals, the police may search without a magistrate's order when a warrant to compel attendance or a warrant for arrest has been issued and if a person has been apprehended in *flagrante delicto*. When an administrative inquiry is launched for the purpose of removing public hazards to life, health and the nation, every individual is compelled to permit access to all premises in his charge which absolutely must be inspected or searched.

Inviolability of letters

The guarantee of the inviolability of letters contained in article 32 of the Constitution provides protection against the arbitrary searching

[8] Judgement of the High Court, 21 December 1955; *Reports of Judgements* 1955-1961, p. 112.

[9] Fleiner/Giacometti, *Schweiz. Bundesstaatrecht 1949*, p. 430.

[10] Judgement of the High Court, 1 May 1962, AHC 1962/1.

[11] Judgement of the High Court, 6 October 1960; *Reports of Judgements* 1955-1961, p. 151.

[12] *Official Gazette*, 1956, No. 15.

[13] *Official Gazette*, 1959, No. 21.

[14] Austrian civil code 16, parts of which were abrogated by article 9 of the Law concerning Persons and Companies of 20 January 1926, *Official Gazette*, 1926, No. 4.

[15] *Official Gazette*, 1914, No. 3.

[16] *Official Gazette*, 1922, No. 24.

[17] Vienna Convention on Diplomatic Relations, signed 18 April 1961 and ratified by Liechtenstein.

of the mails. Inspection or confiscation of letters is authorized only in cases prescribed by law—as in the case of personal liberty.

Regulations for the inspection and confiscation of letters are contained in the code of criminal procedure. Postal regulations permit the opening of the mails in certain cases: sealed mail which is undeliverable is opened by the postal authorities for the purpose of obtaining forwarding information. The inviolability of letters must not be confused with the secrecy of the mails, which is protected only by an Act (Postal Traffic Act of 2 October 1924).

The right to be judged by one's proper judge

This right, which is guaranteed by article 33 of the Constitution, provides that no person may be withdrawn from the jurisdiction of his proper judge, and also prohibits the establishment of special jurisdictions. The first prohibition protects private persons against the arbitrary decisions of an authority which attempts in any proceedings to arrogate to itself judicial functions which are not within its competence. The "proper judge" is the judicial body which is competent under the relevant legislation, to conduct the arguments and render judgement in any procedings. Intervention by the Government or by an administrative organ in judicial matters is therefore barred.

The prohibition of the establishment of special jurisdictions is derived from the right to be judged by one's proper judge. Special courts, that is, courts which have competence in certain specific fields which the legislature has decided not to confer on the ordinary courts, do not constitute special jurisdictions.[18]

The provision in article 33 to the effect that penalties may be imposed only within the limits of the law is an application of the maxim *nulla poena sine lege*. Accordingly, an act or an omission may be punished only if the law had declared them punishable before they were committed.

The inviolability of private property

The protection of private property is one of the foundations of a free economy. The object of this protection is property *lato sensu*, i.e., private rights of all kinds, and real estate in particular. The right to this protection is not an absolute right. Under article 20 of the property rights code, a property-owner may dispose of his property as he pleases, subject to the limitations specified by law. These limitations include the traditional restrictions on property rights, such as those arising from building regulations, forestry regulations and hunting and fishing rights and which have been considerably extended by the property rights code in the public interest and in the interest of private persons.

Although the Constitution of Liechtenstein is not explicit in this respect, social duties are inherent in the ownership of property and particularly, of real estate. There can be no property right without a corresponding duty to society. The owner of real property must therefore accept, in the general interest, restrictions on his right to transfer property.[19]

The Constitution itself limits property rights by stating in article 35 that:

> "In the public interest, property of any kind may be compulsorily expropriated or mortgaged, against suitable compensation, the amount of which, if contested, shall be determined by the courts."

The reservation concerning the right of expropriation is not an exception; it is a specific restriction of property rights. The public interest is the legal ground for expropriation. Any measures which, because of their intent, scope and duration, go beyond private interest and which are not intended solely for purposes of speculation and to further a financial policy are measures in the public interest.[20]

Freedom of trade and industry

Article 36 of the Constitution reads:

> "Trade and industry shall be free, within the limits prescribed by law; the institution of commercial and industrial monopolies shall be regulated by law."

This article protects an individual economic right. Freedom of trade and industry are to be understood as meaning the ability to earn one's living by any lawful means. By proclaiming freedom of trade and industry in the Constitution, the State declares that it will refrain from any interference in the economic activity of private persons. This freedom is not, of course, unlimited: it is subject to legal restrictions. The principle underlying these restrictions is embodied in article 14 of the Constitution, which states that the main function of the State is to promote the general well-being of the population and for this purpose, to protect its economic interests. In the interest of the general well-being within the meaning of article 14, the legislature may restrict freedom of trade and industry if the economic or social situation or public order makes it necessary to do so.

The restrictions are to be found largely in industrial legislation, which establishes conditions for access to certain professions and for the exercise of a commercial or industrial career. Under article 36 of the Constitution, commercial and industrial privileges may be granted to private individuals, but only for a specified period. Accordingly, access to a trade or profession cannot be permanently blocked. On the other hand, the granting of a temporary privilege is compatible with the Constitution.[21]

[18] Judgement of the High Court, 20 January 1947; *Reports of Judgements* 1947-1954, p. 191.

[19] Judgement of the High Court, 6 October 1960; *Reports of Judgements* 1955-1961, p. 161.

[20] Ivo Beck, *Das Enteignungsrecht der Fürstentums Liechtenstein* (The expropriation laws of the Principality of Liechtenstein), 1950, p. 43.

[21] Judgement of the High Court, 1 September 1958; *Reports of Judgements* 1955-1961, p. 145.

Freedom of conscience and religion

Article 37 of the Constitution guarantees freedom of conscience and religion to all persons. This provision grants and protects the right of everyone to have or not to have a specific religious belief and to regulate his ethical conduct accordingly, to choose his faith freely and to belong to a religious community. Thus, the State is prohibited from imposing restraints in matters of religion. On the other hand, no one may invoke his religious faith as a ground for evading the responsibilities as a citizen.

Under article 37 (2) of the Constitution, the Roman Catholic Church is the official church and in that capacity, enjoys the protection of the State. The Constitution thus acknowledges the special position of the Roman Catholic Church and its decisive importance in public and social life, having regard to its role and work in and on behalf of the community. Consequently, the State has exempted it from the provisions of private law and given it a higher status by making it subject to public law. This status in public law means, *inter alia,* that church institutions are recognized as subject to autonomous statute law governing the internal affairs of the Church. Canon law is thus incorporated into the juridical system of the State as a norm of objective law.

Persons of faiths other than the Roman Catholic faith have the right to profess and practise their religion within the limits of public order and morality. They have the following rights:

1. The right freely to practise their religion in word and deed;

2. Freedom of worship, that is to say, the right to perform, alone or with other persons, acts of worship, to participate in them or in other religious practices;

3. Freedom of religious association, that is to say, the right to form, together with persons of the same faith, private-law religious societies or communities for the purpose of practising a religion collectively.[22]

Property rights of religious communities and societies

Article 38 of the Constitution guarantees the rights of ownership and all other property rights of religious communities and societies in respect of their institutions, foundations and other property used for worship, education and charitable purposes. This principle affords greater protection than the general guarantee of property rights, and prevents the confiscation of Church property in the interest of the State alone (secularization). The administration of Church property "shall be regulated by a special law", but the assent of the Church authorities must be sought before it is promulgated.

Freedom of expression

Freedom of expression gives exeryone the right freely to express his opinions, the product of his thinking. This individual right includes freedom of speech and freedom to communicate ideas in writing or graphically. The right to communicate ideas through the Press is another form of freedom of expression.

Nevertheless, freedom of expression is not absolutely unlimited. It may be exercised only within the limits of law and morality. Every individual may be held responsible for exceeding these limits and thereby violating the law. That restriction may be wrongfully applied and may give rise to a violation of this constitutionally protected individual right. Restrictions affecting the exercise of freedom of expression include, *inter alia,* a number of provisions of the criminal code.

Freedom of the Press makes it possible for private persons to disseminate their opinions to an unlimited number of persons through the press. This right is also subject to the limitations prescribed by law and morality. In this connexion, the provisions of the Act on the Protection of the State[23] which relate to the Press, are particularly important. They authorize the security police to seize printed matter and declare it confiscated if it does not contain the information required by law (such as the names of the publisher, printer and author). Printed matter may also be confiscated if it is likely to disturb public order, particularly if its contents incite to commission of the crime of disturbing the public order or rebellion against the authorities or an offence against public morality.

The provision that censorship may be exercised only in respect of public performances and exhibitions precludes censorship of the press.[24] Preventive measures taken in accordance with the provisions of the Act on the Protection of the State concerning the Press do not contravene the prohibition of press censorship. They are justified by the fact that the Legislature's intent is that freedom of the Press is a guarantee of democratic freedoms in the State and cannot be a means of undermining public order.

Freedom of assembly and association

Article 41 of the Constitution guarantees the right to form organizations within the limits of the law and to hold meetings. An organization, within the meaning of the Law governing persons and organizations, means an association of at least three persons for purposes of attaining a political, religious, scientific, artistic, charitable or economic goal. Prior permission of the administrative authority to constitute an organization is necessary only when the chief purpose of the proposed organization is to operate on a commercial basis.[25]

The State prosecutor may order the Administrative Tribunal to dissolve an organization whose

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[22] Advisory opinion of Mr. Godehard Ebers, Professor at the University of Innsbruck, on article 37 of the Constitution (unpublished).

[23] Articles 17-24 of the Act on the Protection of the State of 14 March 1949, *Official Gazette* No. 8.

[24] The Act implementing this article of the Constitution has not yet been promulgated.

[25] Article 259 of Law governing persons and organizations of 20 January 1926.

aims and procedures jeopardize the security of the State or whose purpose is unlawful or immoral. The establishment and activities of an organization are, of course, also subject to the provisions of the criminal code.

Freedom of association is restricted in the sense that permission to hold an assembly must be requested from the Government. Only the following have unlimited freedom in this sphere:

1. All Church meetings;
2. Secular non-public meetings;
3. Assemblies of working citizens convened to discuss and pass resolutions concerning such matters as elections and voting;
4. School meetings;
5. Public or private meetings having a religious purpose or in the public interest.

The right of petition

Article 42 of the Constitution guarantees the right of petition. A petition contains suggestions and demands concerning legal situations. The right of petition may be exercised by individuals or corporate bodies. The petition is addressed to the Diet or the National Committee. Petitioners must have their suggestions and demands presented by a deputy. A demand submitted only in writing is not considered to be a petition unless its content is expounded to the Diet by a deputy. If the petition is presented in accordance with the proper procedure, the Diet (or the National Committee) is required to hear the suggestions and demands it contains. It is not bound, however, to express its views concerning them, to reply or to act on them. This is the essential difference between a petition and the request for legislative action referred to in article 64 of the Constitution. A request for legislative action submitted in the prescribed manner must be dealt with by the Diet in accordance with the law.

The right of appeal

Article 43 of the Constitution grants Liechtenstein nationals the right of appeal within the limits prescribed by law. The right of appeal protects the appellant against the denial of an appeal which is receivable according to the provisions of the law. A Liechtenstein national who has been denied the right to appeal granted to him by law has therefore had one of his constitutional rights violated.[26] Moreover article 43 of the Constitution prevents the legislature from excluding appeals in certain circumstances. The principle that everyone has the right to appeal against any decision of an authority at least to its immediate superior is thus established. On the other hand, the limitation of appeal by, for example, excluding a third and higher appeal authority, is not in itself unconstitutional.

[26] Judgement of the High Court, 21 November 1955 (unpublished).

LUXEMBOURG

GRAND DUCAL ORDER OF 21 JANUARY 1967 [1]

...

Art. 1. The Agreement between the Government of the Grand Duchy of Luxembourg and the Government of the Federal Republic of Germany aimed at facilitating the movement of persons in the frontier zones, signed at Bonn on 9 December 1965, shall be published in the *Mémorial* in order that it may thereby enter into force.

...

[1] *Mémorial*, No. 9 of 17 February 1967.

ACT OF 4 JULY 1967 AMENDING BOOK 1, PART V, CHAPTERS I AND III OF THE CIVIL CODE AND ARTICLES 264 AND 265 OF THE PENAL CODE [2]

Art. 2. Articles 148, 149, 150, 151, 152, 153 and 154 of the Civil Code, as amended by the Act of 12 June 1898, are hereby replaced by the following provisions:

Art. 148. Sons and daughters who have not completed their twenty-first year may not contract marriage without the consent of their parents.

In the event of disagreement between the father and the mother, such disagreement shall constitute consent.

If there is disagreement between divorced or legally separated parents, the consent of the spouse having custody of the child shall be mandatory.

Art. 149. If the father or mother is dead or if either is unable to express his or her will or is absent, the consent of the other shall suffice.

Art. 150. If the father and mother are dead or are unable to express their will or are absent, the grandfathers and grandmothers shall take their place.

If there is disagreement between the grandfather and grandmother of the same line, or between the two lines, such disagreement shall constitute consent.

Art. 151. It shall not be necessary to produce either the death certificate of the father or mother or the death certificates of both parents if declarations testifying to their death are made, in the first case, by the surviving spouse, and, in the second case, by the grandparents. These declarations shall be noted either on the instrument of consent of the father, mother or grandparents, or on the marriage certificate.

The absence of the ascendant whose consent is required shall be deemed to be established by production of a judicial declaration of his absence or, failing such declaration, of a judicial order for an inquiry. If no such judicial declaration or order has been made, its place shall be taken by a sworn declaration by the prospective spouse whose ascendant is absent. Such declaration shall

[2] *Ibid.*, No. 49 of 21 July 1967.

testify that the place of residence of the ascendant is unknown and that nothing has been heard from him for more than six months. It may be made at the time of celebration of the marriage in the presence of the civil registration officer, who shall note it on the certificate.

It may also be received before the celebration of the marriage by the civil registration officer of the domicile or place of residence of one of the prospective spouses. The civil registration officer shall prepare a report of the oath-taking and the declaration by the prospective spouse.

If the prospective spouse is unable to establish the death of his parents in the manner prescribed in the first paragraph hereof; if the ascendant whose consent is required is unable to express his will for any reason other than death or absence; if the ascendants other than the parents are dead and the prospective spouse is unable to produce the death certificate, the marriage shall be performed on the basis of the declaration made by the prospective spouse in the manner prescribed in the second and third paragraphs hereof.

Art. 152. Disagreement between the father and mother, between the grandfather and grandmother of the same line or between the grandparents of the two lines may be placed on record by a notary instructed by the prospective spouse; the notary shall draw up the documents without the assistance of another notary or of witnesses and give notice of the proposed marriage to the parent or parents or grandparent or grandparents whose consent has not yet been obtained.

The notice shall state the first names, surnames, occupations, domiciles and places of residence of the prospective spouses and of their parents, or, if necessary, of their grandparents, and the place where the marriage is to be performed.

The notice shall also contain a declaration that it is served with a view to obtaining the consent which has not yet been given, and that in the absence of that consent the marriage will be performed without it.

Art. 153. Disagreement between the ascendants may also be placed on record either by means of a letter, of which the signature is authenticated, addressed to the civil registration officer who is to perform the marriage, or by means of an instrument drawn up in the form prescribed in article 73, paragraph 2.

Art. 154. Perjury in the cases referred to in this chapter shall be punished with the penalties prescribed by article 220 of the Penal Code.

The provisions of Book 1 of the Penal Code and those of the Act of 18 June 1879, as amended, empowering the courts to recognize extenuating circumstances, shall apply.

. . .

Art. III. Article 158 of the Civil Code is hereby amended as follows:

Art. 158. Legally acknowledged natural children who have not completed their twenty-first year may not contract marriage without having obtained the consent of the parent who has acknowledged them, or of both parents if both have acknowledged them.

In the event of disagreement between the father and the mother, such disagreement shall constitute consent.

The provisions of article 149, article 151, second and third paragraphs, and article 154 shall apply to minor natural children.

Art. IV. After article 160, an article 160 *bis* is hereby inserted, worded as follows:

Art. 160 bis. Where, in the cases provided for in articles 148 to 150 and 158 to 160, consent to the marriage of a minor is refused, the *arrondissement* court, on the application of the *procureur d'Etat,* may authorize the child to contract marriage if it deems the refusal unjustified.

The application shall take the form of a summons to appear on a specified day before the *arrondissement* court of the minor's domicile or place of residence. One week's notice shall be given. No caveat may be entered against the decision but an appeal may be lodged against it within the two weeks following the date on which it is handed down, if the party concerned is present, or, if he is not, the date on which notice of the decision is served on him. For appearance before the High Court of Justice, one week's notice shall be given.

The *arrondissement* court and the High Court of Justice shall examine the case as a matter of urgency. The proceedings shall take place in chambers.

Art. V. Articles 173 and 176 of the Civil Code are hereby replaced by the following provisions:

Art. 173. The parents, and in the absence of the parents, the grandparents, may enter an objection to the marriage of their children or descendants even if they are of full age.

After the judicial withdrawal of an objection to a marriage entered by an ascendant, no further objection entered by an ascendant shall be admissible, nor may it delay the performance of the marriage.

Art. 176. Any person entering an instrument of objection shall state therein his qualifications for doing so and his election of domicile in the place where the marriage is to be performed; he shall also state the reasons for his objection and reproduce the legal text on which the objection is based; if he fails to fulfil any of these requirements, the objection shall be null and void and the ministerial officer who signs the instrument shall be suspended.

After one full year, the instrument of objection shall cease to have effect. It may be renewed, except in the case referred to in the second paragraph of article 173.

Art. VI. Articles 264 and 265 of the Penal Code are hereby replaced by the following provisions:

Art. 264. A civil registration officer who fails to set forth in the marriage certificate the consents prescribed by law;

Who perform a marriage without having satisfied himself that those consents exist; or

Who receives a marriage certificate in a case of the kind referred to in article 228 of the Civil Code before the expiry of the time-limit prescribed by that article, shall be punished with a fine of 501 to 10,000 francs.

Art. 265. A civil registration officer who performs a marriage against the wishes of the persons whose consent is required shall be punished with imprisonment for a term of three months to one year and a fine of 1,000 to 10,000 francs.

MADAGASCAR[1]

DECREE No. 67-013 REGULATING THE RECORDS OF COURT DECISION[2]

TITLE I

ORGANIZATION

Art. 1. The registry of records of court decisions established for every court of first instance or for every section of a court shall be kept by the chief clerk of the court under the supervision of the *procureur de la République* or the section president and the *procureur général* of the appeals court.

Art. 2. The special registry of records of court decisions established for the appeals court shall be kept by the chief clerk of the court under the supervision of the *procureur général.*

TITLE II

PREPARATION OF BULLETIN No. 1

Art. 3. A bulletin No. 1 shall be prepared for any person who has been the subject of one of the decisions listed in article 589 of the Code of Criminal Procedure which has become final through the exhaustion of all possibilities of appeal.

If it concerns a person for whom a bulletin No. 1 already exists, the new bulletin shall be clearly marked "Previous record".

Art. 4. Bulletins No. 1 recording:

A conviction for a serious offence (*crime*) or less serious offence (*délit*) by a criminal court;

A decision concerning measures of protection, supervised education or a correctional penalty applied to an offender who is a minor;

A disciplinary decision by the judicial authority which entails or orders disqualifications;

A declaratory judgement of bankruptcy or a legal settlement;

A court order declaring forfeiture of paternal authority or the withdrawal of all or some of the rights pertaining to it, shall be prepared by the clerk of the court which rendered the decision within one month from the day when it became final if it was rendered after full argument on both sides. In the case of a ruling by default, the time-limit of one month shall run from the day of notification.

If the court has ordered the suspension of the executive of the sentence, the bulletin No. 1 recording the conviction shall be clearly marked "suspension".

. . .

Art. 6. A bulletin No. 1 recording a deportation order against an alien shall be prepared either in the office of the clerk of the court of the place of birth if the alien was born in the territory of the Republic, or in that of the appeals court, upon notification of the deportation order being made by the Minister of the Interior to the Minister of Justice, Keeper of the Seals.

. . .

Art. 9. Bulletins No. 1 concerning persons born abroad, persons whose place of birth is unknown or not traced and persons whose identity is in doubt, shall be transmitted by the chief clerk of the court which pronounced the sentence to the *procureur général* of the appeals court. They shall be filed in the special registry of court decisions.

Art. 10. The chief clerk of the court or of the section of the court of the place of birth and the clerk of the court responsible for the special registry of court decisions shall enter on the bulletin No. 1, as soon as they receive notification, the annotations prescribed by article 590 of the Code of Criminal Procedure.[3]

The notification shall be addressed, as soon as possible and using individual forms, either to the *procureur de la République* or to the president

[1] Texts furnished by the Government of the Malagasy Republic.

[2] *Journal officiel de la République Malagasy*, 14 January 1967.

[3] For extracts from the Code of Criminal Procedure, see the *Yearbook on Human Rights for 1962*, pp. 177-180

of the section of the court, or to the *procureur général*:

1. For pardons, commutations or reductions of sentence, by the clerk of the court which pronounced the sentence;

2. For decisions to suspend sentence, by the authority making them;

3. For rulings entailing rehabilitation and rulings and judgements relating to rigorous imprisonment (*relégation*), by the *procureur général,* the *procureur de la République* of the court issuing the ruling or the president of the section which rendered the judgement;

4. For decisions rescinding or suspending deportation orders, by the authority which issued the order;

5. For the expiry dates of prison sentences and the execution of imprisonment for debt and for orders of conditional release, by the governors and chief warders of penal institutions and through the *procureur de la République* or president of the section of their residence; for orders revoking conditional release, by the director of the judicial administration and prison services;

6. For the payment of a fine, by the treasury tellers and officials responsible for collection and through the *procureur de la République* or the president of the section of their residence;

7. For judgements concerning discharge from bankruptcy and legal settlements and legal certifications of discharge from bankruptcy, by the clerk of the court which handed down the decision.

Art. 11. The bulletin No. 1 shall be withdrawn from the registry of court decisions and destroyed by the chief clerk of the court or section of the court in the following cases:

1. Upon the death of the person named in the bulletin, which may be established from the marginal note in the register of births, or when the date of birth shown on the bulletin indicates that the person is over 100 years old;

2. When the conviction entered on the bulletin No. 1 has been rendered null and void by amnesty;

3. When the person concerned has obtained a decision correcting an error in the register of court decisions; the withdrawal shall be made at the behest of the *procureur de la République* in the court which handed down the decision or of the president of the section which rendered the judgement;

4. When the convicted person has appealed against a sentence or ruling by default or when the chamber of cassation voids the decision by applying article 77 of the Act establishing the Supreme Court, the withdrawal shall be effected by order of the *procureur de la République* in the court which handed down the decision that has now become null and void, or of the president of the court section which handed down the decision.

Art. 12. The office of the clerk of the court or section of the court of the place of birth shall receive from foreign authorities, under the relevant diplomatic conventions, notification of any sentences pronounced by their courts against Malagasy nationals, or persons born in the territory of the Republic.

These notifications, which shall constitute bulletins No. 1, shall be filed in the registry of court decisions in their original form, or, if necessary, after being copied onto a regular bulletin No. 1 form.

The annotations prescribed by article 590 of the Code of Criminal Procedure shall be entered on these bulletins by the clerk of the court as soon as he receives the notifications from the foreign authority.

Title III

DUPLICATES OF BULLETINS No. 1 AND NOTIFICATIONS FOR INTERNATIONAL EXCHANGE OF INFORMATION

Art. 13. Exact copies of the bulletin No. 1 called "Duplicates" shall be prepared by the clerk of the court which has pronounced sentence in the cases and the conditions described below.

Art. 14. When the court has rendered a judgement involving deprivation of voting rights, as stated in article 2 of Organic Law No. 3 of 6 June 1959 regulating the exercise of the franchise, the clerk of the court shall make a duplicate of the bulletin No. 1 on a special form, regardless of the age and sex of the convicted person, and shall deliver it to the *sous-préfet* of the place of domicile of the convicted person.

That authority shall duly order the convicted person's name to be stricken from the electoral roll and shall then transmit the duplicate to the office of the National Institute of Statistics and Economic Research (*Institut National de la statistique et des études économiques*).

In the event that a further judgement should alter the voting rights of the person named in the bulletin No. 1, the clerk of the court who prepared the bulletin shall so notify the administrative authority to which the duplicate was delivered. That authority shall duly order the correction to be made in the electoral roll and shall transmit the notification as indicated in the preceding paragraph.

. . .

Art. 16. Where international agreements have been concluded for this purpose, the chief clerk of the court which rendered one of the judgements listed in article 589 of the Code of Criminal Procedure with respect to a national of one of the foreign countries which has entered into such an agreement with the Malagasy Republic, shall prepare, in addition to the bulletin No. 1, a duplicate of that bulletin marked "Notification for international exchange of information", which he shall deliver as prescribed in article 9 for transmission in accordance with the procedure established in the agreement.

Title IV

DELIVERY OF BULLETINS No. 2 OF RECORDS OF COURT DECISIONS

Art. 17. The bulletin No. 2 shall be delivered

in the conditions and to the authorities specified in article 594 of the Code of Criminal Procedure, and to the administrations and bodies corporate which appear on the list annexed to this decree in connexion with their personnel and the applications for employment which they receive.

The bulletin No. 2 shall be requested from the office of the chief clerk of the court of first instance or of the section of the court of the place of birth or from the office of the chief clerk of the appeals court, in the event that the person concerned was born abroad, by letter or telegram indicating the civil status of the person whose bulletin is requested, the competence of the requesting authority and the reason for the request.

However, it shall not be necessary to specify the reason for the request when the request is made by a judicial authority.

. . .

TITLE V

DELIVERY OF BULLETINS No. 3

Art. 20. The bulletin No. 3 shall be delivered only in the conditions and to the persons specified in article 595 of the Code of Criminal Procedure.

It should be requested by letter signed by the person it concerns and specifying his civil status.

The request shall be directed or presented to the chief clerk of the court or court section of the place of birth, or to the chief clerk of the appeals court responsible for the special registry of court decisions in the case of a person born abroad.

If the applicant cannot write or sign his name, this fact shall be noted by the administrative authority of the district where he resides, which shall certify that the request has actually been made in the name and on the initiative of the person whom the bulletin No. 3 concerns.

The bulletin No. 3 may also be requested from the clerk of the court by the person it concerns if he appears in person and can establish his identity.

. . .

TITLE VI

THE SPECIAL REGISTRY OF RECORDS OF COURT DECISIONS

Art. 23. In the office of the chief clerk of the appeals court, a special registry of records of court decisions shall be kept, in which shall be filed alphabetically and for each individual, by date of rulings, judgements, decisions or decrees:

Bulletins No. 1 concerning persons born abroad;

Bulletins No. 1 concerning persons whose place of birth is unknown or not traced or whose identity is in doubt.

DECREE No. 67-341 IN APPLICATION OF ARTICLES 44, 45, 46, 47 and 49 OF THE PENAL CODE, CONCERNING FORCED RESIDENCE [3]

Art. 1. Any judgement or order imposing forced residence shall, as soon as it becomes final, be notified by regular dispatch to the Minister of the Interior by the parquet of the court which delivered the sentence.

Any commutation or remission of a life sentence and any conditional release of a prisoner sentenced to rigorous imprisonment shall be notified by the Keeper of the Seals, the Minister of Justice, to the Minister of the Interior.

Art. 2. At least six months before a prisoner is released or as soon as possible if the term of imprisonment is less than six months, the head of the penal establishment in which the offender is confined shall transmit his file to the Minister of the Interior.

The file must contain the recommendation of the *ministère public* attached to the court which delivered the sentence regarding the nature and scope of the measures to be taken with respect to the offender, and this recommendation must be attached to the extract of the decision or judgement to be sent to the prison.

Art. 3. After obtaining the recommendation of the sub-prefect of the place in which the offence was committed and, if he so wishes, that of the sub-prefect of the last place of domicile of the person concerned, the Minister of the Interior shall submit the record of the person subject to forced residence to the commission established by article 45 of the penal code.

. . .

Art. 5. With a view to drawing up the individual decision specified by article 45, the commission shall propose a list of places in which the offender may be forbidden to reside.

This list shall be drawn up in the light of the circumstances of the crime of offence which resulted in the imposition of forced residence.

[3] *Ibid.*, 23 September 1967. For extracts from the Penal Code, see *Yearbook on Human Rights for 1962*, pp. 180-182.

Art. 6. The decision with regard to forced residence shall be taken by the Minister of the Interior, and shall mention the list of forbidden places.

Upon receipt of the certified copy of the decision, to which the documents in the file shall be attached, the Director of National Security shall establish the identity card and a form authorizing the issue, if necessary, of a duplicate thereof.

. . .

Art. 8. The identity card shall be sent by the Director of National Security to the head of the penal establishment in which the person concerned is serving his sentence.

Art. 9. On his release, the offender shall be notified of the decision imposing forced residence and shall be issued with his identity card by the head of the penal establishment in which he served his sentence.

The notification and the issue of the card shall be noted on the identity card and signed by the head of the establishment and by the offender.

The head of the penal establishment shall inform the Director of National Security of the notification and of the issue of the identity card.

The identity card shall be delivered to the offender after the police formalities with which he is required to comply under the terms of articles 47 and 49 of the Penal Code, have been brought to his attention.

Art. 10. In the event that the person subject to forced residence is not confined in a penal establishment or was released before the head of that establishment was informed of the decision imposing forced residence, he shall be notified and his identity card shall be delivered to him at the suit of the Ministry of the Interior.

Art. 11. The visa specified in article 47 of the Penal Code shall be issued by the police commissioner of the commune in which the person concerned takes up residence, or if there is no police commissioner, by the commander of the *gendarmerie* detachment or an authority designated by decision of the Minister of the Interior. It shall consist of affixing to the identity card a moist stamp and the signature of one of the abovementioned authorities in the spaces provided for that purpose.

The authority visaing the identity card shall enter in a register the name of the person whose residence is restricted, and the date on which the visa was issued.

Art. 12. Any person under forced residence must always be in a position to present his identity card whenever required to do so by the police authorities.

Art. 13. If the person under forced residence loses his identity card, he must make an oral declaration to that effect within forty-eight hours to the police commissioner or, in his absence, to the commander of the *gendarmerie* detachment of the place in which he resides. The commissioner or, alternatively, the commander of the *gendarmerie* detachment shall give him a receipt for the declaration and shall request a duplicate of the identity card from the Director of National Security without delay.

Art. 14. Anyone under forced residence who is sentenced to forced residence a second time shall not be issued with a new identity card.

The identity card which he holds shall be completed in that case by an additional page bearing the date on which the new sentence expires.

The additional page shall be issued in the same conditions as the identity card itself.

Art. 15. When for pressing or urgent reasons a person under forced residence requests permission to reside temporarily in a place which is forbidden to him, such permission may be granted for a maximum period of one month not renewable for the same cause by the prefect of the prefecture to which he is requesting access, and for longer than one month by the Minister of the Interior on the recommendation of the commission.

Requests by the persons concerned may be heard only if the latter have complied strictly with the police formalities specified by articles 47 and 49 of the Penal Code and articles 10 and 11 of this Decree.

Art. 16. The offender authorized to reside in places forbidden to him shall be obligated to submit to the control of the police authorities provided in article 47 of the Penal Code.

Art. 47. If, while he is under forced residence, the offender is sentenced to imprisonment or to a more severe penalty, the Minister of the Interior shall immediately be informed by the parquet.

The sentence and the term actually served shall be noted on the identity card by the head of the penal establishment, who shall inform the Minister of the Interior to that effect.

Art. 18. Decisions modifying the conditions of compliance with the sentence of forced residence taken in application of article 46 of the Penal Code shall be notified by the Minister of the Interior to the Director of National Security and by the latter to the person concerned.

The notification shall be recorded on the identity card.

ACT No. 67-020 AUTHORIZING THE ACCESSION OF THE MALAGASY REPUBLIC TO THE GENEVA CONVENTION RELATING TO THE STATUS OF REFUGEES OF 28 JULY 1951 [4]

Art. 1. The accession of the Malagasy Republic to the Geneva Convention Relating to the Status of Refugees of 28 July 1951 is hereby authorized, subject to the following reservations:

1. For the purposes of the obligations of the Malagasy Government under this Convention, the words "events occurring before 1 January 1951" in article 1, section A, paragraph 2, shall be understood to mean "events occurring before 1 January 1951 in Europe";

2. The provisions of article 7, paragraph 1, shall not be interpreted as including the treatment accorded nationals of countries with which the Malagasy Republic has concluded conventions on establishment or co-operation agreements;

3. The provisions of articles 8 and 9 shall not be interpreted as preventing the Malagasy Government, in time of war or other grave and exceptional circumstances, from taking measures in the case of a refugee because of his nationality in the interests of national security;

4. The provisions of article 17 shall not be interpreted as impeding the implementation of the laws and regulations establishing the proportion of alien wage-earners whom employers may engage in Madagascar or the obligations of the latter upon engaging alien labour.

[4] *Ibid.*, 25 November 1967. For the text of the Convention, see *Yearbook on Human Rights for 1951*, pp. 581-588.

ACT No. 67-023 AUTHORIZING THE SIGNATURE OF THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION [5]

Art. 1. The signature of the International Convention on the Elimination of All Forms of Racial Discrimination is hereby authorized, subject to the following reservations:

"The Malagasy Republic does not consider itself bound by the provisions of article 22 of the Constitution, under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention shall, at the request of any of the Parties to the dispute, be referred to the International Court of Justice, and declares that in each individual case the consent of all the Parties to such a dispute is necessary before the dispute can be referred to the International Court."

[5] *Ibid.*, 25 November 1967. For the text of the Convention, see *Yearbook on Human Rights for 1965*, pp. 389-394.

ACT No. 67-027 AMENDING AND SUPPLEMENTING THE PROVISIONS OF ARTICLE 3 OF ACT No. 66-017 OF 5 JULY 1966 CONCERNING CIVIL REGISTRY DOCUMENTS [6]

Art. 1. Article 3 of Act No. 66-017 of 5 July 1966 concerning civil registry documents shall be amended and supplemented as follows:

"Art. 3 (new)—Until 31 December 1968, special hearings may be held in the chief towns of the communes by the lower civil courts for the issuance of court decisions in lieu of birth certificates.

"All officers of the lower courts may preside

[6] *Ibid.*, 23 December 1967.

over the special hearings within the territorial area of their jurisdictions and all sub-prefects may do so within their districts.

"Civil officers of the central administration who are responsible for the administration of justice and officers of the higher courts shall likewise be empowered to hold special hearings throughout the territory of the Republic. The records of the decisions issued by the civil officers of the central administration and the officers of the higher courts and all other documents shall be preserved in the record office of the civil jurisdiction in which the hearing is held.

"Notwithstanding articles 6 and 15 of Ordinance No. 60-107 of 27 September 1960 introducing a reform of the organization of the judiciary, and article 39 of the Code of Civil Procedure, the procedings for the issuance of court decisions in lieu of birth certificates shall not require prior notification; it shall not be mandatory for an officer of the *ministère public* to attend the special hearings.

"Any officer presiding over a special hearing may request the assistance of an *ad hoc* clerk. If necessary, he shall administer to the latter an oath that the clerk 'will fulfil his functions well and loyally and perform all the duties they confer on him'.

"A short record of the proceedings may replace the record of the hearing provided for in article 182 of the Code of Civil Procedure.

"In every case, a true copy of the decision shall be transmitted to the Ministry of Justice."

ACT No. 67-029 AMENDING CERTAIN PROVISIONS OF ACT No. 60-004 OF 15 FEBRUARY 1960 CONCERNING PRIVATE OWNERSHIP OF LAND [7]

Art. 1. The time-limit set in article 81, paragraph 2, of Act No. 60-004 of 15 February 1960,[8] amended by Act No. 64-026 of 11 December 1964,[9] for the admissibility of registration claims under the Act of 9 March 1896 shall be extended until 31 December 1972.

The time-limit set in article 18, paragraph 2, of the same Act for the reclamation of land registered as of unknown ownership owing to the absence of the owner at the time of the cadastral operations shall be extended until 27 February 1973.

Art. 2. Articles 77 and 81 of Act No. 60-004 of 15 February 1960 shall be amended and supplemented as follows:

The text of article 77 shall be replaced by the following new provisions:

"There shall be instituted a collective procedure for establishing right of ownership, to be known as collective registration or cadastral survey, the purpose of which shall be to determine such ownership and to ensure the exercise of the real rights deriving from it by the occupant of Malagasy nationality who holds such rights either by virtue of the Act of 9 March 1896 or by virtue of occupation as defined in articles 18 and 26 above.

"This procedure shall be applied to all landed property which is subject to private appropriation, excluding lands which, on the date of the start of operations in the territorial district concerned, are a part of the public domain or which are already registered or, if the boundaries have been demarcated, are in the process of registration or which have been the subject of a deed declaratory of ownership or a deed of concession.

"It shall rest with interested third parties and, if there is occasion, with the State to prove before the responsible judicial bodies which will be established that the occupant does not meet the conditions laid down in the first paragraph.

"The procedure of collective registration or cadastral survey shall comprise:

"(*a*) General demarcation operations;

"(*b*) Endorsement of ownership rights;

"(*c*) Drawing up and keeping of deeds of ownership.

"The conditions governing the implementation of this article, including the payment of costs, shall be determined by decree of the Council of Ministers."

The following paragraphs shall be added at the end of article 81:

"Cadastral operations which have been undertaken under the system established by the Decree of 25 August 1929 and for which the collective demarcation record has been drawn up shall be continued provisionally under the conditions laid down in articles 153 to 155 of Ordinance No. 60-146 of 3 October 1960 concerning the land registration system.

"However, as from the entry into force of the decree(s) governing implementation pro-

[7] *Ibid.*, No. 569 of 23 December 1967.

[8] *Ibid.*, No. 88 of 27 February 1960.

[9] *Ibid.*, No. 390 of 12 December 1964.

vided for in new article 77 and after the establishment of the judicial bodies mentioned therein, the new regulations shall apply automatically to all pieces of land which have not yet been the subject of a judgement of the itinerant land tribunals.

"Furthermore, with a view to making the land ownership system completely uniform, the said decree or a subsequent decree shall establish conditions for the automatic conversion of existing land register entries into registered title-deeds and for the direct establishment of registered title-deeds for pieces of land which have already been the subject of a final judgement of the land tribunals and for which no land register entry has yet been made."

ACT No. 67-030 RELATING TO MATRIMONIAL REGIMES AND THE FORM OF WILLS [10]

PREAMBULAR TITLE

GENERAL

Art. 1. The spouses may determine by contract the effect of their marriage on their property.

In the absence of a contract, and subject to the alternatives set forth in articles 2 and 3, the spouses shall be governed by the system of ordinary law prescribed in title I of this Act.

Art. 2. On being questioned by the civil registrar at the time the marriage is solemnized or by the representative of the competent authority during the performance of the traditional marriage rites, the spouses may declare their agreement that, while their estate shall be regulated by law, they will share their common property equally if and when the marriage is dissolved.

Art. 3. As provided in the preceding article, the spouses may also agree that a separation-of-property arrangement as established in article 56 *et seq.* of this Act shall apply to their property.

Art. 4. In the marriage contract, the spouses may not derogate from the laws governing public order and morality, or from the rules regulating parental authority or guardianship, or from the rights and obligations deriving from their marriage or from the legal order of succession.

Art. 5. Unless otherwise specified in the marriage contract, the provisions of ordinary law shall be applicable, provided they are compatible with the contract.

The marriage contract shall be drawn up and executed or certified by a notary in the presence and with the consent of the spouses. Anyone other than the spouses who has to consent to, or take part in, the marriage contract may indicate his consent or participation either in writing by an affidavit authenticated by the competent authority or through a proxy having special powers conferred in the same manner.

There shall be issued to the intended spouses, for delivery to the civil registrar, a certificate indicating their identity and domicile, the date of the marriage contract and the name, title and domicile of the notary or public official who has authenticated the marriage contract.

Art. 7. The marriage contract shall be drawn up before the marriage but shall not take effect until the date of the marriage.

Art. 8. The marriage certificate shall indicate the existence of a contract or of a declaration made in accordance with articles 2 and 3 of this Act.

Art. 9. In the event that either spouse should seriously jeopardize the interests of the home or the children by breaches of the contract or behaviour indicating unfitness or fraud, the presiding judge of the civil court of the place of domicile of the spouses may, by an order issued at the request of the other spouse, prescribe provisional measures for safeguarding their common or personal property, including "reserved" property, notwithstanding the matrimonial régime.

These measures shall remain in effect for a period not exceeding two years and may be revoked before that time by order of the same judge.

They may be renewed.

Art. 10. Either spouse may petition the court for judicial separation of property when his or her interests are placed in jeopardy by the ill-regulated life, mismanagement or misconduct of the other spouse.

Art. 11. The judgement decreeing judicial separation of property shall be retroactive to the date of the petition.

The estate of the spouses shall thereafter be subject to the régime established in article 56 *et seq.* of this Act.

Art. 12. In decreeing a separation of property, the court may, if necessary, order the respondent to pay to the petitioning spouse his or her contributory share of the upkeep of the household.

Art. 13. Not less than three years following the date of the marriage, and in the interests of the family, the spouses may mutually agree to modify or change their matrimonial régime, whatever it may be, by drawing up a document executed or authenticated by a notary or the

[10] *Ibid.*, No. 569 of 23 December 1967.

competent authority and ratified by the civil court of their place of domicile.

If any creditors have been defrauded of their rights, they may, in accordance with the conditions laid down in the Code of Civil Procedure, lodge a third-party appeal against the judgement of ratification.

Art. 14. At the suit of the clerk of the court and one month after their adoption, court decisions decreeing separation of property or modifying the matrimonial régime which have become final shall be noted in the margin of the marriage certificate, in the record of the amended contract and, if necessary, in the margin of the copy of the contract in the register of the competent authority. In the same manner and within the same period of time, the same notation shall be made on the commercial register in the event that either spouse is engaged in commerce.

Art. 15. If either spouse should allow the other to administer his or her personal property, the rules governing tacit consent shall apply.

Title I

ORDINARY LAW OR *KITAY TELO AN-DALANA* OR *FAHATELO-TANANA*

Art. 16. The composition, administration and sharing of property constituting the estate of the community or the estate of each of the spouses under ordinary law or *kitay telo an-dalana* or *fahatelo-tanana* shall be subject to the following rules.

Chapter I

Personal property of the spouses

Art. 17. The movable and immovable property which the spouses hold on the date of their marriage or which they acquire during the marriage by inheritance, donation or legacy, shall constitute their personal property.

Art. 18. The following shall also constitute personal property:

1. The fruits and profits of personal property;

2. Movable or immovable property acquired by purchase during the marriage when such property is acquired in exchange for personal property or with personal funds or with the proceeds from the sale of personal property;

3. The property and the rights thereto belonging exclusively to the individual.

Art. 19. Legal action may be initiated to recover the following out of personal property:

1. Debts encumbering and inheritance and bequests payable by either spouse during the marriage;

2. Debts incurred by either spouse in his or her personal interest and without the consent of the other spouse, unless the debtor spouse can prove that the debt was contracted to defray household expenses;

3. Debts owed by either spouse on the date of the marriage; however, the maintenance which each spouse is personally obligated to provide for his father and mother may also be recovered from the common property.

Art. 20. Each spouse shall retain full ownership of his or her personal property and may freely dispose of it.

Chapter II

Community property

Art. 21. Subject to the provisions of article 18, the following shall constitute community property:

1. Earnings and wages received by the spouses;

2. Common funds;

3. Property acquired with earnings, wages or common funds, including the wife's "reserved" property, which shall be administered separately.

Art. 22. The husband shall administer the community property.

Art. 23. He may not, without his wife's consent:

1. Make gifts of real or personal community property;

2. Alienate or mortgage a building, business or farm which constitutes community property;

3. Alienate non-negotiable securities or tangible movables held in common, the transfer of which must be made public.

Art. 24. The wife shall be presumed to be acting for her husband when she acts alone to administer, enjoy or dispose of common property which she personally holds.

Art. 25. The wife shall enjoy the exclusive right to administer the property acquired with her earnings and wages from the exercise of a profession independently from that of her husband.

Art. 26. Legal action may be taken to recover the following out of community property, including "reserved" property:

1. The payment of debts incurred for the benefit of the household or the children or in discharge of a maintenance obligation incumbent on the spouses under the Act on Marriage;

2. The payment of debts incurred by either spouse for his own personal benefit but with the consent of the other spouse or as agent for the other spouse and for the latter's personal benefit.

3. The payment of debts arising out of an extra-contractual obligation during the marriage.

Art. 27. Legal action may also be taken either at the time of the marriage or later to recover out of the community property, including the "reserved" property if there is no personal property, the payment of maintenance other than that which either spouse is obligated to provide for his or her parents under article 19 (3).

Art. 28. Legal action may be taken to enforce the payment of debts incurred by the wife in the exercise of her profession or even for her

personal benefit, and without her husband's consent, out of her "reserved" property if she has no personal property.

Art. 29. If either spouse is incompetent, incapable or handicapped, or if he or she voluntarily renounces conjugal living, the other may bring legal action in order to obtain the exclusive right to exercise all or part of the power to administer, enjoy or dispose of the common property, including the "reserved" property.

If the need for this measure subsequently ceases to exist, the court may restore to the spouse in question the rights of which he or she has been deprived.

Art. 30. Either spouse may bring legislation to nullify any transactions concluded by the other in excess of his rights.

Proceedings for nullification may be started by the other spouse within three months from the date on which the transaction came to his or her knowledge, but may not be started more than one year after the dissolution of the community.

The proceedings shall be without prejudice to the rights of third parties.

DISSOLUTION OF THE COMMUNITY

Art. 31. The community shall be dissolved:

1. By the death of either spouse;

2. By absence, following the judgement decreeing the final transfer of the property of an absent spouse to his or her heirs;

3. By divorce;

4. By a change in the matrimonial régime;

5. By judicial separation of property.

Art. 32. The effects of the dissolution of the community between the spouses may by judicial decision be made retroactive to the actual date when they stopped living together as husband and wife.

Art. 33. After the community has been dissolved, first the wife and then the husband shall recover his or her tangible personal property or property which has been substituted for it.

Art. 34. Any movable or immovable property shall be regarded as common property unless it can be proved by any means whatsoever, that it is the personal property of either spouse.

Art. 35. The community must reimburse the spouses for any benefit derived from the use of their personal property.

Art. 36. Each spouse must reimburse the community or the other spouse whenever the value of his or her personal property has been enhanced at the expense of the common property or the personal property of the other spouse.

Art. 37. A general account shall be opened in the name of each spouse and of the community showing the amounts to be reimbursed.

Art. 38. If the community is dissolved by the death of either spouse, the board and lodging of the survivor shall be charged to the community during the following year in proportion to the need of the claimant and the resources of the community.

The surviving spouse shall not have to return to the common estate the fruits of the common property he or she has received in the year following the decease and in any case not until they are claimed by the beneficiaries of the deceased.

Art. 39. In the same circumstances, when the common property includes a farm constituting an economic unit, the surviving spouse who either lives on the farm or who operates it or who effectively contributes to its operation, may petition that it be left unpartitioned for a period not exceeding six years.

That period of time may always be reduced in the light of circumstances.

Art. 40. After all obligations have been paid and the common debts discharged, and subject to the provisions of articles 1, 2 and 13, the community estate shall be partitioned into three parts, two going to the husband and one to the wife.

Art. 41. In all cases of the dissolution of the community, if the spouses or their beneficiaries who are of full age and legal capacity are present or duly represented, the partition may be made out of court.

The partition may be preceded by an inventory authenticated by the spouses or their beneficiaries. The partition may be ratified by the court at the request of any of the parties.

Art. 42. The partition shall, as far as possible, be made in real property, or, failing this, by the award of sums of money to those receiving the smallest shares to compensate for the inequality of the shares.

Art. 43. The shares of the real property to be divided shall be estimated by the parties at the time of the partition.

In the absence of agreement, the estimate shall be made by an expert chosen by the parties or assigned for that purpose by the presiding judge of the court of the jurisdiction in which the property is situated.

Art. 44. If there are creditors seeking or opposing seizure, or if the parties agree that a sale is necessary to discharge the debts and obligations of the community, the real property may be sold in the manner prescribed by the Code of Civil Procedure under the heading "seizures and executions".

Art. 45. When the common property includes a farm constituting an economic unit, the surviving spouse or one of the spouses may have it assigned to him, subject if necessary, to the payment of compensation, if, at the time of the dissolution of the community, he operated the farm himself or effectively contributed to its operation.

Art. 46. The parties may agree that the wife will take her share of community property in the form of a sum of money. In that case, the remittance of the sum shall be preceded by an inventory estimating the property to be partitioned, verified by an instrument executed before the competent authority or authenticated by a notary.

Art. 47. The partition of the community property must be made by a court:

1. In the event that all the parties are not present or represented or include persons who are legally disqualified;

2. In the event that either spouse or any of his beneficiaries withholds consent to the partition or challenges either the way it is carried out or completed; in that case, the partition may be partial.

Art. 48. The court ruling on the request for partition shall entrust responsibility for liquidating and partitioning the property to a notary, a public official or a clerk of the court, who, in case of difficulty, may always bring the case before the court.

Art. 49. In ruling on the request, the court may, without prior expert advice, even when the case involves persons who are legally disqualified, order that the property shall be distributed or, if it is not easily divisible, shall be sold at auction in a single lot.

In the latter case, the court shall set the price in accordance with the provisions of article 43 and the sale shall be held in accordance with the provisions of the Code of Civil Procedure.

Art. 50. When expert knowledge is required, whether it has been requested under the conditions provided for in article 49 or ordered by the court, the reports of the experts shall be made in accordance with the procedures prescribed for expert advice in the Code of Civil Procedure.

The experts' reports should indicate briefly the basic for the estimates. They should state whether the property being estimated can be easily divided, and if so, how that can be done. They should establish the composition and value of each share.

Art. 51. The judgement or ruling given in an action to terminate the community must pronounce on the dissolution and, subject to the provisions of article 48, prescribe the measures enumerated in articles 49 and 50 in the event that the parties cannot reach an amicable agreement.

Art. 52. If either of the spouses or any of the heirs has misappropriated or concealed any of the property of the community, he shall be deprived of his rights to that property.

LIABILITIES OF THE COMMUNITY

Art. 53. Legal action may be brought against either spouse to recover the common debts which he has contracted and which have not been discharged at the time of the partition of the community property.

Art. 54. If, in the partition of the estate, the wife has received half of the common property either by virtue of the declaration referred to in article 2 or as a result of a change in the matrimonial régime, legal action may be brought against either spouse to recover half of the joint debts contracted by the other spouse, which have not been discharged at the time the community property was divided.

If the wife has not received half of the common property, she may be sued for only one third of such debts.

Art. 55. The spouse who has paid more than the share of the debt which he was obligated to pay may bring legal action against the other to recover the excess.

TITLE II

THE REGIME OF JUDICIAL SEPARATION OF PROPERTY

Art. 56. The judicial separation of property provided for in articles 3, 11 and 13 of this Act shall be regulated by the following provisions.

Art. 57. Each of the spouses shall retain the right to administer, enjoy and dispose freely of his or her own personal property.

Art. 58. Subject to the provisions of article 60 of Order No. 62-009 of 1 October 1962 concerning marriage, each of the spouses shall be held personally responsible for all the debts he has contracted.

Art. 59. The real or personal property acquired by the spouses during the marriage shall, for all purposes relating to them or to third parties, be deemed to belong to both of them, each having half, unless there is evidence to the contrary, which may be submitted in any form.

TITLE III

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

Art. 60. The provisions of titles I and II above shall enter into force six months after the publication of this Act.

. . .

TITLE IV

THE FORM OF WILLS

Chapter I

Art. 65. A will is an instrument by which any person of sound mind may dispose of all or part of his property for the period following his demise, unless he is declared legally incapable by law or custom; it may be revoked at any time.

A will must be drawn up in one of the following forms: in manuscript, in a secret or sealed document or in an official document.

ACT No. 67-034 AMENDING ORDINANCE No. 62-078 OF 29 SEPTEMBER 1962 CONCERNING THE ESTABLISHMENT OF THE NATIONAL FAMILY ALLOWANCES AND WORKERS' COMPENSATION FUND [11]

Art. 1. Article 2 of Ordinance No. 62-078 is cancelled and replaced by the following provisions:

"Art. 2 (new). The National Fund is a State public institution of industrial and commercial nature with legal personality and financial autonomy. It shall be under the joint protection of the Ministers of Labour, Finance and the Civil Service. The procedure governing such joint protection shall be determined by decree of the Council of Ministers."

Art. 2. Article 6 of Ordinance No. 62-078 is cancelled and replaced by the following provisions:

"Art. 6 (new). The funds of the National Fund may be deposited in the Treasury, in banks and in the National Investment Society.

"The capital representing industrial accident pensions must be deposited as shares of the National Investment Society. The Fund shall be represented, by its president and members of its Governing Body, on the board of directors of this body, in accordance with the rules of representation as laid down in article 5 of Act No. 66-027 of 19 December 1966."

[11] *Ibid.*

MALAYSIA

INDUSTRIAL RELATIONS ACT 1967

Act No. 35 of 1967, assented to on 20 July 1967.[1]

(EXTRACTS)

. . .

PART II

RIGHTS OF WORKMEN AND EMPLOYERS AND THEIR TRADE UNIONS

3. For the purposes of this Part, the expression "trade union" includes an association that has applied to be registered as a trade union.

4. (1) Subject to the provisions of any written law relating to the registration of trade unions, every workman shall have the right to form and assist in the formation of and to join a trade union and to participate in its lawful activities.

(2) Subject to the provisions of any written law relating to the registration of trade unions, every employer shall have the right to form and assist in the formation of and to join a trade union and to participate in its lawful activities.

(3) No person shall interfere with, restrain or coerce a workman or an employer in the exercise of his rights under subsection (1) or subsection (2) as the case may be.

(4) No trade union of workmen and no trade union of employers shall interfere with each other in the establishment, functioning or administration of that trade union.

(5) No employer or trade union of employers and no person acting on behalf of such employer or such trade union shall support any trade union of workmen by financial or other means, with the object of placing it under the control or influence of such employer or such trade union of employers.

5. (1) No employer or trade union of employers, and no person acting on behalf of an employer or such trade union shall—

(*a*) impose any condition in a contract of employment seeking to restrain the right of a person who is a party to such contract to join a trade union, or to continue his membership in a trade union; or

(*b*) refuse to employ any person on the ground that such person is or is not a member or an officer of a trade union; or

(*c*) discriminate against any person in regard to employment, promotion, any condition of employment or working conditions on the ground that such person is or is not a member or officer of a trade union; or

(*d*) dismiss or threaten to dismiss a workman, injure or threaten to injure him in his employment or alter or threaten to alter his position to his prejudice by reason that the workman—

(i) is or proposes to become, or seeks to persuade any other person to become, a member or officer of a trade union; or

(ii) participates in the promotion, formation or activities of a trade union; or

(*e*) induce a person to refrain from becoming or to cease to be a member or officer of a trade union by conferring or offering to confer any advantage on or by procuring or offering to procure any advantage for any person.

(2) The preceding subsection shall not be deemed to preclude an employer from—

(*a*) refusing to employ a person or to promote a workman or to suspend, transfer, lay-off or discharge a workman for proper cause; or

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[1] *Government Gazette*, Act Supplement, No. 6 of 3 August 1967. The text of the Act in English and a translation thereof into French have been published by the International Labour Office as *Legislative Series*, 1967—Mal.1.

(*b*) requiring that a person upon his appointment or promotion to a managerial position shall cease to be or not become a member or officer of a trade union catering for workmen other than those in a managerial position; or

(*c*) requiring that any workman employed in a confidential capacity in matters relating to staff relations shall cease to be or not become a member or officer of a trade union.

6. No workman or trade union of workmen and no person acting on behalf of such trade union shall—

(*a*) except with the consent of the employer, persuade at the employer's place of business during working hours a workman of the employer to join or refrain from joining a trade union:

Provided that the provisions of this paragraph shall not be deemed to apply to any act by a workman employed in the same undertaking where such act does not interfere with his normal duties; or

(*b*) intimidate any person to become or refrain from becoming or to continue to be or to cease to be a member or officer of a trade union; or

(*c*) induce any person to refrain from becoming or cease to be a member or officer of a trade union by conferring or offering to confer on any person or by procuring or offering to procure any advantage.

7. (1) Any complaint of any contravention of the provisions of section 4, 5 or 6 may be lodged in writing to the Minister setting out all the facts and circumstances constituting the complaint.

(2) The Minister, upon receiving any complaint under subsection (1), may, if he thinks fit, refer such complaint to the Court for hearing.

(3) The Court shall thereupon conduct a hearing in accordance with the provisions of this Act and may make such award as may be deemed necessary or appropriate.

[Other provisions of the Act deal with the recognition of trade unions; collective bargaining and collective agreements; conciliation; the Industrial Court; investigation and inquiry; and trade disputes, strikes and lockouts and matters arising therefrom.]

MAURITANIA

ACT No. 67-039 OF 3 FEBRUARY 1967, TO INSTITUTE A SOCIAL SECURITY SCHEME [1]

(EXTRACTS)

Chapter I

SCOPE

1. A social security scheme is hereby instituted in the Islamic Republic of Mauritania to provide—

(*a*) family benefits (family benefit branch);

(*b*) employment injury benefits (employment injury branch);

(*c*) old-age, disability and survivors' pensions (pension branch);

(*d*) such other social security benefits as may subsequently be instituted for employed persons.

(2) (1) All workers covered by the Labour Code[2] or the Merchant Shipping Code shall be required to belong to the social security scheme instituted by this Act, without distinction as to race, nationality, sex or origin, if they are mainly employed in the territory of Mauritania for the account of one or more employers, irrespective of the nature, form or validity of their contacts or the amount or nature of their remuneration.

(2) Persons employed by the State shall likewise belong to the scheme if they are not covered by a special social security scheme in pursuance of regulations.

(3) The pupils of vocational schools, trainees and apprentices may, even if they receive no remuneration for their work, be placed on the same footing as workers covered by subsection (1), subject to conditions to be prescribed by order of the Minister of Labour.

(4) The special measures required for applying the provisions of this Act to temporary or casual workers shall be determined by order of the Minister of Labour, after consultation with the managing committee of the Fund.

3. (1) Any person ceasing to qualify for membership of the social security scheme after belonging to it for six consecutive months or more shall be entitled to continue to belong to the pension branch as a voluntary member if he makes application to that effect within six weeks following the end of his compulsory membership.

(2) Rules for the voluntary insurance provided for in this section shall be made by decree after consultation with the managing committee of the National Social Security Fund.

Chapter II

ADMINISTRATIVE ORGANIZATION

4. (1) The National Social Security Fund, hereinafter referred to as "the Fund", shall be responsible for managing the social security scheme instituted by this Act. The Fund shall be a public administrative institution operating at the national level; it shall be a body corporate in civil law, be financially independent and be supervised by the Minister of Labour.

[Other provisions of the Act deal with assets and financial organization; family benefits; employment injuries; and pensions.]

[1] *Journal officiel*, No. 202/3 of 22 March 1967. The text of the Act in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series*, 1967—Mau. 1.

[2] *Legislative Series*, 1963—Mau. 1. For a summary of the Code, see *Yearbook on Human Rights for 1963*, p. 211.

MEXICO [1]

AMENDMENTS TO THE ACT RELATING TO VETERANS OF THE REVOLUTION AS SERVANTS OF THE STATE [2]

Sole section. Sections 15 and 16 of the Act Benefiting Veterans of the Revolution as Servants of the State are hereby amended as follows:

. . .

Section 16. The dependants of veterans shall enjoy the benefits of this Act in accordance with the following rules:

I. The dependant members of the family of a veteran shall be considered to be:

(*a*) His surviving spouse;

(*b*) His children under the age of eighteen;

(*c*) His common law wife, when he has no surviving spouse, provided that she lived in conjugal union with the beneficiary for five consecutive years immediately preceding the day of his death, and provided that both partners remained unmarried during their union;

II. Upon the death of a veteran who had been receiving a supplementary sum from the Federal Treasury, the dependent members of his family shall be entitled to receive 80 per cent of such benefit for the first year, after which the payment shall be reduced by 10 per cent in each succeeding year until the level of 90 per cent of the original benefit is reached;

III. If the deceased veteran had not been receiving a supplementary sum from the Federal Treasury, his dependants shall be entitled to receive for the first year 100 per cent of the supplementary sum which would have been payable to the beneficiary, after which the payment shall be reduced by 10 per cent annually until the level of 50 per cent of the sum for the first year is reached;

IV. Payment of the benefit to the veteran's dependants shall begin on the day following his death;

V. The right of the veteran's dependants to receive the benefit allowed them shall terminate:

(*a*) In the case of his sons, when they reach the age of eighteen;

(*b*) In the case of his daughters, when they reach the age of eighteen, or earlier if they marry or enter into a common law marriage;

(*c*) In the case of his widow or common law wife, when she dies, remarries, or enters into a common law marriage;

(*d*) By statutory limitation, after a period of five years during which the benefit is not collected, reopened from the date of the last collection.

VI. If several dependants are entitled to receive the supplementary sum, the amount shall be divided equally among them;

VII. If the right of a co-participant is suspended or extinguished, his share shall become payable to his co-beneficiaries, whose shares shall be increased proportionately;

VIII. The right of each participant to collect the share payable to him shall terminate after two years, reckoned from the date of the last payment.

A person who is receiving another pension or any payment for work remunerated under the Expenditure Budget of the Federation shall not be eligible to collect the supplementary sum granted to a veteran or his relatives.

. . .

[1] Texts furnished by the Government of Mexico.

[2] *Diario Official*, volume CCLXXX, No. 16 of 19 January 1967.

ADDENDA TO THE PENAL CODE FOR THE FEDERAL DISTRICT AND TERRITORIES [3]

First article. Article 381 (*bis*) has been added to the Criminal Code for the Federal District and Territories and reads as follows:

"*Article 381* (bis). Without prejudice to the penalties prescribed in articles 370 and 371, a penalty of not less than three days and not more than ten years in prison shall be imposed on anyone who commits a robbery in a building, dwelling, apartment or room which is inhabited or intended for habitation, including fixed and mobile units, irrespective of the material of which they are constructed. The same penalties shall apply to anyone who steals an unoccupied vehicle parked on the public highway, or one or more head of large cattle or their young in the open field or some secluded place. Anyone who steals one or more heads of small cattle shall be liable to two thirds of the penalty prescribed in this article, in addition to the penalties provided in articles 370 and 371."

Second article. Article 242 (*bis*) has been added to chapter III of the Thirteenth Title of the Second Book of the Penal Code for the Federal District and Territories. It reads as follows:

"*Article 242* (bis). Anyone who in any way alters the markings, pedigree or brand marks used to identify cattle without the permission of the person who has legally registered them with the competent authority, shall be liable to one to five years' imprisonment and a fine of from 200 to 2,000 pesos."

[3] *Ibid.*, vol. CCLXXX, No. 17 of 20 January 1967.

AMENDMENTS TO ARTICLES 265 AND 266 OF THE CRIMINAL CODE [4]

First article. Articles 265 and 266 of the Criminal Code for the Federal District and Territories under Common Jurisdiction and for the whole of the Republic under Federal Jurisdiction are amended to read as follows:

"*Article 265.* Persons who by means of physical or moral violence engage in sexual relations with a person of either sex shall be liable to penalties of from two to eight years' imprisonment and a fine of from 2,000 to 5,000 pesos. If the victim of the assault is below the age of puberty, the prison sentence shall be from four to ten years and the fine from 4,000 to 8,000 pesos.

"*Article 266.* Intercourse with a child under twelve years of age or a person who for some reason is unable to express consent or resist criminal conduct, shall be regarded as comparable to rape and shall carry the same penalties."

Second article. Article 266 (*b*) has been added to chapter I of the Fifteenth Title of the Second Book of the Criminal Code for the Federal District and Territories under Common Jurisdiction and for the whole of the Republic under Federal Jurisdiction. It reads as follows:

"*Article 266* (b). When the rape is committed as a result of the direct or immediate intervention of two or more persons, the term of imprisonment shall be from eight to twenty years and the fine from 5,000 to 12,000 pesos. The provisions contained in article 13 of this Code shall apply to the other participants.

"Besides the penalties laid down in the preceding articles, a sentence of from six months' to two years' imprisonment shall be imposed when the crime of rape is committed by a parent against his child, by the latter against the former, by a guardian against his ward, or by the step-father or lover of the mother of the victim against the step-child. If found guilty, the defendant shall forfeit his parental authority or guardianship, as well as the right to nominate the victim as his heir.

"When the crime of rape is committed by a person holding a public office or post or engaged in a profession, who makes use of the means and opportunities afforded by the office or profession, he shall be permanently dismissed from the office or post or barred from exercising his profession for a period of five years."

[4] *Ibid.*

AMENDMENT TO SECTION 300 OF THE FEDERAL LABOUR ACT [5]

Sole article. Section 300 of the Federal Labour Act is hereby amended to read as follows:

"*Section 300.* If an occupational injury entails incapacity, whether permanent or temporary, total or partial, the only person entitled to the compensation fixed in the following sections shall be the injured employee; however, if he should die before collecting such compensation, this right shall devolve on the persons who were financially dependent on him, in accordance with the regulations specified in section 927. If an employee, as the result of an occupational injury, incurs total or permanent incapacity due to mental derangement, the compensation shall not be paid to any person other than the person representing him in accordance with the law."

[5] *Ibid.*

ADDITION OF A FOURTH TITLE TO THE SECOND BOOK OF THE PENAL CODE [6]

Single article. A fourth Title has been added to the Second Book of the Criminal Code for the Federal District and Territories under Common Jurisdiction and for the whole of the Republic under Federal Jurisdiction. It reads as follows:

Fourth Title

CRIMES AGAINST HUMANITY

Chapter I

Violations of duties of humanity

Art. 149. The present text remains unchanged.

Chapter II

Genocide

Art. 149 bis. Anyone who, by any means, commits offences against the lives of members of one or more national, ethnic, racial or religious groups with the aim of exterminating them totally or partially, or obliges them to undergo mass sterilization with the aim of preventing the group from producing offspring, shall be guilty of the crime of genocide.

This crime shall carry a penalty of from twenty to forty years' imprisonment and a fine of from 15,000 to 20,000 pesos.

A penalty of from five to twenty years' imprisonment and a fine of from 2,000 to 7,000 pesos shall be imposed on anyone who pursues the same aim by attacking the physical person or health of the members of those communities or by using physical or moral violence to transfer children sixteen years of age to other groups.

The penalties prescribed in the preceding paragraph shall also apply to anyone who, with the same object, deliberately subjects the group to living conditions likely to bring about its total or partial physical extermination.

Anyone holding public office or employed as a government official or civil servant who commits these offences in the performance of his duties or in connexion with the performance of his duties, shall be liable, in addition to the penalties prescribed in this article, to those provided in article 15 of the Act concerning the responsibilities of State officials and employees.

[6] *Ibid.*

MINE LABOUR SAFETY REGULATIONS [7]

TITLE I

GENERAL PROVISIONS

Chapter I

Section 1. The provisions of these Regulations shall be applicable to work or activities relating to the mining of the substances referred to in the Act concerning the enforcement of article 27 of the Constitution with respect to the exploitation and use of mineral resources.

Section 2. These Regulations shall be generally applicable throughout the Republic and shall be enforced by the Secretariat of National Property and the Secretariat of Labour and Social Security.

Section 3. The purpose of these Regulations is:

(*a*) The protection of workers against hazards threatening their health or lives; and

(*b*) Safety in the activities referred to in article 1 of these Regulations.

[7] *Ibid.*, vol. CCLXXXI, No. 11 of 13 March 1967.

DECREE OF 1 JUNE 1967 AMENDING AND SUPPLEMENTING ARTICLES 94, 98, 100, 102, 104, SECTION I, 105 AND 107, SECTIONS II (FINAL PARAGRAPH), III, IV, V, VI, VIII, XIII AND XIV, OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES [8]

Sole article. Articles 94, 98, 100, 102, 104, section I, 105 and 107, sections II (final paragraph), III, IV, V, VI, VIII, XIII and XIV, of the Political Constitution of the United Mexican States shall be amended and supplemented as follows:

Article 94. The judicial power of the Federation shall be exercised by a Supreme Court of Justice, by circuit courts (*Tribunales de Circuito*), *amparo* proceedings being heard by a panel of judges, and appeals by a single judge and by district courts.

The Supreme Court of Justice of the nation shall be composed of twenty-one regular judges (*ministros*) and five auxiliary judges, and shall sit in plenary session or in Chambers. Auxiliary judges shall be members of the Plenary Court when they act as alternates for the regular judges.

As prescribed by law, the Plenary Court and the Chambers shall sit in public session or, exceptionally, in closed session in cases where morality or the public interest so requires.

. . .

Article 98. The regular judges of the Supreme Court of Justice of the nation shall be replaced, in the event of their temporary absence, by the auxiliary judges.

. . .

Article 100. Leave-of-absence for periods not exceeding one month shall be granted to judges by the Supreme Court of Justice of the nation; leave-of-absence for longer periods shall be granted by the President of the Republic, subject to the approval of the Senate or, when the latter is in recess, the Standing Committee (*Comisión Permanente*). No leave-of-absence shall exceed a period of two years.

Article 102. The organization of the *Ministerio Público* of the Federation shall be determined by law; its officers shall be appointed and removed by the Executive in accordance with the relevant legislation and shall be headed by a *Procurador General* who shall have the same qualifications as are required to serve as a judge of the Supreme Court of Justice.

Article 104. The federal courts shall take cognizance of:

I. All civil or criminal proceedings arising out of the enforcement and application of federal laws or of international treaties concluded by the Mexican State. Where such proceedings affect private interests only, the regular judges and

[8] *Ibid.*, vol. CCLXXXIV, No. 45 of 25 October 1967. For extracts from the Political Constitution of the United Mexican States, see *Yearbook on Human Rights for 1946*, pp. 189-202.

courts of the States, the Federal District and the Territories may also take cognizance of them at the election of the plaintiff. Appeals against decisions of the first instance may be lodged with the immediate superior of the judge by whom the case was first heard.

Courts with full autonomy to render judgements may be established under federal law to take cognizance of administrative disputes; they shall be responsible for settling disputes arising between private individuals and the federal administrative authorities or the administrative authorities of Districts and Federal Territories. Federal law shall regulate their organization, functioning and procedure and the manner in which appeals against their decisions shall be lodged.

Appeals to the Supreme Court of Justice against the definitive judgements of the said administrative courts shall be admissible only in the cases prescribed by federal law, always provided that such judgements have been rendered as a result of an appeal submitted to administrative jurisdiction.

Appeals shall be subject to the procedures established by the Act implementing articles 103 and 107 of this Constitution with regard to review by the *amparo indirecto* procedure, and the ruling given by the Supreme Court of Justice in the matter shall be subject to the legal norms governing the admissibility and execution of writs of *amparo*:

II. All disputes pertaining to maritime law;

III. Disputes to which the Federation is a party;

IV. Disputes arising between two or more States or between one State and the Federation or between courts of the Federal District and those of the Federation or a State;

V. Disputes arising between a State and one or more citizens of another State; and

VI. Cases involving members of the Diplomatic and Consular Corps.

Article 105. The Supreme Court of Justice shall have exclusive jurisdiction in all disputes arising between two or more States, between the authorities in a given State as to the constitutionality of their actions, in disputes between the Federation and one or more States and in those to which the Federation is a party in the cases prescribed by law.

Article 107. All disputes mentioned in article 103 shall be dealt with in accordance with the judicial procedures and forms prescribed by law, subject to the following conditions:

I. *Amparo* suits shall always be prosecuted at the request of the injured party;

II. The judgement shall always be so drawn as to affect private individuals exclusively and shall confine itself to affording them protection and *amparo* safeguards in the special case to which the petition refers; it shall make no general statement as to the law or act that may have formed the basis for the complaint.

Any defects in the petition may be waived when the act protested is based on laws declared unconstitutional by a ruling of the Supreme Court of Justice.

Defects in the petition in penal cases, and defects in the petition of the employee in cases brought under labour legislation, may be waived where it is found that the petitioner has been the victim of a manifest violation of the law which has left him without recourse and also, in penal cases, where he has been tried under a law not strictly applicable to the case.

In *amparo* proceedings instituted against acts which have, or may have, the effect of depriving *ejidal* communities and settlements entitled *de facto* or *de jure* to communal status, or individual members of the *ejidal* communities or settlements, of the possession and use of their land, water, pastures and woodlands, any defects in the petition shall be waived in accordance with the Act implementing articles 103 and 107 of this Constitution and in no case shall they be grounds for a nonsuit or dismissal of the case through failure to follow up the prosecution. Nor shall cases involving the rights or *ejidal* landowners or communal settlements be dismissed;

III. Where petitions are brought against the judgements of judicial, administrative or labour courts, writs of *amparo* shall be issued in the following cases only:

(*a*) Against definitive rulings or awards in respect of which no further ordinary recourse is available by which the ruling or judgement may be modified or amended, if the violation of the law occurred in the ruling or award, or if, committed during the course of the trial and affecting the defence of the petitioner, the violation influenced the result of the suit, always provided that, in civil cases, the violation is alleged to have occurred during the proceedings instituted to obtain the redress for which the law ordinarily provides and, if committed in first instance, was invoked in second instance as a violation of the law. These requirements shall not be applicable in the case of *amparo* proceedings instituted against judgement given in disputes relating to civil status or those affecting family order and stability;

(*b*) Against acts committed during the suit whose execution is irreparable, acts committed outside the suit or after the termination thereof, provided that all relevant means of redress have been exhausted;

(*c*) Against acts which affect persons not parties to the suit.

IV. In administrative cases, *amparo* proceedings may also be brought against judgements which give rise to grievances for which no redress is possible through an appeal, action or legal defence. It shall not be necessary to exhaust such means where, for a stay of execution of the act protested to be granted, the law establishing them prescribes more stringent requirements than those necessary under the implementing act governing *amparo* procedure (*Ley Reglamentaria del Juicio de Amparo*) as a condition for a stay of execution;

V. *Amparo* proceedings against definitive judgements or awards, whether the violation occurred during the proceedings or in the judge-

ment or award itself, shall be instituted directly before the Supreme Court of Justice:

(*a*) In criminal cases, against definitive judgements rendered by courts with federal jurisdiction (*Tribunales Judiciales del Fuero Federal*) including military courts; in the case of the regular judicial authorities, when the judgement against which a writ of *amparo* is sought imposes the death penalty or a penalty involving loss of liberty for a period longer than that stipulated in article 20, section 1, of this Constitution for the granting of bail;

(*b*) In administrative cases, where individuals petition against definitive judgements rendered by federal, administrative or judicial courts for which no redress is possible by means of an appeal, action or regular means of legal defence, subject to the limitations as to competence prescribed by the implementing legislation;

(*c*) In civil cases, when appeals are lodged against definitive judgements rendered in federal or mercantile suits, whether the authority pronouncing judgement is federal or local, or in regular suits, subject to the limitations as to competence prescribed by the implementing legislation. The Supreme Court shall have exclusive jurisdiction in *amparo* proceedings instituted against judgements rendered in disputes relating to civil status or those affecting family order and stability.

In federal civil suits, write of *amparo* may be sought by any of the parties involved, including the Federation in defence of its patrimonial interests; and

(*d*) In labour suits where appeals are lodged against the awards of the central conciliation and arbitration boards (*Juntas Centrales de Conciliación y Arbitraje*) of Federal Districts in collective bargaining disputes; of the federal conciliation and arbitration authorities in disputes of whatever nature, and of the civil servants' federal conciliation and arbitration tribunal (*Tribunal Federal de Concilación y Arbitraje de los Trabajadores al Servicio del Estado*);

VI. Apart from the cases to which the previous section refers, *amparo* proceedings against definitive judgements or awards, whether the violation occurred during the hearing or in the judgement or award itself, shall be instituted directly before the collegiate circuit court (*Tribunal Colegiado de Circuito*) within whose jurisdiction the authority rendering the judgement or award has its venue.

In the cases to which this and the foregoing section refer, the Act implementing *amparo* procedure (*Ley Reglementaria del Juicio de Amparo*) shall establish the procedure and conditions to be followed by the Supreme Court of Justice and the collegiate circuit courts (*Tribunales Colegiados de Circuito*) in giving their respective rulings.

VII. *Amparo* proceedings, in respect of laws or acts of the administrative authority, against acts during the suit, outside the suit or after the termination thereof, or which affect persons not parties to the suit, shall be instituted before the district judge whose jurisdiction extends to the place where the act complained of was committed or attempted, and the procedure shall be confined to the report of the authority and to a hearing, the call for which shall be issued in the same order of the court as that calling for the report. The testimony of both parties shall be offered, the arguments heard and the judgement pronounced at the same hearing;

VIII. Appeals may be lodged against judgements rendered in *amparo* proceedings by district judges. The Supreme Court of Justice shall take cognizance of such appeals:

(*a*) Where a law is challenged on the grounds that it is unconstitutional;

(*b*) In respect of the cases covered by article 103, sections II and III, of this Constitution;

(*c*) Where complaints are lodged against legislation by the President of the Republic in federal matters, promulgated under article 89, section I, of the Constitution, on the grounds that it is unconstitutional;

(*d*) Where, in agrarian matters, complaints are lodged against the acts of any authority which affect the collective rights of *ejidal* settlements or communities or small landowners;

(*e*) Where, in administrative *amparo* proceedings, the agent responsible is a federal authority, subject to the limitations as to competence prescribed by law;

(*f*) Where, in criminal cases, the complaint refers solely to the violation of article 22 of this Constitution.

In cases not covered by the preceding subparagraphs, and in *amparo* proceedings instituted against the acts of administrative authorities constituted in accordance with the first and second parts of section VI of article 73 of this Constitution, the collegiate circuit courts shall take cognizance of petitions for review and there shall be no appeal against their judgements.

IX. Judgements rendered by the collegiate circuit courts in *amparo directo* proceedings shall not be appealable unless they contain a rulings as to the unconstitutionality of a law or the direct interpretation of a provision of the Constitution, in which case remedy may be sought of the Supreme Court of Justice, but the subject of the appeal shall be confined to the resolution of issues which are property speaking constitutional.

Judgements by the collegiate circuit courts shall not be appealable when they are based on rulings of the Supreme Court of Justice on the constitutionality of an act or the direct interpretation of a provision of the Constitution.

X. Acts protested may be subject to a stay of execution in the cases and under the conditions guarantees prescribed by law, in the granting of which account shall be taken of the nature of the alleged violation, of the difficulty of ensuring redress for the damages and prejudice which the complainant may suffer as a result of its execution, of the difficulties which a stay of execution may cause to any third parties involved and of the public interest.

A stay of execution shall be granted in respect of final judgement in criminal suits upon receipt of notice that *amparo* proceedings have been instituted and, in civil cases, when the petitioner

has given bond to cover damages and prejudice which the stay of execution may occasion. The stay of execution shall be void if the other party gives a counter bond to guarantee that the previously existing conditions shall be restored in the event of the granting of the writ of *amparo* and to pay for the corresponding damages and prejudice.

XI. In the case of *amparo directo* proceedings before the Supreme Court of Justice or the collegiate circuit courts, the stay of execution shall be requested from the responsible authority, in which case the petitioner shall, within the period set by law, give notice, under oath, to the said authorities of the institution of the *amparo* proceedings, accompanying it with two copies of the petition, one for the issuing authority and the other to be delivered to the opposing party. In other suits, the district courts shall take cognizance of and rule on petitions for a stay of execution.

XII. Where there is a breach of the safeguards provided for in articles 16 (in criminal suits), 19 and 20, recourse shall be had through the appelate court of the court committing the breach or to the competent district judge; in either case, appeals may be lodged, pursuant to section VIII, against their rulings.

If the districts judge does not reside in the same locality as the authority responsible for the act, the judge before whom the petition of *amparo* is to be submitted, shall be determined by law; this judge may suspend temporarily the execution of the act protested, in the cases and subject to the conditions prescribed by law.

XIII. Where the collegiate circuit courts give conflicting rulings in *amparo* proceedings within their jurisdiction, the judges of the Supreme Court of Justice, the *Procurador General* of the Republic, the said courts or the parties to the proceedings in which the said rulings were given, may submit the matter to the appropriate Chamber of the Supreme Court for a decision as to which ruling shall prevail.

Where the Chambers of the Supreme Court of Justice give conflicting rulings in *amparo* proceedings within their jurisdiction, any of the Chambers, the *Procurador General* of the Republic or the parties to the proceedings in which the said rulings were given, may submit the matter to the Supreme Court of Justice which shall decide in plenary session, which ruling shall prevail.

Judgements rendered by the Chambers or by the Supreme Court in plenary session, in the cases to which the preceding two paragraphs refer, shall determine only matters of jurisprudence and shall not affect specific judicial situations arising from the findings in the proceedings in which the conflicting rulings were given.

XIV. Except as stipulated in the final paragraph of section II of this article, and provided that a law is not challenged as unconstitutional, the *amparo* suit shall be dismissed or the proceedings declared to be discontinued by virtue of the failure of the petitioner or appellant to prosecute the action, as the case may be, when the act protested is of a civil or administrative nature, in the cases and subject to the conditions prescribed by the implementing act (*Ley Reglamentaria*). Discontinuance of the proceedings shall have the effect of confirming the judgement against which the appeal is lodged.

MONACO

ACT No. 822 OF 23 JUNE 1967 ON WEEKLY LEISURE TIME [1]

Art. 1. Except as otherwise provided below, employees shall be entitled to not less than one complete day of weekly leisure time. This leisure time shall be granted on Sundays.

Art. 2. If it is found that the simultaneous granting of leisure time, on Sundays, to the entire staff of an establishment would be harmful to the public or impair the normal functioning of the establishment, the weekly leisure time may be granted either on a regular basis or at certain times of the year only:

(*a*) To the entire staff on a day other than Sunday;

(*b*) To all or part of the staff in rotation.

The employer may apply one of the above exceptions only after consulting the staff representatives or, failing that, the appropriate workers' trade-union, and after obtaining, through an application accompanied by a statement of reasons, a permit from the Labour Inspector. This permit, which shall be for a limited duration, must be displayed in the establishment.

Art. 3. The exceptions specified in the foregoing article may be applied *pleno jure* in establishments coming within one of the categories specified in a list to be established by sovereign ordinance enacted after consulting the provisional Economic Council.

Weekly leisure time for household staff and caretakers of buildings of all kinds may be granted on a day other than Sunday.

Art. 4. Weekly leisure time may be suspended where it is necessary:

(*a*) To have urgent work carried out, particularly work whose immediate execution is essential for the organization of rescue operations, for the prevention of impending accidents or for the repair of damage to supplies, installations or buildings belonging to the establishment;

(*b*) To permit the execution of maintenance work which must necessarily be carried out on the day of collective leisure and which is essential to prevent any delay in the normal resumption of work;

(*c*) To provide for the replacement of one or more absent employees;

(*d*) To ensure the proper functioning of the establishment when, owing to exceptional circumstances, such functioning is essential for business operations.

In such cases the suspension may affect only those employees who are essential for the performance of urgent work or maintenance work for the replacement of absent persons; it may, however, also extend to employees of the enterprise engaged in repair or maintenance work for the establishment concerned. Within the fortnight following the day of leisure missed, the employees in question shall be given an equal amount of compensatory leave except where the second paragraph of article 6 applies.

Each suspension must be immediately notified to the Labour Inspector in accordance with the procedure established by ministerial order.

The exceptions provided for in subparagraphs (*a*) and (*b*) shall not apply to women or to young workers below the age of eighteen.

The number of suspensions of weekly leisure time of the kind provided for in subparagraphs (*c*) and (*d*) may not exceed the maximum established in article 5, including any suspensions effected in application of that article.

Art. 5. Weekly leisure time may be suspended not more than twice a month and not more than six times a year in establishments dealing with perishable substances or periodically confronted with an exceptionally heavy work load. Within the three months following the day of leisure missed, the employees shall be entitled to an equal amount of compensatory leave, except in the cases provided for in the last paragraph of article 6.

Each suspension shall be immediately notified to the Labour Inspector, as provided in the foregoing article.

. . .

[1] *Journal de Monaco*, No. 5,727 of 30 June 1967.

ACT No. 823 OF 23 JUNE 1967 GRANTING WOMEN ACCESS TO THE JUDICIARY AND ENTITLING THEM TO EXERCISE THE PROFESSIONS OF DEFENCE COUNSEL AND COUNSEL [2]

Article 1

Women may be appointed members of the various courts, in the forms and according to the conditions specified in article 2 of Act No. 783 of 15 July 1965 concerning the organization of the judiciary.

Article 2

They shall be entitled to exercise the professions of defence counsel (*avocat-défenseur*) and counsel (*avocat*) at the Appeals Court. The conditions for their appointment and the requirements concerning eligibility, training and professional qualifications shall be governed by the laws in force.

...

[2] *Ibid.*

ACT No. 824 OF 23 JUNE 1967 AMENDING ACT No. 446 OF 16 MAY 1946 ESTABLISHING THE LABOUR COURT [3]

...

Article 2

Article 3 of Act No. 446 of 16 May 1946 shall be amended as follows:

"*Art. 3.* The labour court shall be composed of an equal number of wage-earning employees and an equal number of employers."

Article 3

Article 5 of Act No. 446 of 16 May 1946 shall be amended as follows:

"*Art. 5.* Persons of either sex, knowing the official language of the States, having attained the age of twenty-five years, whether or not residing in Monaco, who, for five years at least, have employed in the Principality, on their own account or on account of another, one or more wage-earning employees or who are engaged in a wage-earning occupation in Monaco, may be appointed members of the Court. The proportion of persons residing outside Monaco shall not exceed 30 per cent of the number of members of the labour court."

The following persons may not be appointed members of the Labour Court:

1. Individuals sentenced, without suspension, to a penalty deprivative of liberty, except in cases where they have committed involuntary homicide or caused involuntary bodily injuries without being guilty of leaving the scene of the offence;

2. Undischarged bankrupts whose bankruptcy has been declared either by the courts of Monaco or by a judgement rendered abroad but enforceable in Monaco;

3. Persons deprived of their civil rights.

Article 4

Article 7 of Act No. 446 of 16 May 1946 shall be amended as follows:

"*Art. 7.* The triennial retirement shall cover half the members of the court who are wage-earning employees and half the members of the court who are employers. The members to retire on the first occasion shall be chosen by lot.

"Retiring members shall be re-eligible."

Article 5

The first paragraph of article 15 of Act No. 446 of 16 May 1946, as it results from article 2 of Act No. 736 of 16 March 1963, shall be amended as follows:

"*Art. 15.* Employers shall be required to allow the wage-earning employees of their establishments who are members of the labour court the necessary time to participate in the meetings of conciliation committees or judicial committees, enquiries, consultations and general meetings; this time shall be considered as working time and in exceptional cases compensatory time off may be awarded."

Article 6

The first paragraph of article 18 of Act No. 446 of 16 May 1946 shall be amended as follows:

[3] *Ibid.*

"*Art. 18.* Any member of the labour court who has failed in his duties shall be called before the said court to explain the facts imputed to him."

Article 7

Paragraphs 1 and 2 of article 29 of Act No. 446 of 16 May 1946 shall be amended as follows:

"*Art. 29.* The labour court may be dissolved by a sovereign ordinance, on the proposal of the Director of Judicial Services."

"Until the installation of the new court, cases shall be brought before the Justice of the Peace."

Article 8

Article 30 of Act No. 446 of 16 May 1946 shall be amended as follows:

"*Art. 30.* The Labour Court shall include:

"1. A conciliation committee.

"2. A judicial committee."

Article 9

The first paragraph of article 31 of Act No. 446 of 16 May 1946 shall be amended as follows:

"*Art. 31.* The conciliation committee shall consist of one wage-earning employee and one employer; special regulations shall establish for this purpose an order of rotation among all wage-earning employees and all employers, members of the court. The chair shall be taken alternately by the wage-earning employee and by the employer, following an order of rotation prescribed by the said regulations."

Article 10

The first paragraph of article 35 of Act No. 446 of 16 May 1946 shall be amended as follows:

"*Art. 35.* The meetings of the judicial committee shall be public. If the proceedings are of a nature to create scandal, the court may order closed meetings."

Article 11

Article 53 of Act No. 446 of 16 May 1946 shall be amended as follows:

"*Art. 53.* The competence of the labour court shall be governed, as regards work in an establishments, by the situation of this establishment, and as regards work not done in any establishment, by the place where the worker was engaged."

ACT No. 826 OF 14 AUGUST 1967 ON EDUCATION [4]

SECTION I

ON EDUCATION

Article 1

Education, the imparting of basic knowledge and the elements of general culture, as well as vocational and technical training shall be provided in public or private institutions or in the home.

. . .

Article 5

Apart from the various subjects included in the curriculum, education at all levels shall comprise moral education, civic education, education in the arts and physical education and sports; the last-named shall be subject to medical supervision and adapted to the age and physical capacity of the individual child.

Article 6

The study of the history of Monaco and of the political, administrative, economic and social organization of the Principality shall be included in all teaching curricula.

. . .

SECTION II

ON COMPULSORY EDUCATION

Article 8

The education defined in the preceding section shall be compulsory for children of both sexes from the age of six through sixteen; compulsory education shall be free in public educational institutions.

. . .

Article 12

If it is determined that a school-age child is not receiving the education defined by the preceding articles, the Director of National Education shall direct a warning to the legal representative of the child or to the person who is actually caring for the child notifying him of the penalties to which he is liable.

If the legal representative of the child or the person who is actually caring for the child has failed to report the reasons for the child's absence from school or has given false or insufficient reasons therefor despite the request of the director of the educational institution concerned, he shall receive the same warning from the Director of National Education.

[4] *Journal de Monaco*, No. 5,735 of 25 August 1967.

Article 13

A school-age child found by a police officer in the street, in a theatre or in a place open to the public during school hours without a legitimate excuse shall immediately be taken to the educational institution in which he is enrolled or placed in the custody of his parents.

SECTION III

ON THE NATIONAL EDUCATION COMMITTEE

A National Education Committee shall be established with authority to give an opinion at the request of the Minister of State or one of the members of the Committee on any questions, including questions of an individual nature, concerning education or teaching.

. . .

SECTION IV

ON PUBLIC EDUCATIONAL INSTITUTIONS

Article 16

On the advice of the National Education Committee, public educational institutions shall be established, organized and, where necessary, reformed or abolished by order of the Government.

Article 17

School curricula shall include instruction in the apostolic Roman Catholic religion; it shall be given with due respect for freedom of conscience and unless the parents request that the child should be excused from it.

. . .

Article 19

Disciplinary measures to be applied to pupils in public educational institutions shall be established by ministerial decree on the advice of the National Education Committee.

No pupil may be expelled from the school he attends without prior consultation with a disciplinary board.

Suspension of a pupil for a period exceeding one month and permanent suspension may only be decided, on the report of the school director concerned, by the Director of National Education, who may order that the pupil be examined by the medical-pedagogical commission before taking a decision on the question.

The provisions of the third paragraph of article 4 may be applied if the pupil's unruliness is caused by emotional disturbance or if it is likely to create serious disorder in the classroom.

SECTION V

ON PRIVATE EDUCATIONAL INSTITUTIONS

Article 20

No private educational institution may be opened or function unless it has been so authorized by ministerial decree on the advice of the National Education Committee and under the conditions prescribed in that decree.

. . .

SECTION VI

ON INSPECTION OF THE SCHOOLS

Article 22

All private and public educational institutions shall be inspected by education inspectors in accordance with the conditions established by order of the Governement, which shall be issued on the advice of the National Education Committee.

At the request of the Director of National Education, the inspectors may also see to it that children being taught in the home actually receive the instruction mandatory for all school children.

SECTION VII

ON MEDICAL EXAMINATION

Article 23

It shall be compulsory for all children who attend either a public or private educational institution or a school vacation colony or camp or who are receiving instruction in the home, to undergo a medical examination, whether or not they receive medical care, except in cases of clear emergency.

. . .

SECTION VIII

ON THE TEACHING STAFF

Article 27

No person may have charge of a public or private educational institution or open a private educational institution or teach or supervise in any educational institution or teach privately if:

He has been deprived of his civil or political rights;

He is not of good moral character;

He has not been certified, under the terms, as appropriate, of the statute applicable, the labour medicine legislation or articles 23 and 24, as free from disease or permanently cured of contagious or mental disease and physically and intellectually fit to exercise the function to which he is to be assigned;

He does not hold the academic degrees required for the exercise of his profession in the institution or at the level of education at which he will be working.

Article 28

No person may exercise administrative teaching or supervisory functions in a public educational institution after he has reached the age of sixty-

five unless a special or specific exception has been made, where necessary, on the advice of the National Education Committee.

Article 29

Before he may exercise administrative teaching or supervisory functions in a private educational institution, every private teacher shall be required to submit a statement to the Director of National Education, supported by evidence, to show that he meets the requirements specified in article 27.

. . .

SECTION X

ON SCHOLARSHIPS

Scholarships shall be awarded under the conditions prescribed by law.

. . .

ACT No. 829 OF 28 SEPTEMBER 1967 AMENDING THE CRIMINAL CODE [5]

Article 1

The Criminal Code shall be amended to read as follows:

CRIMINAL CODE

Book 1

PRELIMINARY PROVISIONS

Article 1

Breaches of the law are classified as crimes, correctional offences or petty offences.

Crimes are punishable by *peines afflictives* or *peines infâmantes;* correctional offences by correctional penalties; and petty offences by police penalties.

Article 2

Any attempt to commit a crime, evidenced by the start of its execution, shall be equated with the crime itself if it has been suspended or has failed in its purpose only through circumstances independent of the will of its perpetrator.

Article 3

An attempt to commit a correctional offence shall be equated with the offence only in the cases specially prescribed by law.

Article 4

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

Actions in process under an Act repealed during the proceedings shall be discontinued.

In the case of conflict between two successive laws, the least severe shall be the only one applied, even if it has been promulgated after commission of the offence.

SOLE TITLE

CRIMINAL, CORRECTIONAL AND POLICE PENALTIES

Article 5

Criminal penalties may be *peines afflictives et infâmantes* or *peines infâmantes.*

Article 6

Peines afflictives et infâmantes consist of rigorous imprisonment, which may be temporary or for life.

Article 7

Peines infâmantes are:

(1) banishment;

(2) civic degradation.

Article 8

Correctional penalties are:

(1) temporary imprisonment;

(2) the temporary loss of certain civil, personal or family rights;

(3) a fine.

Article 9

Police penalties are:

(1) imprisonment;

(2) a fine.

. . .

Article 12

Confiscation, either of the *corpus delicti,* where the property belongs to the convicted person, or of the articles produced or procured by the offence, or of those which were used or intended to be used for its commission, shall be a penalty common to criminal, correctional and petty offences.

Article 13

Sentences to the penalties prescribed by law shall always be pronounced without prejudice to any restitution, indemnity or compensation which may be due to the injured parties.

[5] *Ibid.*, No. 5,740 of 29 September 1967.

Article 14

Convicted persons shall be subject to the regulations of the penal establishments intended for them.

Chapter I

CRIMINAL PENALTIES

Article 15

Life sentences to a *peine afflictive* shall carry the penalties of civic degradation and legal disability provided for in articles 17 and 18 of this Code.

Article 16

The term of a penalty of temporary rigorous imprisonment shall be from ten to twenty years, or from five to ten years, depending on the case as prescribed by law.

Article 17

Sentences to rigorous imprisonment or banishment shall entail civic degradation from the day on which the sentence becomes final and, in the case of sentences *in absentia,* from the day on which the publicity measures prescribed in article 526 of the Code of Criminal Procedure are adopted.

Article 18

Any person sentenced to a *peine afflictive et infâmante* shall be deprived of his civil rights for the duration of his sentence. A guardian and deputy guardian shall be appointed to manage and administer his estate in the manner prescribed for the appointment of guardians and deputy guardians to persons under legal disability.

Article 19

The property of offenders shall be restored to them after they have served their sentences, and the guardians shall render to them an account of their administration.

Article 20

Persons sentenced to banishment shall be escorted out of the territory of the Principality.

The term of banishment shall be not less than five years and not more than ten years, beginning on the day on which the judgement becomes final.

Article 21

If a banished person returns to the territory of the Principality before his sentence expires, he shall, on the sole establishment of his identity, be sentenced to rigorous imprisonment for a term at least equal to the unexpired part of his term of banishment but not exceeding twice that term.

Article 22

Civic degradation shall comprise:

(1) the dismissal and exclusion of the offender from any public employment, function or office;
(2) deprivation of all civil rights and of the right to wear any decoration;
(3) disqualification from acting as a sworn expert, from witnessing legal instruments and from testifying in court otherwise than for the sole purpose of supplying information;
(4) disqualification from membership of any family council and from acting as a guardian, trustee, deputy guardian or legal administrator save in respect of the children of the offender and subject to the express approval of the family;
(5) deprivation of the right to bear arms, to keep a school or to teach or be employed in any educational establishment as a professor, teacher or supervisor.

Article 23

Where civic degradation is imposed as principal penalty, it may be accompanied by a term of imprisonment, to be determined by the court, of not more than five years.

If the offender is an alien, or a Monegasque who has lost his nationality, the penalty of imprisonment shall be imposed in all cases.

Article 24

All sentences involving the penalty of rigorous imprisonment for life or for a term, of of banishment or civic degradation, shall appear in print and shall be posted in the places where administrative notices are usually displayed.

Chapter II

PENALTIES IN CORRECTIONAL MATTERS

Article 25

The term of a penalty of imprisonment shall be not less than six days and not more than five years unless other limits, particularly in the case of repeated offences, have been established by law.

A sentence of one day's imprisonment shall be for twenty-four hours and that of one month for thirty days.

Article 26

The amount of fines shall be established for each offence according to the following categories:

1. 100 to 1,000 francs;
2. 500 to 5,000 francs;
3. 1,000 to 10,000 francs;
4. 2,000 to 50,000 francs.

Article 27

In the cases permitted by law, the courts may suspend, in whole or in part, the following civil, personal and family rights:

(1) the right to vote and to be elected;
(2) the right to be called or appointed to public office or government employment or to exercise such office or employment;
(3) the right to bear arms;
(4) the right to vote and have a say in family deliberations;

(5) the right to be appointed guardian, trustee, deputy guardian or administrator of an estate save in respect of the children of the offender and subject to the consent of the family;
(6) the right to be a sworn expert or to witness legal instruments;
(7) the right to be heard in court except to supply information.

Chapter III

POLICE PENALTIES

Article 28

Imprisonment for a petty offence shall be for not less than one day and not more than five days.

...

Article 29

The amount of the fine shall be established in the case of each kind of offence according to the following categories:

1. 5 to 30 francs;
2. 31 to 60 francs;
3. 31 to 90 francs.

Chapter IV

OTHER SENTENCES WHICH MAY BE AWARDED BY CRIMINAL COURTS

Article 30

In all cases provided for by law, the courts may order the judgement to be published, in whole or in part, at the offender's expense, and shall determine the maximum cost of such publicity.

Publication shall be effected by means of an insertion in the *Journal de Monaco* and even in other newspapers designated for this purpose;

It may also be effected by the posting of notices in the places and according to the procedures to be indicated by the courts.

Chapter V

PENALTIES FOR REPEATED CRIMES AND OFFENCES

Any person who, having been sentenced to a penalty, either *afflictive et infâmante* or *infâmante,* commits a second crime carrying the principal penalty of rigorous imprisonment for ten to twenty years, shall be sentenced to the maximum penalty incurred.

If the second crime carries the penalty of rigorous imprisonment for five to ten years, the offender shall be sentenced to the maximum penalty incurred.

If the second crime carries the principal penalty of civic degradation, the penalty shall be that of banishment.

...

Book II

PERSONS PUNISHABLE, EXCUSABLE OR RESPONSIBLE FOR CRIMES OR OFFENCES

Chapter I

PERSONS PUNISHABLE

Article 41

Accomplices in a crime or offence shall be punished by the same penalty as the persons committing such crime or offence, except as otherwise provided by law.

...

Chapter II

PERSONS EXCUSABLE

Article 44

An act carried out by a person while of unsound mind or while under the compulsion of a force beyond his power to resist shall not constitute a crime or offence.

Article 45

A crime or offence may be excused and the sentence mitigated only in the cases and circumstances in which the law declares the act to be excusable or allows the imposition of a less severe penalty.

Article 46

If it is decided that a minor of from thirteen to eighteen years of age is to be given a penal sentence, the sentence for serious offences shall not exceed twenty years' imprisonment.

In the case of a correctional offence, the sentence shall not exceed half that which would have ben incurred by a person over eighteen years of age.

Article 47

A person under eighteen years of age prosecuted for a crime in which no accomplice above that age is involved shall be tried by the correctional court in conformity with the foregoing article.

Chapter III

PERSONS INCURRING CIVIL LIABILITY

Article 48

If they have failed to comply with the laws and rules in force concerning the accommodation of travellers, innkeepers or boarding-house keepers convicted of having lodged for more than twenty-four hours a person who has committed a crime or correctional offence during his stay, shall be liable for any damages or costs awarded to the parties injured by the crime or correctional offence, without prejudice to any liability incurred by them in the cases provided for under the civil code.

Article 49

In other cases of civil liability which may arise in criminal, correctional and police matters, the courts before which the cases are brought shall act in conformity with the provisions of the civil code.

Book III

CRIMES AND CORRECTIONAL OFFENCES AND THEIR SUPPRESSION

TITLE I

CRIMES AND CORRECTIONAL OFFENCES AGAINST THE STATE

. . .

Chapter II

INFRINGEMENTS OF LIBERTY

Article 72

Any public official or agent of the Government who orders or commits any arbitrary act which prejudices either the liberty of an individual or the laws and institutions of the Principality shall be sentenced to loss of civil rights.

However, if he proves that he acted on the order of his superiors in matters within their jurisdiction and was compelled by virtue of his subordinate status to follow such an order, he shall be exempt from the said penalty, which shall in this case be applied solely to the superiors who gave the order.

Article 73

Damages adjudicable by reason of the infringements covered in article 72, claimed either in the criminal prosecution or in civil proceedings, shall be assessed with regard to the persons, circumstances and harm incurred, but in no case, and whosoever the harmed person may be, shall the damages be less than one hundred francs for each day of illegal or arbitrary detention.

Article 74

Public officials in charge of the administrative or judicial police who refuse or neglect to act upon a legal claim designed to establish arbitrary detention, either in premises intended for the surveillance of detainees or in any other place, and who fail to prove that they have not reported it to higher authority, shall be punished by loss of civil rights and shall pay damages which shall be assessed in accordance with article 73.

Article 75

Any warden of the Monaco house of detention:

who receives a prisoner without a judicial warrant or judgement,

who detains a prisoner or who refuses to produce him before a police officer or police officer's deputy, without proof of an order to this effect by the *procureur général* or the judge,

who refuses to produce his registers to the police officer,

shall be convicted of arbitrary detention and sentenced to imprisonment for a term of six months to three years and to the fine prescribed in article 26 (3).

Article 76

Any member of the *parquet* or of the Bench or any officer of the judicial police, who instigates, issues or signs a judgement, order or warrant leading to the personal prosecution or indictment of a member of the National Council, without the prior authorization prescribed by the law, or who, except in the case of *flagrante delicto,* issues or signs the arrest warrant without the said authorization, shall be convicted of abuse of authority and shall be sentenced to loss of civil rights.

Chapter III

BREACHES OF THE PEACE

. . .

Section IV

Unlawful assembly—resistance and other acts of defiance against public authority

. . .

§ III

Insulting and violent acts committed against persons exercising public authority

Article 164

Any person who, by means of writings or drawings, which are not published, or by spoken words, gestures or threats, or by sending, with the same intent, any object, insults the Minister of State, the Director of the Judicial Services, a Government Councillor, judge or State Counsel, in the exercise of or in connexion with the performance of his duties, shall be punished by imprisonment for a term of three months to one year and by the fine prescribed in article 26 (3), or by one of these two penalties alone.

Article 165

Any person who, in any of the forms specified in the preceding article, insults a ministerial officer, a commandant or agent of the law enforcement services or any person discharging a public function, in the exercise of or in connexion with the performance of his duties, shall be punished by imprisonment for a term of one to six months and the fine prescribed in article 26 (2), or by one of these two penalties alone.

. . .

§ XI

Interference with the freedom or worship

Article 205

Any person who, by bodily violence or threats, constrains or prevents one or several persons from

practising the Catholic religion or any other religion, from attending the services of that religion, from celebrating certain festivals, from observing certain holidays, and, for this purpose, from opening or closing their workshops, offices or stores and from engaging in or ceasing to engage in certain work, shall be punished by imprisonment for a term of six days to one month and the fine prescribed in article 26 (1), or by one of these two penalties alone.

. . .

Section VI

Offences committed by distributors and hawkers of writings and drawings

Article 217

All distributors or hawkers of writings or drawings of any kind must be in possession of a permit issued by the administrative authority. This permit may be withdrawn.

Persons contravening this provision shall be sentenced to imprisonment for a term of six days to one month and to the fine prescribed in article 26 (1), or to one of these two penalties alone, without prejudice to any proceedings which may be instituted, for crimes or offences, either against the authors or publishers of these writings or drawings or against the distributors or hawkers themselves.

Section VII

Unlawful associations

Article 218

No association may be formed without the authorization of the Government.

This authorization is always revocable.

Article 219

Any association which is formed without authorization or which, having obtained it, infringes the conditions laid down, shall be dissolved.

Anyone who participates in a non-authorized association shall be punished by imprisonment for a term of one to six months and by the fine prescribed in article 26 (2), or by one of these two penalties alone. The penalty shall be imprisonment for a term of three months to one year and the fine prescribed in article 26 (3), or one of these two penalties alone, in the case of chiefs, directors or administrators of the association.

TITLE II

CRIMES AND OFFENCES AGAINST PERSONS, PROPERTY AND ANIMALS

Chapter I

CRIMES AND OFFENCES AGAINST PERSONS

. . .

Section IV

Sexual offences

Article 260

Any person who commits an act of indecent exposure shall be punished by imprisonment for a term of three months to one year and by the fine prescribed in article 26 (3), or to one of these two penalties alone.

. . .

Article 265

(1) Any person who commits a sexual offence by habitually instigating, fostering or facilitating the debauchery or corruption of minors under twenty-one years of age of either sex, or even occasionally, of minors under sixteen years of age;

(2) Any person who, in order to satisfy the passions of others, engages, seduces or leads astray, even with her consent, a woman or girl of full age, with a view to debauchery;

(3) Any person who, in order to satisfy the passions of others, using fraud or violence, threats, abuse of authority or any other means of coercion, engages, seduces or leads astray a woman or girl of full age, with a view to debauchery;

(4) Any person who, by these means, forces a person, even of full age, to engage in prostitution;

shall be punished by imprisonment for a term of six months to three years and by the fine prescribed in article 26 (3).

These two penalties shall be incurred even though the various acts which form the constituent elements of the offence are committed in different countries.

Attempts and preparations to commit the offences specified in this article shall be subject to the same penalties as the offences themselves.

. . .

Article 274

Any married person who marries a second time before the dissolution of the existing marriage shall be punished by imprisonment for a term of one to five years and by the fine specified in article 26, paragraph 3.

A public official who is aware of the existing marriage and celebrates the second marriage shall be liable to the same punishment.

Section V

Unlawful arrest and house confinement

Article 275

Any person who deprives another of his freedom of movement, imprisons him or subjects him to house confinement without a warrant from the constituted authorities, except in cases in which the law prescribes the arrest of an accused person, shall be punished by rigorous imprisonment for a term of ten to twenty years.

Any person who provides facilities for such imprisonment or house confinement shall be liable to the same penalty.

Article 276

If the imprisonment or house confinement has lasted longer than one month, the penalty shall be the maximum term of rigorous imprisonment.

Article 277

The penalty shall be reduced to imprisonment for a term of one to five years if the perpetrator of the acts specified in article 275 has freed the person deprived of his freedom of movement, subjected to house confinement or imprisoned within ten days from the day on which such restraint was imposed.

Article 278

Persons convicted of such acts shall be liable to the maximum term of rigorous imprisonment in each of the following three situations:

(1) if the deed was done under false authority, under a false name or with a false warant;

(2) if the person deprived of his freedom of movement, subjected to house confinement or imprisoned has been threatened with death;

(3) if the victim has been tortured.

The penalty shall be rigorous imprisonment for life if, by being subjected to such torture, the victim was mutilated, underwent amputation or was deprived of the use of a limb, was blinded, lost one eye or suffered some other serious permanent disability.

Section VI

Offences by omission

Article 279

Without prejudice to the imposition, where appropriate, of penalties stricter than those prescribed in the present code or in special laws, the penalty of imprisonment for a term of six months to three years and the fine specified in article 26, paragraph 3, shall be imposed upon:

(1) Any person who, knowing of a crime attempted or committed against another person or persons, did not immediately inform the judicial or administrative authorities, where such warning could have prevented the crime or mitigated its effect or where circumstances suggested that the perpetrators would commit further crimes which could have been prevented by such a warning.

The foregoing provisions shall not apply to relatives or relations by marriage, up to the fourth degree inclusive, of the perpetrators of the crime or attempted crime or of their accessories, except in the case of crimes committed against minors under fifteen years of age;

(2) Any person who, by taking immediate action and without risk to himself or third parties, could have prevented a crime or an offence against another's person, wilfully refrains from doing so;

(3) Any person who, either by personal action or by summoning help, could, without risk to himself or third parties, have assisted someone in peril, wilfully refrains from doing so;

(4) Any person who possesses evidence of the innocence of another person he knows is in preventive detention or is about to be tried for a crime or offence and wilfully refrains from testifying immediately to the judicial or police authorities. However, any person who testifies voluntarily, even if belatedly, shall not be liable to any penalty.

The foregoing provisions shall not apply to the perpetrator of the act which is the subject of the prosecution, his accomplices, his accessories and their relatives or relations by marriage up to the fourth degree inclusive.

Section VII

Crimes and offences against children

Article 280

Any person who kidnaps or conceals a child, conceals the birth of a child, substitutes one child for another or attributes a child to a woman who is not the child's mother shall be punished by rigorous imprisonment for a term of five to ten years.

If it is not proved that the child survived, the penalty shall be imprisonment for a term of one to five years.

If it is proved that the child did not survive, the penalty shall be imprisonment for a term of one to three months.

Section VIII

Family desertion

Article 295

The penalty of imprisonment for a term of three months to one year and the fine specified in article 26, paragraph 2, or one of such penalties alone, shall be imposed upon:

(1) a father or mother who, without serious cause, leaves home for more than two months and fails to fulfil all or some of his or her obligations as parent or legal guardian; the period shall be deemed terminated only if the deserting parent returns home definitively;

(2) a husband who, without serious cause, wilfully deserts his wife for more than two months, knowing her to be pregnant;

(3) a father and mother who seriously endanger the health, safety or morals of their child by ill-treatment, setting bad examples of drunkenness or misconduct or failing to provide care and guidance.

In the cases specified in paragraphs (1) and (2) above, legal proceedings shall be instituted during the marriage only upon complaint by one of the spouses.

. . .

Chapter II

CRIMES AND OFFENCES AGAINST PROPERTY

. . .

Section II

Bankruptcy—acquisition of goods by false pretences and other types of fraud

. . .

§ V

Violations of the privacy of the mails and other breaches of laws governing the postal and telecommunication service

Article 341

The privacy of the mails shall be inviolable.

Article 342

The privacy of the mails shall be deemed to have been violated if their contents have been discovered by any means whatsoever or if an attempt has been made to discover or divulge the name of the sender or addressee.

Article 343

Any official or employee of the Government or of the postal or telephone service who withholds or opens letters or cables in the mails or intercepts telephone communications, or who facilitates such acts, shall be punished by imprisonment for a term of one to five years and by the fine specified in article 26, paragraph 4.

Persons convicted of such acts shall be debarred from public office for not less than five years and not more than ten years.

Article 344

Any person who has been convicted of having wilfully withheld or opened a letter or cable, or of having violated the privacy thereof by any other means, or of having wilfully intercepted a telephone communication, shall be punished by imprisonment for a term of six months to three years and by the fine specified in article 26, paragraph 3.

. . .

MOROCCO

NOTE [1]

The three texts dated 14 August 1967, excerpts from which are given below, deal with two kinds of legislation:

(1) A Royal Legislative Decree to provide for the maintenance of operations in industrial and commercial undertakings and for the dismissal of their employees;

(2) A Royal Legislative Decree to provide for the payment of compensation on the dismissal of certain classes of employees; and its instrument of implementation, a Royal Decree, to lay down conditions and rates for the payment of such compensation.

[1] Note transmitted by the Government of the Kingdom of Morocco.

The first requires administrative permission for the complete or partial closing of an industrial or commercial undertaking and presents the penalties for contraventions.

The second Royal Legislative Decree provides for compensation to be paid to employees working on contracts of unspecified duration for dismissal after one year of actual employment. It is supplemented by a Decree of implementation which prescribes the conditions for the payment of dismissal compensation.

All the above legislation thus protects employees subject to arbitrary dismissal or to the unjustified closure of the undertaking where they are employed, and is in keeping with the spirit of article 23 of the Universal Declaration of Human Rights, which states that everyone has the right to work and to protection against unemployment.

ROYAL LEGISLATIVE DECREE No. 314-66 OF 14 AUGUST 1967, TO PROVIDE FOR THE MAINTENANCE OF OPERATIONS IN INDUSTRIAL AND COMMERCIAL UNDERTAKINGS AND FOR THE DISMISSAL OF THEIR EMPLOYEES [2]

(EXTRACTS)

1. No industrial or commercial undertaking or any part thereof may be closed without the permission of the governor of the prefecture or province, irrespective of whether or not there are employed persons in its service.

[2] *Bulletin officiel*, No. 2860, of 23 August 1967. The text of the Royal Legislative Decree in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series*, 1967—Mor. 1.

Such permission shall likewise be required for the dismissal of all or any of the persons employed in such undertakings, if the persons dismissed are not replaced within a week and the undertakings continue to operate or to operate in part, unless the dismissal relates to wage or salary earners recruited for temporary or seasonal employment.

2. Application for permission to close shall be sent by registered letter to the governor of the prefecture or province where the undertaking is located, together with all necessary explanations,

including those relating to the undertaking's financial circumstances and its inability to continue operations.

The governor shall take a decision on the application within three months, after consulting a committee composed in a manner to be prescribed by decree. In the absence of a reply within the allotted time permission for the closure shall be deemed to have been given.

3. Application for permission to dismiss all or any of the persons employed in an undertaking (unless they are replaced as aforesaid) shall be sent by registered letter, together with all necessary explanations, to the official responsible for labour inspection, who shall transmit it with his opinion to the governor.

Where large numbers of workers are to be dismissed, the governor shall, if he sees fit or if the official responsible for labour inspection so requests, consult the committee referred to in section 2, as provided in that section.

. . .

ROYAL LEGISLATIVE DECREE No. 316-66 OF 14 AUGUST 1967, TO PROVIDE FOR THE PAYMENT OF COMPENSATION ON THE DISMISSAL OF CERTAIN CLASSES OF EMPLOYEES [3]

1. Unless he is guilty of serious misconduct, every permanent employee working under a contract of unspecified duration in an industrial or commercial establishment, liberal profession, agricultural or forestry undertaking, non-trading corporation, trade union, association or group of any kind shall be entitled, irrespective of how he is remunerated and of the intervals at which such remuneration is paid, to compensation for dismissal after one year of actual employment in the undertaking, at rates and subject to conditions to be laid down by decree.[4]

2. A workers' representative who is dismissed while still in office shall be entitled to compensation at twice the normal rate, unless the official responsible for labour inspection has given his consent to the dismissal.

3. The dismissal compensation provided for in section 1 above shall be independent of any damages paid by the employer for failure to observe the requisite period of notice, as prescribed in the Order of the Vizier of 13 August 1951, or for unjustified dismissal, as prescribed in section 6 of the Order of 23 October 1948.

4. The provisions of this Royal Legislative Decree shall be without prejudice to the application of any more favourable provisions contained in private work rules, collective agreements or individual contracts of employment.

[3] *Ibid.*

[4] See below.

ROYAL DECREE No. 317-66 OF 14 AUGUST 1967, TO LAY DOWN RATES AND CONDITIONS FOR THE PAYMENT OF THE DISMISSAL COMPENSATION INSTITUTED BY ROYAL LEGISLATIVE DECREE No. 316-66 OF 14 AUGUST 1967 [5]

1. The dismissal compensation instituted by Royal Legislative Decree No. 316-66 of 14 August 1967[6] shall be payable at the following rates for every year or fraction of a year of actual employment:

48 hours' wages for the first five years of service;
72 hours' wages for the sixth to tenth year of service;
96 hours' wages for the eleventh to fifteenth year of service;
120 hours' wages for service beyond the fifteenth year.

2. The following shall be equated with periods of actual employment:

[5] *Ibid.*

[6] See above.

(*a*) periods of leave with pay;
(*b*) rest periods granted to women on their confinement, as provided in section 18 of the Dahir of 2 July 1947 to regulate employment;[7]
(*c*) periods of temporary incapacity for work, if the employee has subtained an employment accident or contracted an occupational disease;
(*d*) periods of employment for which the performance of the contract is suspended, but not terminated, *inter alia,* on account of authorised absence, illness not attributable to an occupational disease, the temporary closure of the undertaking by decision of the administrative authority or on account of *force majeure.*

3. Dismissal compensation shall be calculated on the basis of the average wages received during the 52 weeks preceding the dismissal.

4. The wages taken for the calculation of dismissal compensation shall not be less than the statutory minimum wage fixed in pursuance of the Dahir of 18 June 1936 respecting the minimum remuneration of wage-earning and salaried employees.[8]

5. Account shall be taken, in the calculation of dismissal compensation, of the wages proper and the following fringe benefits:

1. bonuses and compensation connected with the work as such, except—
   (*a*) compensation for expenses;
   (*b*) compensation for the assumption of responsibility, except post allowances, such as the bonuses payable to the head of a shift or gang;
   (*c*) compensation for arduous or dangerous work;
   (*d*) compensation for work done in a geographically unfavourable area;
   (*e*) compensation for the temporary replacement of a worker in a higher grade or for the temporary or exceptional performance of a certain job, except overtime pay;
2. benefits in kind;
3. commission and tips.

The value assigned to benefits in kind and tips shall not be less than that fixed, *inter alia,* in pursuance of the Dahir of 18 June 1938.[8]

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[7] *Legislative Series,* 1947—Mor. 1, 1950—Mor. (Fr.) 1.
[8] *Ibid.,* 1936—Mor. 3.

NETHERLANDS

NOTE [1]

1. Freedom of expression—Court decisions

Freedom of expression is guaranteed as a basic right in article 7 of the Netherlands Constitution and in article 10 of the European Convention on Human Rights and Fundamental Freedoms, which Convention has direct force of law in the Netherlands legal system.

Article 7 of the Constitution reads as follows: "No person shall require previous permission to publish thoughts or feelings by means of the printing press, this without prejudice to every person's responsibility according to the law."

Article 10 of the European Convention guarantees freedom of expression in a more general sense, while allowing for the possibility of imposing restrictions on certain, specifically defined grounds.

By its decisions of 24 January 1967 and 30 May 1967, the Supreme Court of the Netherlands also laid down that—as a further consequence of the freedom of the press recognized in article 7 of the Constitution—a person does not require previous permission to publish, by distribution, public exhibition or any other means, the contents of printed or written documents or pictures expressing thoughts or feelings. It is true that such publication may be subject to restrictions—a municipal council may, for instance, impose restrictions in the interest of public order, particularly with a view to traffic safety—but such restrictions must never go so far that a given publication medium having, amongst other media, an independent importance, and able to meet a certain need in connexion with such publication, is generally prohibited or made subject to prior permission from the authorities.

According to the Supreme Court, this was the case in the two actions in question. The first decision concerned a provincial by-law prohibiting the putting up of advertising or publicity slogans in the rural parts of a municipality without previous permission from the provincial authorities. The second decision concerned a municipal by-law prohibiting the carrying of publicity material on the public highway without permission from the municipal authorities. The Supreme Court held that both by-laws were contrary to the provisions of article 7 of the Constitution.

Jurisprudence on this matter received further definition with the decision of the Supreme Court of 30 May 1967. This concerned a municipal by-law prohibiting processions on the public highway, as also participation therein, without permission from the municipal authorities. The Supreme Court held that, while a demonstrative procession is indeed a medium through which thoughts or feelings are expressed, it differs too greatly from the media to which article 7 of the Constitution refers, for it to be placed in the same category as the latter. The circumstance that slogans are carried in the procession does not alter this fact, since the by-law in question did not prohibit the publication of slogans in general nor did it make such publication subject to previous permission. Consequently, the Supreme Court did not deem this by-law to be contrary to the provisions of article 7 of the Constitution.

The Supreme Court further held that the by-law was compatible with article 10 of the European Convention; "prevention of disorder" referred to in the said article as being one of the grounds for imposing restrictions, was applicable here, since holding a procession might give rise to traffic hold-ups and other disorders.

2. Protection against arbitrary interference with one's privacy legislation

A Bill aiming to afford protection against the tapping and recording of conversations by technical appliances was submitted to the States-General on 4 December 1967.

By way of extension to the Bill referred to in the 1966 Yearbook containing further provisions to protect the privacy of telephone conversations,

[1] Note furnished by the Government of the Netherlands.

the present Bill affords statutory protection in another sector of a person's private life.

Under the provisions of the Bill, it shall be prohibited, by means of a technical appliance:

(*a*) To listen in to a conversation otherwise than by order of one of the parties to that conversation;

(*b*) Or to record such a conversation unless one is a party to it or has been ordered to do so by such a party.

The Bill makes a distinction between conversations held in a dwelling, enclosed space or premises, and conversations held elsewhere. The latter case would comprise, for instance, conversations held in non-enclosed places, in the street or in a public conveyance. The tapping or recording of conversations held in a dwelling, enclosed space or premises, need not be done secretly to constitute a punishable offence. For instance, a person who tells his neighbour that he will listen in to a conversation to be held in the neighbour's home—and then suits the action to the word—commits a punishable offence. However, when conversations are held outside a dwelling, enclosed space or premises, the listening in must be done secretly to constitute a punishable offence.

Other punishable offences, regardless of where the conversation takes place, are:

(*a*) The installation of a technical device in any place for the purpose of illegally tapping or recording a conversation;

(b) Passing on knowledge acquired through illegal tapping or recording.

The prohibition does not apply to:

1. Tapping and recording telephone conversations (this is regulated in the Bill providing for the protection of telephone privacy);
2. Tapping or recording in the interests of State security on the instructions of the Ministers concerned;
3. Tapping or recording conversations conducted in a dwelling, enclosed space or premises by means of a technical device installed on the instructions of the tenant of the dwelling, enclosed space or premises (this would comprise such devices as sound and calling apparatus, intercommunication devices, house telephone).

This exception shall not apply:

(*a*) If the device has been installed secretly;

(*b*) In the event of obvious abuse.

The Governement does not consider it necessary, at the present time, to make an exception for tapping as a means to detect punishable offences.

The penal provisions do not extend to the trade in tapping devices, since the practical disadvantages of such provisions would be insurmountable. For all devices that might be used for prohibited tapping or recording could also be used for other, wholly acceptable purposes ("babyphones", stethoscopes, hearing aids, etc.).

However, the Bill does contain a penal clause prohibiting advertisements in which emphasis is laid on the suitability of the object advertised for secretly tapping and recording conversations.

3. Public health legislation

The Special Medical Expenses (Compensation) Act was passed in Parliament on 14 December 1967 and, by Decree of 21 December 1967, it entered into force, in part, on 1 January 1968. Unlike the Health Insurance Fund Act, which is applicable only to persons under a certain wage level, the Special Medical Expenses (Compensation) Act provides for a national insurance covering, in principle, all residents of the Netherlands. Under the Act, the payment of the cost of special or very prolonged treatment and nursing in special institutions is provided for. As from 1 January 1968, children, who are deaf, hard of hearing, blind and partially sighted, as also persons who are mentally defective, are entitled to treatment, nursing and care in recognized institutions. As from 1 April 1968, the facilities have been extended and now include treatment and nursing in hospitals after the 366th day, and nursing and treatment in recognized nursing homes, as also treatment and nursing of physically and mentally handicapped persons in certain categories of institutions to be determined later, as from the day the patients enter the institution.

The facilities are available only in institutions which satisfy certain standards and are recognized by the Minister for Social Affairs and Public Health. Such institutions conclude agreements with the executive bodies concerned.

Control of the fees charged by the recognized institutions is provided for by the Hospital Fees Act.

The Special Medical Expenses (Compensation) Act provides for a certain contribution towards nursing expenses to be made by the insured persons themselves.

The implementation of the Act has been entrusted to the health insurance funds, the private insurers of medical expenses and the civil service medical expenses insurance institutions, with supervision being carried out by the Health Insurance Fund Council.

NEW ZEALAND

NOTE [1]

I. LEGISLATION

1. *Electoral Amendment Act 1967*

Section 2 of this Act enables Maoris to be Parliamentary candidates for European seats and vice versa.

2. *Education Amendment Act 1967*

Section 13 of this Act provides that, where a teacher has been suspended or transferred pending the hearing and determination of a charge of professional misconduct, and the charge after inquiry or investigation, is held not to be proved, the teacher shall be reinstated in his position and shall receive his full salary in respect of the period for which he did not receive that salary.

3. *Costs in Criminal Cases Act 1967*

The effect of this Act is to liberalize substantially the grant of costs to successful defendants. A number of factors are laid down which the court is required to take into account. In particular, there is to be no presumption for or against the grant of costs; costs are not to be refused merely because the prosecution was properly brought, or granted because the defendant was successful.

4. *Door to Door Sales Act 1967*

This Act provides that in certain circumstances where sales of certain goods are made at household premises, purchasers shall be able to rescind such contracts within a period of seven days.

5. *Maori Affairs Amendment Act 1967*

The object of this Act is to bring the law surrounding Maori land more closely into line with the ordinary law relating to land.

6. *Infants Amendment Act 1967*

This Act provides that in certain sections of the Infants Act 1908, the term "infant" includes an illegitimate child.

7. *Criminal Justice Amendment Act 1967*

(*a*) Abolishes sentences of preventive detention except for sex offenders and gives the Prisons Parole Board a new jurisdiction to recommend the release of persons serving sentences of imprisonment for six years or more.

(*b*) Removes a limitation on the court's discretion to prohibit the publication of the name of an accused or convicted person.

(*c*) Directs that prison sentences of less than six months are to be imposed only where no other way of dealing with the offender than imprisonment is appropriate.

II. COURT DECISIONS

1. *Police* v. *Collins* [1967] N.Z.L.R. 479.

It was decided that where a defendant has elected summary trial on an indictable offence and the Court, pursuant to section 43 of the Summary Proceedings Act 1957, has substituted another indictable offence defined in the same section, the defendant has a further right to elect trial by jury.

2. *The Queen* v. *Jack Taylor* [1967] N.Z.L.R. 577.

The Supreme Court held in this case that it should consent to the reversal of a plea of guilty where it is satisfied that the accused had not really pleaded guilty, or that he had been mistaken in his plea, or that he had a clear defence to the charge.

3. *Salaca* v. *The Queen* [1967] N.Z.L.R. 421.

The Court of Appeal held that threats made at some time prior to a marriage ceremony to enlist the aid of a witch-doctor, are insufficient to raise the defence of compulsion to the crime of bigamy. It was therefore held that the trial Judge would have been justified in withdrawing the defence from the jury. But it was held further that as the trial Judge had allowed the issue to go to the jury, he was not justified in directing

[1] Note furnished by the Government of New Zealand.

the jury to disregard the evidence of two witnesses as to the state of mind of Fijians (the appellant being one) towards threats of intervention by witch-doctors.

4. *Te Paki* v. *Police* [1967] N.Z.L.R. 337.

The Supreme Court of New Zealand acting in its appellate jurisdiction on an appeal from the High Court of the Cook Islands will not interfere with a judgement of the High Court on the grounds of irregularities in matters of procedure or evidence unless there is a denial of natural justice or a miscarriage of justice is caused. Where however the only evidence is the uncorroborated statement of an accomplice, a confessed liar, a verdict of guilty based on that evidence is unsatisfactory and cannot be allowed to stand even though it was the product of an entirely fair trial.

NICARAGUA

DECREE No. 6 OF 22 AUGUST 1967 [1]

1. The following conventions adopted by the International Labour Organisation in Geneva are ratified:

No. 87: Convention concerning Freedom of Association and Protection of the Right to Organize.[1]

No. 98: Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively.[1]

No. 100: Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.[1]

No. 105: Convention concerning the Abolition of Forced Labour.[1]

No. 111: Convention concerning Discrimination in Respect of Employment and Occupation.[1]

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[1] *La Gaceta*, No. 228 of 7 October 1967.

NIGERIA

NOTE [1]

INTRODUCTORY NOTE

The Constitution of the Federation makes adequate provisions for the preservation of the basic fundamental human rights. These provisions are carefully guarded and preserved by the courts, the Bar and all the governments in the Federation. A review of these provisions is made in part one below, while under the second part, a summary of judicial decisions on the Constitutional provisions is made.

PART I

LEGISLATION

Part III of the 1963 Constitution of the Federation (No. 20 of 1963) deals with fundamental rights. The relevant sections are sections 18 to 33 of the said Constitution. Sections 18 to 33 provide as follows:

"18.—(1) No person shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty.

"(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable:

"(*a*) for the defence of any person from violence or for the defence of property;

"(*b*) in order to effect an arrest or to prevent the escape of a person detained;

"(*c*) for the purpose of supressing a riot, insurrection or mutiny; or

"(*d*) in order to prevent the commission by that person of a criminal offence.

"(3) The use of force in any part of Nigeria in circumstances in which and to the extent to which it would have been authorized in that part on the first day of November 1959, by the Code of Criminal Law established by the Criminal Code Ordinance, as amended, shall be regarded as reasonably justifiable for the purposes of this section.

"19.—(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

"(2) Nothing in this section shall invalidate any law by the reason only that it authorizes the infliction in any part of Nigeria of any punishment that was lawful and customary in that part on the first day of November 1959.

"20.—(1) No person shall be held in slavery or servitude.

"(2) No person shall be required to perform forced labour.

"(3) For the purposes of this section 'forced labour' does not include:

"(*a*) any labour required in consequence of the sentence or order of a court;

"(*b*) any labour required of members of the armed forces of the Federation in pursuance of their duties as such or, in the case of persons who have conscientious objections to service in the armed forces, any labour required instead of such service;

"(*c*) any labour required in the event of any emergency or calamity threatening the life or well-being of the community; or

"(*d*) any labour that forms part of normal communal or other civil obligations.

"21.—(1) No person shall be deprived of his personal liberty save in the following cases and in accordance with a procedure permitted by law:

"(*a*) in consequence of his unfitness to plead to a criminal charge, in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty or in the execution of the order of the court of record punishing him for contempt of itself;

"(*b*) by reason of his failure to comply with the order of a court in order to secure the fulfilment of any obligation imposed upon him by law;

[1] Note furnished by the Government of Nigeria.

"(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

"(d) in the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare;

"(e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

"(f) for the purpose of preventing the unlawful entry of any person into Nigeria or for the purpose of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings reating thereto.

"(2) Any person who is arrested or detained shall be promptly informed, in language that he understands, of the reasons for his arrest or detention.

"(3) Any person who is arrested or detained in accordance with paragraph (c) of subsection (1) of this section shall be brought before a court without undue delay and if he is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

"(4) Any person who is unlawfully arrested or detained shall be entitled to compensation.

"(5) Nothing in this section shall invalidate any law by reason only that it authorizes the detention for a period not exceeding three months of a member of the armed forces of the Federation or a member of a police force in execution of a sentence imposed by an officer of the armed forces of the Federation or a police force, as the case may be, in respect of an offence punishable by such detention of which he has been found guilty.

"22.—(1) In the determination of his civil rights and obligations a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality:

"Provided that nothing in this subsection shall invalidate any law by reason only that it confers on any person or authority power to determine:

"(a) questions arising in the administration of a law that affect or may affect the civil rights and obligations of any person; or

"(b) chieftaincy questions.

"(2) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing within a reasonable time by a court.

"(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public:

"Provided that:

"(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto in the interests of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of twenty-one years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice; and

"(b) if in any proceedings before a court or such a tribunal a Minister of the Government of the Federation or a Minister of the Government of a Region certifies that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

"(4) Every person who is charged with a criminal offence shall be presumed to be innocent until he his proved guilty:

"Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

"(5) Every person who is charged with a criminal offence shall be entitled:

"(a) to be informed promptly, in language that he understands and in detail, of the nature of the offence;

"(b) to be given adequate time and facilities for the preparation of his defence;

"(c) to defend himself in person or by persons of his own choice who are legal practitioners;

"(d) to examine in person or by his legal representatives the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to the witnesses called by the prosecution; and

"(e) to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence:

"Provided that nothing in this subsection shall invalidate any law by reason only that the law prohibits legal representation in a court established by or under the Native Courts Law, 1956, the Sharia Court of Appeal Law, 1960, or the Court of Resolution Law, 1960, of Northern Nigeria, the Customary Courts Law, 1956, of Eastern Nigeria, or the Customary Courts Law of Western Nigeria, as amended, or any law replacing any of those laws.

"(6) When any person is tried for any criminal offence, the court shall keep a record of the proceedings and the accused person or any person authorized by him in that behalf shall be entitled

to obtain copies of the record within a reasonable time upon payment of such fee as may be prescribed by law.

"(7) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed.

"(8) No person who shows that he has been tried by any competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court; and no person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

"(9) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

"(10) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore 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 written law and the penalty therefor is not so prescribed.

"23.—(1) Every person shall be entitled to respect for his private and family life, his home and his correspondence.

"(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:

"(*a*) in the interest of defence, public safety, public order, public morality, public health or the economic well-being of the community; or

"(*b*) for the purpose of protecting the rights and freedom of other persons.

"24.—(1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

"(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observations if such instruction, ceremony or observances relate to a religion other than his own.

"(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

"(4) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:

"(*a*) in the interest of defence, public safety, public order, public morality or public health; or

"(*b*) for the purpose of protecting the rights and freedom of other persons, including their rights and freedom to observe and practise their religions without the unsolicited interventions of members of other religions.

"25.—(1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

"(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:

"(*a*) in the interest of defence, public safety, public order, public morality or public health;

"(*b*) for the purpose of protecting the rights, reputations and freedom of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating telephony, wireless broadcasting, television, or the exhibition of cinematograph films; or

"(*c*) imposing restrictions upon persons holding office under the State, members of the armed forces of the Federation or members of a police force.

"26.—(1) Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to trade unions and other associations for the protection of his interests.

"(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:

"(*a*) in the interest of defence, public safety, public order, public morality or public health;

"(*b*) for the purpose of protecting the rights and freedoms of other persons; or

"(*c*) imposing restrictions upon persons holding office under the State, members of the armed forces of the Federation or members of a police force.

"27.—(1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof; and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto.

"(2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:

"(*a*) restricting the movement or residence of any person within Nigeria in the interest of defence, public safety, public order, public morality or public health;

"(*b*) for the removal of persons from Nigeria to be tried outside Nigeria for criminal offences or to undergo imprisonment outside Nigeria in execution of the sentence of courts in respect of criminal offences of which they have been found guilty;

"(*c*) imposing restrictions upon the movement or residence within Nigeria of members of the public service of the Federation or the public service of a Region, members of

the armed forces of the Federation or members of a police force.

"(3) Nothing in this section shall invalidate any law by reason only that the law imposes restrictions with respect to the acquisition or use by any person of land or other property in Nigeria or any part thereof.

"(4) Nothing in this section shall invalidate any law by reason only that the law provides for the removal or exclusion of a person who is or was a chief by reference to a territory or a part of a territory from a particular area within that territory.

"28.—(1) A citizen of Nigeria of a particular community, tribe, place of origin, religion or political opinion shall not, by reason only that he is such a person:

"(*a*) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the Government of the Federation or the Government of a Region to disabilities or restrictions to which citizens or Nigeria of other communities, tribes, places of origin, religions or political opinions are not made subject; or

"(*b*) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action any privilege or advantage that is not conferred on citizens of Nigeria of other communities, tribes, places of origin, religions or political opinions.

"(2) Nothing in this section shall invalidate any law by reason only that the law:

"(*a*) prescribes qualifications for service in an office under the State or as a member of the armed forces of the Federation or a member of a police force or for the service of a body corporate established directly by any law in force in Nigeria;

"(*b*) imposes restrictions with respect to the appointment of any person to an office under the State or as a member of the armed forces of the Federation or a member of a police force or to an office in the service of a body corporate established directly by any law in force in Nigeria;

"(*c*) imposes restrictions with respect to the acquisition or use by any person of land or other property; or

"(*d*) imposes any disability or restriction or accords any privilege or advantage that, having regard to its nature and to special circumstances pertaining to the persons to whom it applies, is reasonably justifiable in a democratic society.

"29.—(1) An act of Parliament shall not be invalid by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of sections 18, 21, 22 or 28 of this Constitution, but no such measures shall be taken in pursuance of any such Act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency:

"Provided that nothing in this section shall authorize any derogation from the provisions of section 18 of this Constitution except in respect of deaths resulting from acts of war or any derogation from the provisions of subsection (7) of section 22 of this Constitution.

"(2) In this section 'period of emergency' means a period of emergency for the purposes of section 70 of this Constitution.

"30.—(1) Where:

"(*a*) any person is detained in pursuance of an Act of Parliament derogating from the provisions of section 21 of this Constitution; or

"(*b*) the movement or residence of any person within Nigeria who is a citizen of Nigeria is lawfully restricted (otherwise than by order of a court) in the interest of defence, public safety, public order, public morality or public health,

that person shall be entitled to require that his case should be referred within one month of the beginning of the period of detention or restriction and thereafter during that period at intervals of not more than six months to a tribunal established by law and that tribunal may make recommendations concerning the necessity or expediency of continuing the detention or restriction to the authority that has ordered it:

"Provided that such authority, unless it is otherwise provided by law, shall not be obliged to act in accordance with any such recommendation.

"(2) A tribunal established for the purposes of this section shall be constituted in such manner as to ensure its independence and impartiality and its chairman shall be a legal practitioner appointed by the Chief Justice of Nigeria.

"31.—(1) No property, movable or immovable, shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except, or under the provisions of, a law that:

"(*a*) requires the payment of adequate compensation therefor; and

"(*b*) gives to any person claiming such compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the High Court having jurisdiction in that part of Nigeria.

"(2) Nothing in this section shall affect the operation of any law in force on the thirty-first day of March 1958, or any law made after that date that amends or replaces any such law and does not:

"(*a*) add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired;

"(*b*) add to the purposes for which or circumstances in which such property may be taken possession of or acquired;

"(c) make the conditions governing entitlement to any compensation or the amount thereof less favourable to any person owning or interested in the property; or

"(d) deprive any person of any such right as is mentioned in paragraph (b) of subsection (1) of this section.

"(3) Nothing in this section shall be construed as affecting any general law:

"(a) for the imposition or enforcement of any tax, rate or due;

"(b) for the imposition of penalties or forfeitures for breach of the law, whether under civil process or after conviction of an offence;

"(c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts;

"(d) relating to the vesting and administration of the property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind, of deceased persons and of companies, other bodies corporate and unincorporate societies in the course of being wound up;

"(e) relating to the execution of judgments or orders of courts;

"(f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;

"(g) relating to enemy property;

"(h) relating to trusts and trustees;

"(i) relating to the limitation of actions;

"(j) relating to property vested in bodies corporate directly established by any law in force in Nigeria;

"(k) relating to the temporary taking of possession of property for the purposes of any examination, investigation or enquiry; or

"(l) providing for the carrying out of work on land for the purpose of soil-conservation.

"(4) The provisions of this section shall apply in relation to the compulsory taking of possession of property, movable or immovable, and the compulsory acquisition of rights over and interests in such property by or on behalf of the State.

"32.—(1) Any person who alleges that any of the provisions of this Chapter has been contravened in any territory in relation to him may apply to the High Court of that territory for redress.

"(2) Subject to the provisions of section 115 of this Constitution, the High Court of a territory shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such direction as it may consider appropriate for the purpose of enforcing, or securing the enforcement, within that territory of any rights to which the person who makes the application may be entitled under this chapter.

"(3) Parliament may make provision with respect to the practice and procedure of the High Courts of the territories for the purposes of this section and may confer upon those courts such powers in addition to those conferred by this section as may appear to be necessary or desirable for the purpose of enabling those courts more effectively to exercise the jurisdiction conferred upon them by this section.

"33.—Without prejudice to the generality of section 165 of this Constitution, in this chapter, unless it is otherwise expressly provided or required by the context:

" 'court' means any court of law in Nigeria but, except in relation to a member of the armed forces of the Federation, does not include a court-martial;

" 'law' includes an unwritten rule of law;

" 'member of the armed forces of the Federation' includes any person who is subject to naval, military or air-force law; and

" 'member of a police force' includes a person who is subject to any law relating to the discipline of a police force."

Part II

JUDICIAL DECISIONS

As could be seen from part I above, provisions dealing with fundamental rights form part of the Constitution of the Federation, and as such it follows that most of the important court decisions on the issue of fundamental rights are mainly cases of interpretation of the relevant sections of the Constitution. In this respect, the cases summarized below are worthy of note:

A. Determination of Civil Rights

1. *Merchant Bank Limited* v. *Federal Minister of Finance* (1961) ALL N.L.R. 594

(Decided by the Supreme Court of Nigeria.) The appellant held a banking licence granted and issued under the Banking Act. In September 1960, the respondent made an order revoking the licence and ordering the winding up of the Bank's business. The appellant Bank thereupon brought an action in the High Court of Lagos seeking:

(a) a declaration that the respondent's order was void and of no effect, and

(b) an injunction restraining the respondent from giving effect to the order and also from winding up the appellant's banking business.

The appellant contended that the licence issued under the Banking Ordinance conferred a right which, under clause 5 of the sixth schedule to the Nigeria (Constitution) Order in Council 1954 (which is the equivalent of the "civil right" under section 22 of the 1963 Constitution of the Federation), could be revoked only by a court or other tribunal established by law. The High Court, dismissed the action. On appeal to the Supreme Court, it was held that the provision did not apply to the revocation of a licence under the Banking Act, since the grant of such a licence did not create a "civil right" within the protection of the Constitution. Moreover, even if it did, it was only to carry on the business of banking under the licence granted in accordance with the Banking Act, and since the Act permitted the Minister to revoke a licence, his action in doing so in due form did not infringe the right at all.

B. Right to a Fair Trial

2. *Gokpa* v. *Inspector-General of Police* (1961) ALL N.L.R. 423

(Decided by the High Court of the then Eastern Region sitting as appellate court from decisions of Magistrate Courts.) The appellant was charged on various counts of stealing and forgery. The charges seem to have been on the Magistrate's Court list since 12 April 1960, but the appellant first appeared before the Magistrate at Ogoni in the then Rivers Province on 27 September 1960. No plea was taken on the date, and the case was adjourned to 25 October 1960 at the prosecution's request. The case was not called on 25 October 1960. On 28 November 1960, the case again appeared on the list, but neither the appellant nor his counsel were present. The Magistrate ordered a bench warrant to issue against the appellant and adjourned the case to the next day. On the next day, 29 November 1960, the appellant was brought into court without his counsel. He informed the court that he had counsel and asked for an adjournment to enable his counsel to appear. The Magistrate adjourned the case to later in the day, although appellant's counsel, and in fact any available counsel, resided in Port Harcourt, 23 miles away; no counsel was available in the court. At 2.30 p.m., the hearing was resumed, one witness's evidence was taken and then it was adjourned to the next day. Appellant did not take any active part in the proceedings. He did not cross-examine the prosecution witnesses and refused to give evidence in his defence. The Magistrate found him guilty and sentenced him to two years imprisonment. On appeal, it was contended that the trial contravened the provisions of section 22 of the Constitution of the Federation in that the appellant was not given a fair trial. The court held that a court should endeavour to see that an accused is given a fair chance to defend himself and with the aid of counsel when he is represented by one. That a Magistrate's desire to dispose of cases of long standing on his list is understandable; but such disposal of a case should not be done at the expense of giving an accused adequate opportunity of defending himself. By depriving the accused of the right to be represented by counsel, the action of the Magistrate in this case amounted to denying the appellant the opportunity of fair trial, contrary to the guarantee of section 22 of the Constitution. A new trial was therefore ordered.

3. *Shemfe* v. *Commissioner of Police*

(1962) N.N.L.R. 87

(Decided by the High Court of the then Northern Nigeria sitting as appellate court from decisions of Magistrate Courts.) The facts of this case are similar to those in Gokpa's case summarized above. Prior to the commencement of his trial, the appellant's request for an adjournment to bring his counsel was refused. There was explanation given as to failure of counsel to be present or to provide a substitute. The accused conducted his own defence and was found guilty on all counts. It was argued on appeal that the appellant did not have a fair trial because of the absence of his legal representative. The appeal court held that the trial was not unfair because of the absence of counsel in the circumstances of the case. That although the appellant had to take charge of his own defence he had not been deprived by the court of his opportunity to have a legal representative, because the lack of assistance was occasioned by counsel himself. That the Magistrate properly proceeded with the trial in view of the fact that counsel's absence was unexplained and unjustified and that the accused had taken upon himself the conduct of his defence instead of withdrawing from the case as in Gokpa's case.

4. *Emmanuel Nelson* v. *Bornu Native Authority*

(Appeal No. D/47CA/66, decided in the High Court of Northern States of Nigeria sitting as appellate court on 2 February 1947.)

N. was charged with impersonating a licensing officer contrary to section 132 of the Penal Code. During the trial, evidence revealed that N. wrote a note and gave it to B. a member of the public who had called to renew his motor vehicle licence. The note was to the effect that, as the Licence Agent of Maiduguri, N. had authorized B. to drive his motor vehicle before the licence receipts were available.

The vehicle particulars and money collected from B. were found with N. when he was apprehended. It is an essential ingredient of this offence that the offender should not in fact hold the office he pretends to hold, or that he should not be the person he pretends to be. The charge in this case alleged that the appellant was not an officer but no one gave evidence to this effect. There was also no evidence before the trial court that N. wrote the document in question as he never identified or admitted it. These two facts were brought out at the trial. After N. had concluded giving evidence in his defence, the presiding judge asked: "Are you a worker there?", and N. answered that he was not. The judge again asked whether N. was the writer of the document, and he said he was. The appeal court held that these two questions should not have been asked and the answers were inadmissible as evidence because section 22(9) of the Constitution of the Federation says:

> "No person who is tried for a criminal offence shall be compelled to give evidence at his trial."

The appeal court held that N. was not warned that he was not bound to answer those questions and that if he answered them, his answer might be used against him as laid down under section 236(1)(*b*) of the Criminal Procedure Act; he was, therefore, left with no alternative but to answer the court's questions, and was in effect compelled to answer them. His answers, therefore, were not evidence, and for this reason the charge was not proved and the appeal was allowed.

C. Freedom of Conscience and Expression

5. *Ojiegbe & Another* v. *Ubani & The Electoral Commission* (1961) 1 ALL N.L.R. 277

(Decided by the Supreme Court.) The appellants filed an election petition in the High Court

arising out of the general election to the Federal House of Representatives in respect of an Aba constituency which was held in December 1959. The main ground of objection to the election result was that in that constituency, there were some six to seven thousand Seven Day Adventists who, because of their religious belief which forbade any form of activity on Saturday, had not voted in the election held on a Saturday. The candidate for whom some of them might have voted was defeated by over twenty thousand votes, so that the result would have been the same had they voted. It was contended on their behalf that their fundamental right to freedom of conscience (presumably under section 24 of the Constitution) was violated in that they were subjected to disability or restriction by the holding of the election on a Saturday, especially as their request that the election date should be changed to Friday, 11 December 1959, had been rejected by the Governor-General. The Supreme Court held that no fundamental right of the appellants had been violated and that their election petition had been properly rejected by the High Court at Aba.

6. *D.P.P.* v. *Chike Obi* (1961) 1 ALL N.L.R. 186

(Decided by the Supreme Court). The accused was charged with sedition under sections 50 and 51 of the Criminal Code for publishing and distributing a pamphlet containing, *inter alia,* the words: "Down with the enemies of the people, the exploiters of the weak and oppressors of the poor". The publication was directed against the Government of the Federation. It was contended by counsel for the accused that the relevant sections of the Code, in so far as they related to the Government of Nigeria were inconsistent with the provisions of section 25 of the Constitution because "any law which punishes a person for making a statement which brings a Government into discredit or ridicule, or creates disaffection against the Government irrespective of whether the statement is true or false and irrespective of any repercussions on public order or security, is not a law which is reasonably justifiable in a democratic society". The Supreme Court held that the Constitution had not invalidated those sections of the Criminal Code and that freedom of expression was adequately protected in this regard by section 50(2) of the Code. That to accept the accused's contention that, under section 25(2), a law was only valid if the acts prohibited by it were, in every case, likely to lead directly to disorder, was to take too narrow a view of the constitutional provision.

7. *The Queen* v. *The Amalgamated Press (of Nigeria) Ltd. and Fatogun* (1961) 1 ALL N.L.R. 199

(Decided by the Supreme Court.) The defendants were arraigned before the High Court of Lagos on an information charging them with the offences of publishing a seditious publication contrary to section 51(1)(*c*) of the Criminal Code and publishing false news likely to cause fear and alarm contrary to section 59(1) of the Criminal Code. Upon a reference by the Lagos High Court under section 115 of the Constitution, the Supreme Court held that sections 1 and 25 of the Constitution of the Federation had not invalidated sections 50 and 51 of the Criminal Code, and that section 24 of the Constitution cannot be used as a licence to spread false news likely to cause fear and alarm to the public which remained an offence against section 59(1) of the Criminal Code. That what section 25 guaranteed, is a right within the law, not unordered freedom.

D. Freedom from Trial under an Unwritten Law

8. *Aoko* v. *Fagbemi and D.P.P.* (1961) I ALL N.L.R. 400

(Decided by the High Court of Western Nigeria.) The applicant, a woman, who had not been judicially separated, was found guilty by a Grade "D" Customary Court of adultery with another man with whom she had been living, a charge to which she had already pleaded guilty, and was made to pay a total sum of £8 17s. 0d. in fine, compensation and costs. On an application to the High Court on her behalf for an order to quash the said conviction and set aside all consequential orders based on it and to refund to her the money paid in compliance with the Customary Court's order, the High Court held that the order of the lower court must be quashed as an infringement of the woman's right guaranteed to her under section 22(10) of the Constitution which declares that no one shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law. That what the lower court did was also a violation of the woman's right to fair hearing as guaranteed by section 22(2) and her money was ordered to be refuded to her.

E. Who is Competent to Bring Action for Infringement of Human Rights ?

9. *Olawoyin* v. *Attorney-General, Northern Region* (1961) I ALL N.L.R. 269

(Decided by the Supreme Court.) The Northern Region's Children and Young Persons Law 1958, in part VIII, prohibits political activities by juveniles and prescribes penalties on juveniles and others who are parties to certain specific offences. The appellant brought an action for a declaration that that part of the law was unconstitutional in that it contravened the provisions of the Constitution of 1954 (sixth schedule) protecting fundamental rights, relating to private and family life, freedom of conscience and freedom of expression (now sections 23, 24 and 25 of the 1963 Constitution). In the High Court, the appellant contended that he was the father of children whom he wished to educate politically and because of that wish, there was a danger of his rights being infringed if the law were enforced; even though no action of any kind had been taken against him under the law. The High Court dismissed the case on the ground that no right of the appellant was alleged to have been infringed and that it would be contrary to principle to make a declaration *in vacuo.* The Supreme Court held

that only a person who is in imminent danger of coming into conflict with a law, or whose normal business or other activities have been directly interfered with by or under the law, has sufficient interest to sustain a claim that the law is unconstitutional. That the appellant in this case failed to allege or establish any such interest.

To be compared with the above case is:

10. *Cheranci* v. *Alkali Cheranci*
(1960) N.N.L.R. 24

(Decided by the High Court of the then Northern Region sitting in Kano.) The plaintiff was convicted of inciting a young boy to participate in politics and sentenced to a term of imprisonment. He challenged the validity of part VIII of the Northern Nigeria Children and Young Persons Law, 1958, on the ground that it was contrary to the provisions of the Constitution which guarantee freedom of expression, freedom of conscience and freedom from discrimination. The court held that the provision of the law being impugned was valid and constitutional, since the restriction it contained was reasonably justifiable in the interest of public morality and public order.

NORWAY

NOTE [1]

A. LEGISLATION

1. *Amendments of 24 November/15 December 1967 to §§ 50 and 61 of the Constitution*

By these amendments, the voting age and eligibility age in "Storting" elections has been lowered from 21 to 20 years. The amendments will also affect the voting age and eligibility age in municipal elections, cf. the Municipal Election Act of 10 July 1925, §§ 1 and 10.

2. *Act of 10 February 1967 relating to the procedure in administrative cases (Administration Act)*

The Act contains general provisions concerning the procedure in administrative cases in the State as well as municipal administration. It contains rules regarding the disqualification of officials, the obligation to supply information and the use of attorneys in administrative cases. The parties in an administrative case shall have the right to be notified before a decision is made, and subject to certain limitations they shall have the right to examine the documents in the case.

Other important rules require the reasons for a decision to be given. In certain cases, the reasons must be given when the decision is made. In other cases, the reasons shall be given when a party so requests—after having been notified of the decision. The parties shall have the right to be notified of the decision—together with the reasons therefor, as stated above.

Of importance too are the rules of appeal to a superior instance. The Act introduces a general right of appeal and provides for time-limits for appeal procedure, etc.

The Act contains moreover certain rules concerning the promulgation of administrative regulations. The administration is ordered to obtain the opinions of interested organizations, etc., before promulgating such regulations, and to publish the regulations.

The date on which the Act will enter into force will be fixed by separate Act, which is expected to be adopted in 1968/69.

3. *Act of 27 May 1967 (No. 1) amending the Prison Act*

The object of this amendment is to allow also those prisoners who have been sentenced to less than three years imprisonment to be released on probation when half the sentence—though not less than four months—has been served. The Act also permits the probation period to be fixed on a more individual basis.

4. *Act of 16 June 1967 (No. 1) amending the rules for reporting births*

Whereas previously the main rule was that births were to be reported to the registrar of births at the place of birth, the report shall now after amendment be filed with the population registrar in the mother's home district. It has not been decided whether the population registrars are to take over the official recording of births, or whether this recording shall as hitherto pertain to the priests of the Established Church who in such case would have to receive the report from the population registrars. The special reporting rules which previously applied to non-members of the Established Church and which were connected with the rule that the report should be filed with the priests as birth registrars, were repealed by the amending Act.

5. *Act of 30 June 1967 (No. 1) amending the Act of 12 November 1954 relating to municipal councils*

The object of the amending Act is partly to clarify the rules concerning remuneration of municipal officials, partly to broaden the powers of the municipalities to pay the costs of transportation and board for the officials and to compensate them for loss of earnings—or costs of appointing a deputy—entailed by the functions of their office.

[1] Note furnished by the Government of Norway.

6. *Act of 7 July 1967 (No. 2) amending the rules of the Criminal Code concerning punishment for gross theft, etc.*

The amendment relaxed the rule concerning the minimum punishment for repeated gross theft, so that the courts can now sentence to less than the minimum of two years imprisonment if special reasons so indicate. Other rules concerning the minimum punishment for repeated gross property crimes have been similarly relaxed.

7. *Act of 21 July 1967 (No. 2) amending the laws of procedure*

The amendment provides statutory authority to fingerprint and photograph suspected and convicted persons. Norwegian law did not previously have any clear statutory authority in this respect, but is was considered lawful to take such fingerprints and photographs. However, the uncertainty as to how far this was lawful resulted in these statutory provisions.

8. *Act of 15 December 1967 (No. 1) extending the period of limitation for war crimes and crimes against humanity*

The Act extends the time-limit for prosecution and conviction for certain war crimes against humanity committed during the Second World War. The Act comprises only such offences as can be punished by life imprisonment, and where the period of limitation had not already expired. The Act is a consequence of the work being done in the United Nations on the convention which will prohibit any limitation of the right to undertake prosecution and conviction for war crimes and crimes against humanity. The Act aims at enabling Norway subsequently to accede to such a convention without having to make reservations for all crimes committed during the Second World War.

B. JUDICIAL DECISIONS

1. *Supreme Court decree of 12 May 1967*

By decree of 12 May 1967, the Supreme Court, with dissenting votes, decided that it is a criminal offence to use hashish or marijuana, even if the use is not connected with possession. The Drugs Act of 20 June 1964 prohibits explicitly the possession of these substances, but not directly the use thereof. In administrative regulations, the use thereof is also explicitly prohibited. Of the Supreme Court majority, two judges considered that the regulations had statutory authority, one that the Act's prohibition had to be interpreted as comprising use too. The two dissenting judges held that mere use was not a criminal offence.

2. *Supreme Court judgement of 24 November 1967*

The general meeting of the Norwegian Union of Chemical Industry Workers resolved in 1965 to second the National Council's proposal for collective householder's insurance for the members (i.e., fire and other damage insurance covering the members' homes), and authorized the National Council to undertake negotiations with a co-operative insurance company and to include the insurance premium in the Union dues. Three members brought suit to have the resolution declared invalid. The Union, in its principal claim, requested the courts to reject the suit because it was contrary to the principle of union self-government; in its subsidiary claim, the Union moved for acquittal. Neither the City Court nor the Supreme Court upheld the Union's claim. The Supreme Court, in its judgement of 24 November 1967, declared the general meeting's resolution invalid in so far as it made the plaintiffs' membership in the Union dependent on their participation in the collective insurance and their payment of a corresponding addition to the Union dues. The Supreme Court emphasized that the primary purpose of the trade unions is to safeguard the members' interests in relation to their employers, and that union membership is today of vital importance to an employee. It should therefore not be permissible to order the members, as a condition for membership, to assume obligations which entail extra dues for secondary purposes. One judge dissented.

It can be added that Norway does not have special statutory provisions concerning membership in unions, etc. The case had consequently to be decided on general principles of law.

3. *Supreme Court judgement of 15 December 1967*

The Supreme Court, in its judgement of 15 December 1967 held that the book "Without a Thread" was "obscene" and the author and publisher were fined. The majority of the Court found it evident that the book was obscene in terms of the Criminal Code by the standards applied in judgements pronounced in 1958 and 1959. They held moreover that the more liberal view which had emerged in sexual matters could not have entailed such far-reaching changes in the general standards of law as to place the book beyond the range of the Criminal Code. One judge, dissenting, found that the book did not come within the obscenity concept of the Criminal Code.

C. INTERNATIONAL AGREEMENTS

In 1967, Norway has not concluded, outside the United Nations, the specialized agencies or the Council of Europe, any international agreements affecting human rights.

PAKISTAN

NOTE [1]

1. Basic democracy system

One of the major objectives of the introduction of the Basic Democracy System in the country was to establish the right of the people to participate in the developmental and other activities concerning their welfare. The members of the Union Council are elected from different wards on the basis of adult franchise. In order to establish a close liaison between the elected members and their electors, there have been established throughout the country Ward Committees which have started functioning under the rules specifically framed for this purpose.[2] The Wards Committees are required to make surveys of the various needs of the wards for all-round development and to prepare phased programmes to be undertaken for execution by them under the aegis of the Union Councils. Thus direct participation of the people in the developmental activities is a step further in the direction to strengthen their human rights.

2. Labour field

A number of laws have been passed by the Central as well as Provincial Governments to ensure everybody's right to work; to equal pay; to social security; to freedom of association; and to collective bargaining. The labour laws also provide social, medical, educational, etc., amenities to workers of all categories and protect the legitimate rights of the employers. Pakistan has ratified thirty ILO Conventions and six of them (Nos. 11, 20, 87, 98, 105 and 111) are essentially in the field of human rights. A brief analysis of the labour laws is given below:

(a) *Factories Act*

The Factories Act, 1934, which provided for the regulation of working conditions, health, hygiene, safety, welfare, rights and privileges of the workers, was repealed by the East Pakistan Factories Act, 1965, which is an improvement over the previous legislation. The Factories Act, 1934, is still in force in West Pakistan, and constant endeavours are being made to guarantee all the legitimate rights and privileges to the workers, keeping in view the present-day requirements. The West Pakistan Government is expected to make its own new Factory Act soon.

(b) *Industrial Disputes Act*

Both the East Pakistan Labour Disputes Act, 1965, and the West Pakistan Industrial Disputes Ordinance, 1968, provide for investigation and just solution of labour disputes. Labour Courts have been set up to decide disputes between employers and workers.

(c) *Trade Unions*

Both the East Pakistan Trade Union Act, 1965, and the West Pakistan Trade Union Ordinance, 1968, provide for the growth of healthy and sound trade unionism in the country. Since the workers are not able to protect their rights and ventilate their grievances individually, the above laws give them an opportunity to organize themselves into unions and to protect their rights collectively.

(d) *Employment of Children Act, 1938*

This Act stands to protect children from heavy work and other difficult conditions in factories. Section 3 of the Act has clearly laid down the conditions for the employment of children in factories.

(e) *Minimum Wage*

The Minimum Wages Ordinance 1961 attempts to save the working class from being exploited by employers. The Provincial Governments, under this Ordinance, have constituted Minimum Wage Boards to recommend minimum wages for the workers in industries, etc. This Ordinance ensures that workers are not paid less than the subsistance level.

[1] Note furnished by the Government of Pakistan.

[2] Rules issued by the two Provincial Governments appear in *The Dacca Gazette, Extraordinary*, Part I, of 11 September 1965 and *The Gazette of West Pakistan*, No. L 7532 of 15 March 1966.

(f) *Workmen's Compensation and Social Security*

The Workmen's Compensation Act, 1923, aims at compensating the employees who receive injuries while at work. The workers in this country are generally the bread earners of their families and their death or disability puts a lot of burden on their families. So the legal provisions are there to give them immediate financial relief.

The West Pakistan Social Security Ordinance, 1965, was put into operation on the 1st day of March 1967. It introduced an integrated social security scheme based on a contributory system under which employers and workers contribute at the ratio of 2: 1. The scheme provides for medical and cash benefits to workers employed in commercial and industrial undertakings in the contingencies of sickness, maternity and employment injury. It also provides for disablement pension, disablement gratuity and death grant. Presently, the scheme is operating to cover only the textile workers in Karachi, Hyderabad, Lyallpur, Multan, Rawalpindi and Peshawar. It is proposed to extend the scope and benefits of the scheme to other areas and industries gradually. The East Pakistan Government is also expected to introduce these measures in the near future.

PANAMA

LEGISLATIVE ACT No. 1 OF 30 JANUARY 1967 SUPPLEMENTING ARTICLE 13 OF THE CONSTITUTION [1]

Sole article. Article 13 of the Constitution[2] shall read as follows:

Article 13. The Colombians who took part in the movement for independence are Panamanians by virtue of the Constitution without the necessity of naturalization papers. Minors under seven (7) years of age who are of foreign nationality and have been legally adopted by citizens of Panama are also in like manner Panamanians, provided that they meet the requirements of article 9 (*d*) regarding children of a Panamanian father or mother born outside the territory of the Republic.

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[1] *Gaceta Oficial,* No. 15,802 of 13 February 1967.

[2] For extracts from the Constitution of Panama, see *Yearbook on Human Rights for 1946*, pp. 219-224; *Yearbook for 1948*, pp. 370-371 and *Yearbook for 1960*, p. 265.

POLAND

NOTE [1]

I. LEGISLATION

1. *Universal Declaration, articles 3, 7, 8 and 9*

The new regulations contained in the Act of 14 April 1967 concerning the Procurator's Office of the Polish People's Republic (*Journal of Laws,* No. 13, item 55) are worthy of note. The Act enlarges existing guarantees with regard to the implementation of the individual's right to freedom. It is the task of the Procurator-General of the Polish People's Republic and of the procurators under his authority to guarantee the people protection of the law and to ensure that the rights of citizens are respected. They perform these functions by overseeing the enforcement of court judgements in criminal cases, of decisions concerning remand in custody and other judicial decisions entailing deprivation of liberty (article 2, paragraph 1; article 3, paragraph 1 (4), and article 22, paragraph 3 of the Act concerning the Procurator's Office of the Polish People's Republic). Where the procurator finds, that the protection of legality, of citizens rights, of the public interest or of public property so requires, he institutes or supports a civil action in criminal cases. Except in the cases specified in the Act, the procurator may also institute a court action or participate in it at any stage, regardless of who the person instituting the action may be (article 30 of the Act).

The supervision which, in accordance with the Act, the procurator exercises over establishments for the confinement of persons who have been deprived of their liberty, includes, in the first instance, responsibility for ensuring that the confinement of persons in such establishments is in conformity with the law, that sentences are executed in a lawful manner and that all judgements and decisions entailing the deprivation of liberty are consistent with the law (article 34, paragraph 1, of the Act). The Act also requires the procurator to order the immediate release of a prisoner if any circumstance is brought to light which is contrary to the law relating to the deprivation of liberty (article 36, paragraph 1).

2. *Universal Declaration, article 8*

An Act concerning legal costs in civil cases was promulgated on 13 June 1967 (*Journal of Laws,* No. 24, item 110). In addition, several executive orders expanding the possibilities for exemption from judicial fees were promulgated during the period under review.

3. *Universal Declaration, article 13*

The provisions of the Act of 14 February 1967 amend the Passport Act (*Journal of Laws,* 1967, No. 6, item 21) and afford citizens broader opportunities for the enjoyment of the right to freedom of movement. The Act extends the period of validity of passports and the period during which a passport issued for a single journey may be used (article 9 of the Passport Act, *Journal of Laws,* 1959, No. 36, item 224, and *Journal of Laws,* 1962, No. 39, item 172). Provision is made in the original Act for the inclusion in identity documents of a passport insert authorizing journeys to and from the countries specified therein. The amending Act extends the period of validity of passport inserts authorizing a single journey in both directions (article 16 of the Passport Act). Under the amending Act, the holder of a passport or passport insert authorizing more than one journey is relieved of the obligation to deposit the document with the competent authorities following his return from each journey abroad.

4. *Universal Declaration, article 23*

Through its full-employment policy, Poland is giving effect to the right to work guaranteed in its Constitution. In 1967, the average number of persons employed in the national economy who were covered by social insurance amounted to 9,879,000, or approximately 30.8 per cent of the country's population. This figure does not include workers employed on small private farms; such persons numbered 6,500,000 in 1960, and the total for 1967 is estimated at 6,100,000.

[1] Note furnished by the Government of Poland.

During 1967, employment offices recorded a monthly average of 56,000 persons temporarily unemployed—comprising 0.57 per cent of the total number of insured persons employed in the national economy—and 137,000 unfilled jobs. In 1967, aggregate wages increased by 9 per cent. In the context of a 4 per cent increase in employment, gross wages increased by an average of 4.8 per cent owing to higher productivity and upgrading of workers while net wages increased by 2.5 per cent.

5. *Universal Declaration, article 25*

The following legislation promulgated during the period under review is listed by subject headings:

A. *Development and improvement of the various types of health care*

1. Order of the Minister of Health and Social Welfare of 31 July 1967 concerning the organization of public health care (*Journal of Laws,* No. 36, item 183). The Order specifies the scope of public health care and the ways in which it is provided. It creates the means whereby the health needs of the entire population in cases not requiring hospitalization may be met to the fullest possible extent.

2. Order of the Minister of Health and Social Welfare of 25 November 1967 concerning the medical and vocational rehabilitation of persons under care in psychiatric institutions (*Official Journal of the Ministry of Health and Social Welfare,* No. 23-24, item 98). The Order establishes the procedures and conditions for the medical and vocational rehabilitation of persons suffering from mental illness. This type of activity on the part of the health services is aimed at restoring the patient's ability to exercise his regular occupation or teaching him new vocational skills.

3. Directive No. 14/67 of the Minister of Health and Social Welfare of 31 July 1967 concerning health education (*Official Journal of the Ministry of Health and Social Welfare,* No. 16 item 64) and Order of the Minister of Health and Social Welfare of 8 December 1967 concerning competitions to prepare health education exhibits for display in the windows of public pharmacies (*Official Journal of the Ministry of Health and Social Welfare,* No. 23-24, item 100). On the assumption that the attention which citizens pay to their state of health depends primarily on the level of health education, these enactments deal with the problem of improving the methods of disseminating health education information in general and seek to promote good health habits. They also provide that it is the duty of all health-service employees to improve the methods of disseminating information to all social groups so as to ensure active co-operation between the population and the health services in safeguarding public health.

The decline in the mortality rate among newborn children, the growing number of deliveries taking place in hospitals or in the delivery rooms of dispensaries, the universal use of vaccination against infectious diseases and other successes achieved in the field of health in Poland are largely attributable to the educational activities conducted by all the health services as well as by social organizations.

B. *Expansion of the right of citizens to obtain orthopaedic devices*

1. Order of the Minister of Health and Social Welfare of 10 November 1967 (*Journal of Laws,* No. 42, item 214).

2. Decision No. 265 of the Council of Ministers of 10 November 1967 concerning the provision of orthopaedic devices to certain population groups (*Polish Monitor,* No. 62, item 296).

These texts provide that uninsured persons are entitled to receive orthopaedic devices at State expense where this is justified for health or other reasons. In addition, the relevant formalities have been simplified.

C. *Treatment at health resorts*

1. Decision No. 251 of the Council of Ministers of 26 October 1967 concerning the rules governing the activities of organs and institutions authorized to operate health resorts (*Polish Monitor,* No. 62, item 295). This Decision implements the Act of 17 June 1966 concerning health resorts and balneotherapy. It defines the manner in which organs and institutions operating health resorts are to co-operate with a view to improving the treatment provided.

2. Order of the Minister of Health and Social Welfare of 21 August 1967 concerning the classification of health resorts (*Polish Monitor,* No. 55, item 272). The Order takes the view that balneotherapy constitutes a continuation of hospital treatment and specifies the functions of the various types of health resorts and the requirements which they must satisfy.

D. *Assistance to the disabled*

The provisions of the Order of the Council of Ministers of 30 May 1967 deal with the planned employment of the disabled (*Journal of Laws,* No. 20, item 88) and impose numerous obligations on administrative organs and public enterprises with a view to ensuring suitable working conditions for the disabled and thus facilitating their vocational rehabilitation and guarding against more serious disability.

E. *The quality of pharmaceutical products*

1. Order of the Minister of Health and Social Welfare of 11 January 1967 concerning the obligations of producers and importers with respect to the marketing of pharmaceutical and health products and concerning batch control of such products (*Journal of Laws,* No. 3, item 12).

2. Order of the Minister of Health and Social Welfare of 15 March 1967 concerning the conditions governing the composition and quality of certain pharmaceutical products not included in the Polish Pharmacopoeia (*Journal of Laws,* No. 14, item 64).

The provisions of these Orders constitute a set of legal measures designed to prevent the sale of certain pharmaceutical products of poor quality. They serve to improve the existing regulations

since they take account of the experience and findings of international scientific research.

F. *Social assistance*

General instructions were issued by the Minister of Health and Social Welfare on 30 May 1967 concerning co-operation and co-ordination with regard to social assistance provided by State administrative organs, trade unions and social organizations (*Official Journal of the Ministry of Health and Social Welfare,* No. 12, item 44).

G. *Measures to combat infectious diseases*

1. Instructions of the Minister of Health and Social Welfare and the Minister of Agriculture of 3 October 1967 concerning the prevention of hydrophobia (*Official Journal of the Ministry of Health and Social Welfare,* No. 22, item 94). These instructions are designed to afford the population greater protection against hydrophobia by means of a large-scale information programme on the sources of infection, modern methods of seroprophylaxis, the positive results of anti-hydrophobia vaccination and the free assistance provided by the health services.

2. Instructions of the Minister of Health and Social Welfare of 4 July 1967 on how to prevent tetanus (issued as a pamphlet). This new publicity effort is expected to reduce the incidence of tetanus. If active immunization of the entire population is achieved, it will be possible to restrict the use of the serum and thus protect patients against the harmful effects associated with the tetanus anti-toxin.

H. *Prevention of air pollution*

1. Order of the Chairman of the Central Water Resources Board and the Minister of Health and Social Welfare of 31 January 1967 concerning the rules for measuring the concentration of air pollutants (*Polish Monitor,* No. 11, item 62). With a view to reducing the concentration of pollutants in the air above the territory of Poland this Order provides for action designed to:

— involve public industrial enterprises in the plan to reduce air pollution and require them to undertake measurements of the over-all volume of pollutants and of the pollutants emitted over plants and in protected areas;

— establish continuing control over pollutants produced by public industrial enterprises;

— standardize the methods of measuring the emission of air pollutants.

I. *Health service personnel*

The Decision of the Council of Ministers and the Central Council of Trade Unions of 2 February 1967 establishing a "Health Service Workers' Day" (*Polish Monitor,* No. 9, item 50) recognizes and expresses appreciation for the contribution made by health service workers, who implement the State's obligation to protect the health of Polish citizens.

II. JUDGEMENTS OF THE SUPREME COURT

A. Protection of the life and health of the citizen

1. In its Judgement of 26 September 1966 (II PR 392/66, *Proceedings of the Supreme Court* 1967, No. 2, item 31) concerning compensation in cases of occupational disease, the Supreme Court finds that a public enterprise cannot base a valid defence on a showing that the disease was partly attributable to adverse objective conditions. Where a possibility of contracting an occupational disease exists, public enterprises are required to arrange for regular medical examinations of their workers.

2. In its Judgement of 10 March 1967 (I PR 51/67, JSC 1967, No. 7-8, item 147), the Supreme Court holds that a public enterprise is violating the regulations concerning work safety and hygiene when it requires an employee to work in areas which were battlefields during the Second World War without having first ascertained from the presidium of the local national council whether the area in question is listed as containing minefields and whether the competent authorities have undertaken to remove the mines.

These Judgements were rendered in application of the Decree of 25 June 1954 concerning general pension coverage for workers and their families (uniform text, *Journal of Laws,* 1958, No. 23, item 97), which remained in force until 1 January 1968. Under article 24 of the Decree, public enterprises were not liable in respect of injury resulting from an accident occurring at work unless the injured worker presented proof that the injury had resulted from a violation by the enterprise of its obligations with respect to protection of the life and health of workers.

The new Act of 23 January 1968 concerning obligatory financial compensation in the event of accidents occurring at work (*Journal of Laws,* No. 3, item 8), which entered into force on the date of its publication with effect from 1 January 1968 and applies to cases arising on or after that date (article 27), provides that a worker injured in an accident occurring at work is to receive compensation which in principle, fully covers the injury sustained, regardless of whether the enterprise is at fault.

3. In its Judgement of 6 June 1966 (II CR 65/66, *Proceedings of the Supreme Court,* 1967, item 12), the Supreme Court finds that where a physician attached to a prison or police medical service, having determined that a prisoner is suffering from an illness requiring hospitalization, fails to order the prisoner's transfer to a hospital or prison dispensary, he is violating the obligation to provide all necessary medical assistance to a sick person.

The State, which is the employer of the physician, is liable for the consequences of such violations under the Act of 15 November 1956 concerning the liability of the State in respect of damage or injury caused by State employees

(*Journal of Laws*, No. 54, item 243—now articles 417-421 of the Civil Code). This also applies in cases where a physician attached to a prison or police medical service fails to order a prisoner to be excused from complying with any prison regulations which prevent him from following a recommended course of medical treatment.

4. In its Judgement of 11 November 1966 (I CR 379/66, JSC 1967, No. 7-8, item 135), the Supreme Court finds that a citizen who behaves in an improper manner assumes the risk of damage or injury resulting from any lawful actions of the police. However, the citizen does have recourse in cases where the police violate his rights.

The fact that a police officer needlessly intervening in a situation has committed an unlawful act and thereby caused damage or injury to a citizen is sufficient reason for the State to be obligated to make restitution.

B. Protection of work

(Universal Declaration, articles 23 and 24)

1. In its Judgement of 1 September 1967 (II PZ 48/67, *Proceedings of the Supreme Court*, 1968, No. 1, item 9), the Supreme Court holds to be inadmissible any judicial settlement which is contrary to the interests of the worker and does not provide for the prompt payment of compensation which has been awarded to him.

2. In its Judgement of 7 February 1967 (I PR 53/67, *Proceedings of the Supreme Court*, 1967, No. 4-5, item 67), the Supreme Court rules that a worker may not, in the contract of employment or during his period of employment, waive his right to leave accrued in respect of either current or past service if he is still in a position to take his leave.

The Court's judgement serves to ensure that a worker will have the rest he needs to maintain his strength.

3. In its Judgement of 20 January 1967 (I PR 555/66, *Proceedings of the Supreme Court*, 1967, No. 6, item 94), the Supreme Court takes the position that a worker may not under any circumstances be made to suffer the consequences of poor management of the enterprise employing him in cases where managerial duties are not part of his responsibility. Otherwise, the Court holds, he would be assuming the risks entailed in managing the enterprise.

4. In its Judgement of 17 October 1966 (III PRN 63/66, *Proceedings of the Supreme Court*, 1967, No. 2, item 28), the Supreme Court states that the personnel policies of socialized public enterprises as regards the termination of work contracts are to be considered in the light of the rules governing general social life.

Cases may arise in which the decision of a public enterprise is properly viewed with disfavour by society, even though the employer who is dismissing the worker has complied with the rules regarding the procedure and time-limits to be observed in contract terminations and has not violated either the law or the terms of the work contract. Moreover, the obligation to take account of the rules governing general social life does not apply exclusively to cases involving the dismissal of individuals who are the sole support of their families.

C. Protection of the mother and the child

(Universal Declaration, article 25, paragraph 2)

1. In its Judgement of 3 May 1967 (II PR 120/67, JCS 1967, No. 10, item 189), the Supreme Court holds that an unlawful act against a pregnant woman resulting in changes in the normal development of the foetus constitutes an unlawful act against the child in the event that it is born alive and is subsequently handicapped. The child is entitled to seek damages for the effects of the unlawful act from the person responsible.

The child cannot be placed in a situation less favourable than that of a child who has suffered injury during or immediately after delivery.

2. In accordance with the Judgement of 11 December 1967 rendered by a panel of seven judges of the Supreme Court (III CZP 56/67, Register of Legal Principles, *Proceedings of the Supreme Court*, 1968, No. 1, item 13), the court awarding support payments in respect of a child is bound to do so without taking the family allowance into consideration. The allowance is intended to meet the needs of the child quite apart from any support payments which may be awarded. In cases where the family allowance is paid to the parent who is required to make support payments, the court must, in its decision, authorize the person to whom the support payments are made to receive the allowance as well.

3. Under article 32 of the Code of Civil Procedure, a claim for child support is deemed to constitute a priority claim in that the action may be instituted at the place of domicile of the person entitled to the payments.

However, under article 140, paragraph 1, of the Family and Guardianship Code, a person who is making payments to another to cover the maintenance or upbringing of children but is not under an obligation to do so or is required to do so because payment of child support by the person liable therefor is not possible or would create difficulties for the entitled person, may request reimbursement of the payments by the person liable for child support.

In the light of these provisions, the Supreme Court finds in its Judgement of 6 October 1967 (III CZP 63/67, *Proceedings of the Supreme Court*, 1967, No. 11-12, item 175), that a claim filed by a mother against the father of her child for reimbursement of the cost of maintenance and upbringing of the child under article 140 of the Family and Guardianship Code constitutes a claim for child support under article 32 of the Code of Civil Procedure.

4. In its Judgement of 2 June 1966 (II CR 167/66, JCS 1967, No. 3, item 55), the Supreme Court rules that the fact an adoptive parent is indifferent towards, or even estranged from, the adopted child, does not constitute sufficient grounds for annulling the adoption contract. Under Polish law relating to family rights, an adoption contract can be annulled only for very

serious reasons which are a matter for evaluation by the court. In such cases, the court must be guided primarily by the interests of the minor child, as specifically provided in the new Family and Guardianship Code of 25 February 1964 (article 125, paragraph 1) — in conformity with the general rules laid down in the Family Code of 27 June 1950 — and confirmed by judicial decisions.

In its Judgement of 16 November 1966 (I CR 385/66, *Proceedings of the Supreme Court,* 1967, No. 7-8, item 110), the Court takes the position in a specific case that an adoption contract cannot be annulled because its annulment would be harmful to the interests of the adopted child at a time when the latter requires intensive medical treatment following the appearance of symptoms of infantile cerebral paralysis.

III. INTERNATIONAL AGREEMENTS

1. The Agreement between the Government of the Polish People's Republic, the Government of the French Republic and the Government of the Kingdom of the Netherlands concerning the social security status of employed persons or persons treated as such who have been employed in Poland, France and the Netherlands, signed at Paris on 28 April 1966, entered into force on 1 August 1967.

2. The General Convention between the Polish People's Republic and the Kingdom of Belgium on social security, signed at Brussels on 26 November 1965, entered into force on 1 October 1967.

REPUBLIC OF KOREA

NOTE [1]

1. *Law Governing Job Stabilization (promulgated on 30 March 1967, by Act No. 1952)*

A. Introduction

Article 28-(1) of the Constitution of the Republic of Korea prescribes the responsibility of the Government to establish full employment by stipulating that "the State shall endeavour to promote the employment of workers through social and economic means".[2]

For the intent of the Constitution, the Law Concerning Job Stabilization prescribes the responsibilities of the Government and the local self-government bodies to arrange opportunities for workers to be employed in proper occupation in accordance with their individual capacities.

B. Major contents

(1) Responsibilities of the Government.

(*a*) Matters on job arrangement, vocational guidance and others for those who seek employment at home and abroad.

(*b*) Matters on research projects concerning the demand and supply of the labour power and on counter-unemployment problems.

(*c*) Matters on vocational aptitude test, etc.

(2) Establishment and operation of the job stabilization committee and the job stabilization office.

(3) Establishment and operation of the counter-unemployment committee.

(4) Establishment and operation of the employment offices.

2. *Revised Law Governing Criminal Compensation (promulgated on 16 January 1967, by Act No. 1868)*

A. Introduction

In case a criminal defendant under detention is found innocent, he is assured of the right to claim compensation from the Government. This is provided for in the Constitution and in the Law Governing Criminal Compensation, which was promulgated on 13 August 1958 by Act No. 494. However, the standard compensation amounts, provided in the Law, are at far variance with the reality. Therefore, the Government revised the related provisions of the Law by increasing the standard compensation amounts.

B. Contents of the revision

In case a criminal defendant under detention is found innocent, he may receive a compensation ranging from 200 won to 400 won, instead of 50 won to 100 won under the former law.

Where a criminal defendant is found innocent after his execution, his bereaved family can receive up to 2,000,000 won, instead of 500,000 won under the former law.

Law Governing the Improvement of Education in Islands and Remote Areas (promulgated on 16 January 1967, by Act No. 1870)

A. Introduction

The Constitution and the Law Governing Education prescribe the right of all citizens to receive equal education.

For the effective implementation of the provisions, this Law stipulates the responsibility of the Government and the local self-government bodies to improve compulsory education in remote islands, remote mountain areas and areas adjacent to the Demilitarized Zone (DMZ), where the children in geographic, economic, cultural and social aspects are particularly underprivileged.

B. Responsibilities of the Government

(1) Securing school sites, classrooms, school clinics and furnishing other necessary school facilities.

[1] Note furnished by the Government of the Republic of Korea.

[2] For extracts from the Constitution of the Republic of Korea, see *Yearbook on Human Rights for 1962*, pp. 246-249.

(2) Preparation of teaching materials and implements.

(3) Free distribution of text-books.

(4) Providing measures for school attendance by children.

(5) Providing teachers with residences.

C. Responsibilities of the local self-government bodies

(1) Preparation of teaching materials and other data for instruction.

(2) Providing teachers with opportunities and expenses for research.

Tuberculosis Prevention Law (promulgated on 16 January 1967, by Act 1881)

A. Introduction

The responsibility of the Government for the improvement of national health is stipulated in the provisions of the Constitution, the Law Governing National Medicare, the Law Governing the Improvement of Physical Culture, the Epidemics Prevention Law, etc.

The Tuberculosis Prevention Law was promulgated to impose upon the Government and the local self-government bodies the responsibility of preventing tuberculosis and of treating sufferers from tuberculosis, in order to protect the people from the dreadful disease and thus to improve the national health.

B. Major contents

(1) Regular and occasional medical examination.

Employers, principal and chiefs of other facilities shall conduct regular medical examinations not less than once a year or more occasionally, on their employees and pupils, in accordance with the Health-Social Affairs Ministry decree.

(2) Preventive inoculations.

The Government and the local governments shall conduct preventive inoculation against tuberculosis in respect of those who have proved to be negative from tuberculin test, and in respect of babies who are under one year of age.

(3) Establishment and operation of clinics and hospitals for consumptives.

The Government and the local governments shall establish and operate clinics, sanatoria and hospitals for the treatment of sufferers from tuberculosis.

(4) Isolated accommodation.

Consumptives must be isolated for treatment.

5. *Provisional Special Treatment Law on the Acquisition of Citizenship by Korean Residents Abroad (promulgated on 16 January 1967, by Act 1865)*

A. Introduction

This Law is a special treatment law, providing for a simplified procedure of acquiring citizenship for those Koreans abroad who are not domiciled or have uncertain permanent addresses in Korea, and have registered as Korean residents in accordance with the Law Governing the Registration of Korean Residents Abroad.

B. Procedure of acquiring citizenship

(1) Those Korean residents abroad who want to acquire Korean citizenship, shall apply for it to the chief of the Korean mission abroad, which has jurisdiction over their residence.

(2) The chief of the Korean mission abroad shall transmit the application to the court at home which has jurisdiction over where the applicant wants to be registered.

(3) With the approval of the court, the chief of the competent administrative unit shall have the applicant's name entered in the census register.

C. Exemption of expenses

All expenses for the implementation of this Law shall be defrayed by the Government or the local self-government bodies.

6. *Provisional Special Treatment Law on the Absentee Pronouncement (promulgated on 16 January 1967, by Act 1867)*

A. Introduction

With the unfortunate division of the land of the Republic of Korea since its liberation from Japanese rule in 1945, an innumerable number of North Koreans came to the South to seek freedom, most of them not being accompanied by their families.

Still more, countless patriotic civilians have been separated from their families, since they had been abducted to the North by the Communists during the Korean War.

All these disastrous separations between family members created many legal problems in the social life of those who remain in the North, such as problems relating to marriage, inheritance and the disposition of the absentees' property.

So the Law provides for a special procedure for absentee pronouncement for those who remain in the North and are held captive by the Communists, in an effort to settle the legal life of their family members in the South.

B. Absentee Pronouncement System

The Absentee Pronouncement System is an institution removing the name of the absentee from the register through a trial by the court.

C. Special treatment of the Absentee Pronouncement System

Under this system, the absentees who had disappeared from their residences during the period ranging from 15 August 1945 to 28 July 1953, shall be considered dead in accordance with the decisions made by the court.

The trial seeking for absentee pronouncement shall be filed by those who have interests in the pronouncement.

REPUBLIC OF VIET-NAM

THE CONSTITUTION OF THE REPUBLIC OF VIET-NAM [1]

Chapter I

BASIC PROVISIONS

Article 1. (1) Viet-Nam is a territorially indivisible, unified and independent republic.

(2) Sovereignty resides in the People.

Article 2. (1) The State recognizes and guarantees the basic rights of all citizens.

(2) The State advocates equality of all citizens without discrimination as to sex, religion, race or political party. Ethnic minorities will receive special support so that they can keep up with the rate of progress of the nation as a whole.

(3) It is the duty of every citizen to serve the national interests.

Article 3. The functions and powers of the Legislative, Executive and Judicial Branches must be clearly delineated. The activities of these three branches must be coordinated and harmonized to realize public order and prosperity on the basis of freedom, democracy and social justice.

Article 4. (1) The Republic of Viet-Nam opposes communism in every form.

(2) Every activity designed to propagandize or carry out communism is prohibited.

Article 5. (1) The Republic of Viet-Nam will comply with those provisions of international law which are not contrary to its national sovereignty and the principle of equality between nations.

(2) The Republic of Viet-Nam is determined to oppose all forms of aggression and strives to contribute to the building of international peace and security.

Chapter II

RIGHTS AND DUTIES OF CITIZENS

Article 6. (1) The State respects human dignity.

(2) The State will protect freedom, the lives, property and honor of every citizen.

Article 7. (1) The State respects and protects the security of each individual and the right of every citizen to plead his case before a court of law.

(2) No one can be arrested or detained without a legal order issued by an agency which has judicial powers conferred upon it by law except in cases of flagrant violation of the law.

(3) The accused and his next of kin must be informed of the accusation against him within the time limit prescribed by law. Detentions must be controlled by an agency of the judiciary.

(4) No citizen can be tortured, threatened or forced to confess. A confession obtained by torture, threat or coercion will not be considered as valid evidence.

(5) A defendant is entitled to a speedy and public trial.

(6) A defendant has the right to a defense lawyer for counsel in every phase of the interrogation, including the preliminary investigation.

(7) Any person accused of a minor offense who does not have a record of more than three months imprisonment for an intentional crime may be released pending trial provided he (or she) is employed and has fixed residence. Women pregnant more than three months accused of minor offenses who are employed and have a fixed residence may be released pending trial.

(8) Accused persons will be considered innocent until sentence recognizing his guilt is handed down. In event of doubt, the court will rule in favor of the accused.

(9) If unjustly detained, a citizen has the right to demand compensation for damages after his release, in accordance with the provisions of the law.

[1] Adopted by the Constituant Assembly on 18 March 1967 and promulgated on 1 April 1967. English translation of the Constitution taken from *Viet-Nam Newsletter*, issued by the Office of the Permanent Observer of the Republic of Viet-Nam to the United Nations, New York.

(10) No one can be detained for indebtedness.

Article 8. (1) The private life, home, and correspondence of every citizen will be respected.

(2) No one can enter, search or confiscate a person's property unless in possession of orders from a court or when necessary to the defense of security and public order according to the spirit of the law.

(3) Privacy of correspondence will be protected by law. Any restriction imposed on this right must be determined by law.

Article 9. (1) The State will respect and guarantee freedom of religious belief and freedom to preach and practice religion of every citizen as long as it does not violate the national interest and is not harmful to public safety and order or contrary to good morals.

(2) No religion will be recognized as the State religion. The State will be impartial in the development of various religions.

Article 10. (1) The State recognizes freedom of education.

(2) Basic education is compulsory and free of charge.

(3) University education will be autonomous.

(4) Talented persons who do not have means will be given aid and support to continue their studies.

(5) The State encourages and supports research and creative work by citizens in the fields of science, letters and the arts.

Article 11. (1) Culture and education must be considered matters of national policy, on a national scientific, and humanistic basis.

(2) An appropriate budget must be reserved for the development of culture and education.

Article 12. (1) The State respects freedom of thought, speech, press and publishing, as long as it does not harm personal honor, national security, or good morals.

(2) Censorship will be abolished except for motion pictures and plays.

(3) Press regulations will be prescribed by law.

Article 13. (1) Every citizen has the right to meet and form associations in accordance with conditions and procedures prescribed by law.

(2) Every citizen has the right to vote, run for office and participate in public affairs on an equal basis and in accordance with conditions and procedures prescribed by law.

(3) The State recognizes the political rights of every citizen including the right to petition freely and engage in overt, non-violent and legal opposition.

Article 14. Every citizen will enjoy freedom to choose his place of residence and freedom of movement including the right to go and return from abroad. These freedoms can be restricted by law only for reasons of public health, security or defense.

Article 15. (1) Every citizen has the right and duty to work and receive fair remuneration enabling him and his family to live in dignity.

(2) The State will endeavour to create employment for all citizens.

Article 16. Freedom to join labor unions and to strike will be respected within the framework and regulations prescribed by law.

Article 17. (1) The State recognizes the family as the foundation of society. The State will encourage and facilitate the formation of families and will assist expectant mothers and infants.

(2) Marriage must be based on mutual consent, equality and cooperation.

(3) The State will encourage family cohesion.

Article 18. (1) The State will endeavour to establish a system of social security.

(2) It is the duty of the State to establish a system of social welfare and public health.

(3) It is the duty of the State to support the nation's warriors both spiritually and materially, as well as to support and raise the nation's orphans.

Article 19. (1) The State recognizes and guarantees the freedom of private property.

(2) The State will advocate a policy of making the people property owners.

(3) Expropriation or requisition by the State for the common good must be accompanied by speedy and just compensation at price levels existing at time of expropriation or requisition.

Article 20. (1) Freedom of trade and competition will be recognized but it cannot be exercised to secure monopoly or control of the market.

(2) The State will encourage and assist economic cooperation which has the nature of mutual economic assistance.

(3) The State will give special support to those elements of society which have a low standard of living.

Article 21. The State advocates raising the standard of living of rural citizens, and especially helping farmers to have farmland.

Article 22. On the basis of equality between duties and rights, workers have the right to choose representatives to participate in the management of business enterprises particularly with respect to matters concerning wages and conditions of work within the framework and procedures prescribed by law.

Article 23. (1) Military personnel elected to public office or serving in positions in central government must be demobilized or take leave of absence without salary, according to their choice.

(2) Military personnel on active duty are not permitted to engage in political party activity.

Article 24. (1) The State recognizes the presence of racial minorities in the Vietnamese community.

(2) The State respects the habits and customs of the minority compatriots. Customary courts will be established to pronounce judgments on some disputes involving habits and customs of minority compatriots.

(3) A law will prescribe special rights in order to assist minority compatriots.

Article 25. Every citizen has the duty to defend the country and the republic.

Article 26. Every citizen has the duty to defend the Constitution and respect the law.

Article 27. Every citizen has the duty to fulfill his military obligations as prescribed by law.

Article 28. Every citizen has the duty to pay taxes in accordance with the provisions of law.

Article 29. Any restriction upon the basic rights of the citizens must be prescribed by law and the time and place within which such a restriction is in force must be clearly specified. In any event the essence of all basic freedoms cannot be violated.

Chapter III

NATIONAL ASSEMBLY

Article 30. (1) Legislative authority is vested by the people in the National Assembly.

(2) The National Assembly includes two Houses, the Lower House and the Upper House.

Article 31. The Lower House includes from 100 to 200 representatives.

(1) Representatives are elected by universal suffrage, direct and secret ballot. Candidates run as individuals from separate constituencies no larger than province.

(2) Representatives serve for four years. They may be re-elected.

(3) The election for a new Lower House will be completed at least one month prior to the completion of the term of the old Lower House.

Article 32. Citizens meeting the following qualifications may run for the Lower House:

(1) Vietnamese citizenship at birth, or having held Vietnamese citizenship at least seven years, or recovered Vietnamese citizenship for at least five years, counting from the day of election.

(2) At least 25 years old on the day of the election.

(3) Enjoying full rights of citizenship.

(4) Having draft status in order.

(5) Meeting other conditions specified in the electoral law.

Article 33. The Upper House will include from 30 to 60 members.

(1) Senators are elected at-large by universal suffrage, direct and secret ballot. The election will be by list voting and on basis of plurality. Each list will include from 1/3 to 1/6 of the total membership of the Upper House.

(2) Senators will serve for six years, One half of the Senate will be re-elected every three years. Senators may be re-elected.

(3) Members of the first Upper House will be divided into two groups by drawing lots. The first group will serve six years, the second group three years.

(4) The election of one half of the Upper House must take place at least two months before the term of that half of the Upper House ends.

Article 34. Candidates for the Upper House must be citizens 30 years of age by election day, must meet all the conditions prescribed in the senatorial election law and those prescribed in article 32.

Article 35. (1) If for any reason a vacancy occurs in the Lower House more than two years prior to the end of the term, an election will be held within three months to choose a replacement.

(2) If for any reason a vacancy occurs in the Upper House the election of the replacement will be held concurrent with the next regular election of one half of the Upper House.

Article 36. Procedures and conditions for the candidacies and election of representatives and senators, including ethnic minority representatives, will be prescribed by law.

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Chapter IV

THE EXECUTIVE

Article 51. Executive authority is vested by the people in the President.

Article 52. (1) The President and Vice-President run together on one list and are elected by the entire nation by direct and secret ballot.

(2) The term of office of the President and Vice-President is four years. The President and Vice-President can be re-elected once.

(3) The term of office of the President and Vice-President ends precisely at 12:00 noon on the last day of the forty-eighth month from the day they took office and the term of the new President and Vice-President begins at that time.

(4) The election of the new President will be held on a Sunday, four weeks before the incumbent's term ends.

Article 53. Citizens meeting the following conditions may run for President and Vice-President:

(1) Must have Vietnamese citizenship from day of birth and continuous residence in Viet-Nam for ten years as of date of election. Time spent on official assignment abroad or in political exile is considered as residence in Viet-Nam.

(2) Must be 35 years of age as of election day.

(3) Must enjoy full rights of citizenship.

(4) Must have legal draft status.

(5) Must meet all other requirements set forth in the Presidential and Vice-Presidential law.

. . .

Article 70. (1) The principle of local separation of power is recognized for legal regional entities: villages, provinces, cities and the capital.

(2) The organization and regulation of local administration shall be prescribed by law.

Article 71. (1) Deliberative bodies and the heads of executive agencies of local administrative units will be popularly elected by direct and secret ballot.

(2) At the village level, village chiefs may be elected by village councils from among village council members.

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Chapter V

JUDICIARY

Article 76. (1) Independent judicial power is vested in the Supreme Court and is exercised by judges.

(2) A law shall establish the organization and administration of the judiciary.

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Chapter VII

POLITICAL PARTIES AND OPPOSITION

Article 99. (1) The Nation recognizes that political parties have an essential role in a democratic system.

(2) Political parties may be organized and may operate freely, according to the procedures and conditions prescribed by law.

Article 100. The Nation encourages progress toward a two-party system.

Article 101. The Nation recognizes the formalization of political opposition.

Article 102. Regulations governing political parties and political opposition will be prescribed by law.

Chapter VIII

AMENDING THE CONSTITUTION

Article 103. (1) The President or an absolute majority of the total number of representatives or an absolute majority of the total number of senators has the right to propose amendments to the Constitution.

(2) The proposal must cite reasons and must be submitted to the office of the Upper House.

. . .

Article 105. The resolution to amend the Constitution must be supported by two thirds of the total number of representatives and senators.

. . .

ROMANIA

NOTE [1]

A. TEXTS OF OR EXTRACTS FROM LEGISLATION AND REGULATIONS ADOPTED DURING 1967

I. Regulations concerning protection of workers' rights (*article 23 (1) of the Universal Declaration of Human Rights*)

1. Decision No. 2896 of the Council of Ministers concerning the notification, investigation and registration of industrial accidents and occupational diseases published in the *Official Bulletin of the Socialist Republic of Romania*, No. 2 of 4 January 1967.

The new regulations explain what is meant by an industrial accident and introduce an improved system for the investigation of such accidents and an improved method for determining the factors liable to give rise to industrial accidents and for establishing the measures to be taken to prevent them.

The main provisions of this Decision are:

"*Article 1.* For the purposes of this Decision 'industrial accident' means any violent traumatism affecting the organism or any acute industrial poisoning which occurs in the course of the occupational activity or while fulfilling service obligations, resulting in temporary incapacity for work lasting for at least one day, invalidity or death.

"*Article 4.* When an accident occurs the foreman or person in charge of the work shall notify immediately by any means of communication the director of the socialist undertaking or his deputy and the works union. Any person who knows about an accident or the victim of an accident must notify the foreman that an accident has occurred.

"*Article 5.* (1) In the case of a collective or fatal accident or an accident resulting in disability, the director of the socialist undertaking or his deputy shall immediately notify by telephone or any other means of communication the services of the State Committee for Industrial Protection, the competent local offices of the Public Prosecutor's Department and of the Ministry of the Interior, the institution immediately superior in rank to the said socialist undertaking and the local or regional managing committee of the trade union concerned.

"*Article 7.* (1) Every industrial accident resulting in temporary incapacity for work lasting for at least one day shall be the subject of an inquiry or investigation as soon as it has been reported to the Director of the socialist undertaking, who shall be responsible for making the investigation.

"*Article 8.* (1) An inquiry shall be held into every industrial accident resulting in disability or any fatal or collective accident; the investigation shall be commenced immediately by the services of the State Committee for Industrial Protection to discover the causes of the accident and the persons responsible, pursuant to the statutory provisions in force.

"*Article 13.* (1) Every industrial accident shall be registered by the socialist undertaking where it occurred by means of a standard questionnaire drawn up in accordance with the appropriate instructions.

"*Article 20.* For the purposes of this Decision, 'occupational disease' shall mean any malady suffered by a worker in the exercice of a trade or occupation and caused by toxic agents, whether physical, chemical or biological, present in the workplace, or resulting from excessive strain on the various organs and systems of the body in the performance of the tasks involved in the trade or occupation concerned.

"*Article 23.* (1) The state health inspectorate having local jurisdiction shall hold an inquiry into the causes of the occupational disease, for purposes of confirming or invalidating the diagnosis made and ordering steps to be taken to prevent further outbreaks of disease due to the same causes."

[1] Note received from the Government of the Socialist Republic of Romania.

II. Regulations concerning maternal and child welfare (article 25 (2) of the Universal Declaration of Human Rights).

1. Decision No. 54 of the Council of Ministers concerning the hiring on a part-time basis of women with children under seven years of age, published in the *Official Bulletin of the Socialist Republic of Romania,* No. 7 of 23 January 1967.

The new regulations establish a preferential system for women with children under seven years of age, since they make it possible for them to be hired on a part-time basis, thus ensuring the best conditions for the care and education of their children. This Decision forms an integral part of the series of measures taken for the welfare of the family and the education of minors.

III. Regulations concerning education (article 26 of the Universal Declaration of Human Rights).

1. Decision No. 953 of the Council of Ministers concerning the training of skilled workers through on-the-job apprenticeship, published in the *Official Bulletin of the Socialist Republic of Romania,* No. 40 of 5 May 1967.

The new regulations offer young people who have completed their elementary and general education (15 to 18 years of age) and who have been hired for employment the opportunity to prepare to practise a trade by means of good theoretical and practical training.

The Decision also provides for the granting of remuneration, material support and educational expenses to apprentices.

2. Decree No. 1058 concerning scientific degrees in the Socialist Republic of Romania, published in the *Official Bulletin of the Socialist Republic of Romania,* No. 100 of 28 November 1967.

The new regulations are designed to improve the procedure for admission to the doctorate and the conditions for obtaining scientific degrees.

These regulations were formulated in consultation with experienced teachers and with due regard to the traditions of higher education in our country as well as current international practice concerning methods of earning scientific degrees.

IV. Regulations concerning the restoration of the rights of persons whose rights have been violated by administrative acts (article 8 of the Universal Declaration of Human Rights).

1. Act No. 1 concerning the ruling of the courts on appeals from persons claiming that their rights have been violated by illegal administrative acts, published in the *Official Bulletin of the Socialist Republic of Romania,* No. 67 of 26 July 1967.

The adoption of this Act was an important measure designed to ensure and strengthen legality and the protection of civil rights.

Extract:

"*Article 1.* Any person whose rights have been violated by an unlawful administrative act may request the competent tribunal, in the manner prescribed in this Act, to void the act or to compel the administrative organ against which the claim is made to take appropriate action to end the violation of his right and to make reparations.

"Similarly, the unjustified refusal to answer an appeal relating to a right and failure to settle such an appeal within the period prescribed by the law shall be deemed to be an unlawful administrative act.

"*Article 9.* (1) The tribunal which rules on the appeal may, where appropriate, void the administrative act to which the appeal relates in whole or in part, compel the accused party to hand down another administrative decision or to issue a certificate, affidavit or other written statement.

"*Article 9.* (2) If the appeal is admitted, the tribunal shall also decide on the damages claimed."

This Act implements the constitutional provisions under which a person whose rights have been violated by an unlawful act on the part of a State organ may request the competent authorities to void that act and make reparation; it also implements the provisions of the Constitution which deal with the competence of the courts to rule on appeals from persons claiming that their rights have been violated by administrative acts and to rule on the legality of such acts according to the procedure prescribed by the Act.

This Act governs the right of persons whose rights have been violated by unlawful administrative acts to appeal to the courts to restore their rights by declaring the relevant acts null and void or by taking other appropriate measures and to claim damages in reparation.

V. Regulations designed to raise the standard of living (article 25 (1) of the Universal Declaration of Human Rights).

1. Decision No. 1523 of the Central Committee of the Romanian Communist Party and of the Council of Ministers concerning an increase in low wages, published in the *Official Bulletin of the Socialist Republic of Romania,* No. 62 of 11 July 1967.

Raising the minimum wage is an important measure in the context of the action taken by the State with a view to improving the welfare of the workers.

Extract:

"*Item 1.* With effect from 1 August 1967, the minimum wage shall be increased from 570 to 700 lei per month.

"*Item 2. (1)* With effect from that date, wages which are at present lower than 750 lei per month shall be increased on the average by 10.4 per cent."

2. Decision of the Council of Ministers concerning the reduction of the retail sale price of certain consumer goods, published in the *Official Bulletin of the Socialist Republic of Romania,* No. 35 of 22 April 1967.

Pursuant to this Decision, the sale price on approximately 600 varieties of consumer goods has been reduced.

3. Decree No. 713 concerning the construction by citizens with State aid of privately owned houses for rest or tourism in seaside and health resorts and other tourist resorts, published in the

Official Bulletin of the Socialist Republic of Romania, No. 66 of 23 July 1967.

Extract:

"*Article 1.* Whatever their place of domicile, citizens may, with their own money, with State aid arrange to have privately owned houses for rest or tourism built for their own use and that of their families under the conditions prescribed in this Decree.

"*Article 2.* Privately owned houses for rest or tourism may be built either individually or jointly, on privately owned land or on State land allocated for that purpose, in seaside and health resorts, in the mountains or by the sea, and in other localities of scenic interest.

"The State shall support such action by providing land to be used for an unlimited period, by planning and executing the work and by selling construction materials."

VI. Regulations concerning the right to holidays with pay (article 24 of the Universal Declaration of Human Rights).

1. Act No. 26 concerning paid holidays for employees, published in the *Official Bulletin of the Socialist Republic of Romania,* No. 113, of 28 December 1967.

Extract:

"*Article 1.* (1) Employees shall be entitled to annual paid holidays of from fifteen to twenty-four working days, depending on length of service.

"*Article 1.* (2) Young people under eighteen years of age shall be entitled to annual paid holidays of between eighteen and twenty-four working days, according to their age.

"*Article 2.* (1) In addition to the annual paid holidays granted according to length of service, employees working in certain places or under special working conditions shall also be entitled to additional holidays of from three to twelve working days.

"*Article 2.* (2) The Council of Ministers may, in certain cases, establish additional holidays for a period of more than twelve working days for places of work where the special conditions are such as to necessitate a longer period of rest.

"*Article 3.* (1) Employees holding managerial or similar posts shall be entitled to additional holidays of from two to five working days.

"*Article 6.* (1) The length of annual paid holidays for teachers of all grades shall be equal to the legal length of school vacations or university recesses.

"*Article 12.* (1) and (2). The management of the unit shall take appropriate measures to ensure that its employees enjoy the holidays to which they are entitled each year.

"The right to annual paid holidays may not be the subject of any transaction, and may not be renounced or limited. Any such act shall be legally null and void."

VII. Regulations concerning the comprehensive education of youth (article 26 of the Universal Declaration of Human Rights).

1. Act No. 29 concerning the development of physical education and sports, published in the *Official Bulletin of the Socialist Republic of Romania,* No. 114 of 29 December 1967.

Extract:

"*Article 1.* (1) In the Socialist Republic of Romania physical education and sports are activities of national interest.

"*Article 2.* (1) The National Council for Physical Education and Sports, a central specialized civic organization, shall be responsible for the over-all co-ordination and direction of physical education and sports activities designed to implement the policy of the Party and the State in this field.

"*Article 24.* The State shall allocate investment funds for the construction and equipment of sports centres, and shall provide funds in the budget as well as the land necessary for sports activities."

The Act establishes the obligations of the National Council for Physical Education and Sports, the co-ordinating and policy organ, and of the other State and civic organizations with special responsibility for education and sports.

The Act also prescribes procedures for organizing and operating sports federations as organizations with special functions, sports associations and clubs, which are bodies corporate operating in accordance with specific plans and regulations and within the limits of their budgets.

VIII. Regulations concerning amnesty for certain offences and the commutation of certain sentences (article 7 of the Universal Declaration of Human Rights).

Act No. 25 concerning amnesty for certain offences, the remission and reduction of certain penalties, published in the *Official Bulletin of the Socialist Republic of Romania,* No 113 of 28 December 1967.

The profound transformations which have taken place in the material conditions of our expanding society, and the transformations in the spiritual and moral character of the people have brought about a new attitude towards work and society. Public opinion has become a powerful educational factor in fostering respect for the law and in the prevention and punishment of offences and this has made possible the adoption of measures of clemency under which amnesty has been granted for certain offences and the sentences of many persons convicted of criminal offences have been commuted.

The amnesty and remission of penalties granted under this Act are evidence of the strength of our State and of its democratic nature and humanistic approach.

Amnesty has been granted for offences punishable under law by deprivation of liberty for up to three years or correctional fine or both, offences connected with the illegal crossing of the frontier and offences committed by Romanian

citizens or former Romanian citizens resident abroad.

The sentences imposed on persons condemned to deprivation of liberty for up to five years or made to pay a correctional fine and on persons convicted of unpremeditated crimes have been commuted. The sentences imposed on persons over sixty years of age and on pregnant women or women with children under five years of age have also been commuted.

In addition, some penalties have been considerably reduced.

B. INTERNATIONAL CONVENTIONS

During 1967, the Socialist Republic of Romania concluded the following international conventions relating to human rights:

1. Agreement between the Government of the Socialist Republic of Romania and the Government of the Italian Republic on international road transport, approved by Decision No. 369 of the Council of Ministers and published in the *Official Bulletin of the Socialist Republic of Romania,* No. 22 of 11 March 1967.

2. Cultural Agreement between the Government of the Socialist Republic of Romania and the Government of the Kingdom of the Netherlands, ratified by Decree No. 330 and published in the *Official Bulletin of the Socialist Republic of Romania,* No. 22 of 11 March 1967.

This Agreement facilitates cultural and scientific exchanges between the two countries, *inter alia,* by means of contacts between scholars and between teachers at the university, secondary and technical school levels and between teachers of the arts, the reciprocal granting of fellowships, free access to libraries, archives, and cultural and scientific establishments, the promotion of exchanges of books and other publications and of tourism, contacts, etc.

3. Agreement on cultural co-operation between the Government of the Socialist Republic of Romania and the Government of the Somali Republic, approved by Decision No. 1383 of the Council of Ministers and published in the *Official Bulletin of the Socialist Republic of Romania,* No. 55 of 23 June 1967.

The Agreement deals with the development of exchanges of experience and achievements in science, education, health, literature, the arts and sports through exchanges of delegations and individual visits.

4. Agreement between the Government of the Socialist Republic of Romania and the Government of the People's Republic of Bulgaria concerning co-operation in the field of tourism, approved by Decision No. 1674 of the Council of Ministers and published in the *Official Bulletin of the Socialist Republic of Romania,* No. 68 of 27 July 1967.

The aim of this Agreement is to encourage and facilitate travel by groups or individuals, organized through tourist agencies in the two countries, and the exchange of experience and information concerning the construction and equipment of tourist facilities.

5. Agreement of technical and scientific co-operation between the Government of the Socialist Republic of Romania and the Government of the Republic of Kenya, ratified by Decree No. 714 and published in the *Official Bulletin of the Socialist Republic of Romania,* No. 69 of 29 July 1967.

This Agreement lays the foundations for technical and scientific co-operation with regard to the economic development of the two countries. For that purpose, provision is made, *inter alia,* for sending experts and groups of specialists and consultants in various economic, technical and scientific fields, and for exchanges in connexion with the training of young specialists and specialists designed to supplement their knowledge by practical work and study.

6. Agreement on scientific and technical co-operation between the Socialist Republic of Romania and the Republic of Guinea, approved by Decision No. 2091 of the Council of Ministers and published in the *Official Bulletin of the Socialist Republic of Romania,* No. 77, of 5 September 1967.

This Agreement provides for scientific and technical co-operation between the two countries through, *inter alia,* the sending of experts, specialists and technicians, the granting of scholarships, training in educational and scientific establishments, the exchange of personnel with a view to training new cadres and the despatch of specialists for practical training.

7. Agreement concerning co-operation in physical culture, sports and youth activities between the Government of the Socialist Republic of Romania and the French Republic, approved by Decision No. 2097 of the Council of Ministers and published in the *Official Bulletin of the Socialist Republic of Romania,* No. 79 of 9 September 1967.

This co-operation Agreement falls within the scope of the Agreement on Scientific and Technical Co-operation between Romania and France dated 31 July 1964 and the Cultural Agreement between the Governments of the two countries dated 11 January 1965.

Under this Agreement, the two Parties undertake to promote the development of competitions between the teams and athletes of sports federations and joint training for the Olympic Games and other international competitions, and to arrange for exchanges of trainers, doctors specializing in the treatment of athletes and other specialists, as well as exchanges of information, books, publications, and so on.

8. Agreement between the Government of the Socialist Republic of Romania and the Government of the Socialist Federal Republic of Yugoslavia concerning the abolition of visas for official and private travel, approved by Decision No. 2368 of the Council of Ministers and published in the *Official Bulletin of the Socialist Republic of Romania,* No. 86 of 3 October 1967.

This Agreement introduces certain amendments to the provisions of the Agreement of 6 July 1964 and provides that the citizens of either country

may either for a temporary visit, or in transit, travel in the territory of the other country without a visa issued by the latter.

9. Agreement between the Government of the Socialist Republic of Romania and the Government of the People's Republic of Bulgaria concerning the abolition of entry and exit visas for official, private and tourist travel, and of transit visas, approved by Decision No. 2640 of the Council of Ministers and published in the *Official Bulletin of the Socialist Republic of Romania,* No. 93 of 27 October 1967.

This Agreement facilitates, on a basis of reciprocity, the travel of citizens of either country, who may enter the territory of the other country for a temporary visit or in transit without a visa from the country concerned.

10. Agreement between the Government of the Socialist Republic of Romania and the Government of the Hungarian People's Republic concerning co-operation in the field of tourism, approved by Decision No. 2642 of the Council of Ministers and published in the *Official Bulletin of the Socialist Republic of Romania,* No. 94 of 28 October 1967.

This Agreement provides for technical and scientific co-operation through mutual assistance to be rendered by the two Parties by such methods as the exchange of experts and advisers in technology and science and the provision of facilities for their theoretical and practical training.

11. Cultural Agreement between the Socialist Republic of Romania and the Kingdom of Denmark, ratified by Decree No. 1063 and published in the *Official Bulletin of the Socialist Republic of Romania,* No. 103 of 4 December 1967.

This Agreement is designed to facilitate contacts and co-operation between the research organizations and scientific and educational establishments of the two countries through the despatch and reception of scientists and researchers for periods of work in those organizations, the exchange of university professors and of experience in secondary and primary education, reciprocal visits by persons prominent in the fields of literature, music, the plastic arts, the theatre, the cinema, and so on.

12. Cultural Agreement between the Government of the Socialist Republic of Romania and the Government of the Italian Republic, ratified by Decree No. 1061 and published in the *Official Bulletin of the Socialist Republic of Romania,* No. 105 of 6 December 1967.

This Agreement provides for the promotion of cultural and scientific co-operation between academies, universities and other research and higher educational establishments with a view to exchanging experience, information and documentation, and for the promotion of lectures, consultations, study and advanced training courses in the two countries through reciprocal visits by professors, researchers and scientists.

This Agreement deals with co-operation in cultural, scientific, educational and sports activities. It provides for co-operation between universities and scientific and research institutions, the exchange of information and cultural, scientific and art publications, the organization of lectures and exchanges of specialists in science, education and the arts, the exchange of documentary films and the organization of concerts, theatrical performances, exhibitions and sports competitions.

13. Agreement on cultural co-operation between the Government of the Socialist Republic of Romania and the Government of the Syrian Arab Republic, ratified by Decree No. 1064 and published in the *Official Bulletin of the Socialist Republic of Romania,* No. 105 of 6 December 1967.

This Agreement provides for increased co-operation in science, culture, and the arts. The two countries undertake to exchange the results of their experience and progress in the fields of science, pedagogy, literature, culture and the arts, initiate visits by professors, scientists, cultural and artistic figures, experts and specialists, organize cultural exhibitions and theatrical and musical performances and facilitate the exchange of documentary films between cinematographic institutions.

RWANDA

LABOUR CODE OF THE REPUBLIC OF RWANDA

Established by Act of 23 February 1967 [1]

(EXTRACTS)

PART I

GENERAL PROVISIONS

. . .

2. In this Code, "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: Provided that persons appointed under civil service rules or by contract placing them on the same footing as persons in established posts under civil service rules who are appointed to permanent posts on the establishment of a public administrative service shall not be subject to this Code.

3. Every physical or artificial person in public or private law employing one or more workers, even in a non-continuous manner, shall be considered as an employer and shall constitute an undertaking within the meaning of this Act.

An undertaking may be composed of two or more establishments each composed of a group of persons working together in a given place (factory, workshop, worksite, etc.), under the managing authority of the employer.

Any given establishment shall always form part of an undertaking. It may be composed of only one person. If there is only one establishment and it is independent, it shall constitute both an undertaking and an establishment.

4. Forced labour is absolutely forbidden.

By the term "forced labour" this Act designates 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.

PART II

OCCUPATIONAL ASSOCIATIONS

Chapter I

PURPOSE AND CONSTITUTION OF OCCUPATIONAL ASSOCIATIONS

5. Occupational associations shall have as their sole object the study and defence of the employers' and workers' social and economic interests.

6. Persons carrying out the same trade, similar crafts or allied trades associated in the preparation of specific products, or the same profession shall be free to form a trade union.

Every worker or employer shall be free to join an occupational association selected by him within his own trade or profession.

7. All workers' and employers' associations shall be entitled to draw up their own administrative rules and regulations, to elect freely their representatives, to organise their management and activity and to draw up their programme of action.

The rules of each occupational association and the names, identity and civil status of all persons who are called upon in any capacity whatsoever to manage or direct the association shall

[1] *Journal officiel de la République rwandaise*, No. 5 of 1 March 1967. The text of the Labour Code in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series*, 1967—Rwa.1.

be deposited by the founders of the organisation, in the manner prescribed by order of the Minister responsible for labour affairs.

Any amendments to the rules and any changes in the composition of the board of managers or directors of the occupational association shall be subject to the same obligations.

8. The members responsible for the management or leadership of an occupational association shall:

(*a*) be in full enjoyment of their civil and political rights in accordance with the provisions of the law respecting the electorate applying to them;

(*b*) be of Rwanda nationality or nationals of any other State fulfilling the conditions laid down in (*a*) above: Provided that in the case of workers' occupational associations only nationals of Rwanda may be elected;

(*c*) have their legal domicile or habitual residence in Rwanda.

9. Married women carrying on a trade or profession may join trade unions and participate in their management or leadership subject to the conditions laid down in the preceding sections.

10. Minors who are authorized to accept employment may join trade unions unless the father, mother or guardian objects.

11. Persons who have ceased to exercise their functions or no longer carry on their trade or occupation, may, on condition that they have carried on the said trade or occupation for at least one year, continue to be members of an occupational association.

12. Any member of a trade union may withdraw at any time notwithstanding any clause to the contrary.

13. Workers' and employers' associations shall not be subject to winding up or suspension by administrative decision.

In the case of winding up where this is voluntary (or ordered by a court), the property of the trade union shall devolve in the manner described in the rules or, if there is no provision in the rules, according to rules made by the general meeting. In no case shall the property be distributed among the members.

Chapter II

Civil-law capacity of occupational associations

14. Occupational associations shall enjoy legal personality. They shall have power to sue and be sued and to acquire movable or immovable property without authorization, for or without valuable consideration.

They may in any court exercise the rights reserved to civil-action plaintiffs in criminal proceedings, in relation to acts causing direct or indirect prejudice to the collective interests of the trade or profession which they represent.

They may devote a part of their resources to the creation of workers' dwellings or the purchase of fields for cultivation or sports grounds for the use of their members.

They may establish, administer or make grants to institutions serving the trade or profession, such as provident schemes, solidarity funds, laboratories, experimental farming stations, schemes for scientific, agricultural or social education, courses and publications in matters concerning the trade or profession.

They may make grants to producers' or consumers' co-operative societies.

They may make contracts or agreements with all other occupational associations, companies, undertakings or persons.

If they are so authorized by their rules and on condition that they make no distribution of profits (even by way of refund) among the members, the occupational associations may:

purchase with a view to hiring out, loaning or distributing to members, anything that is necessary for the trade or profession, including raw materials, tools, implements, machinery, fertilisers, seeds, plants, animals and feeding stuff for cattle;

provide a free service for the sale of products derived exclusively from the personal labour or holdings of the members, and promote such sale by means of exhibitions, advertisements, publications, group orders and deliveries, but not by carrying out the selling operation in their own name and on their own responsibility.

15. Occupational associations may be consulted on all disputes and all questions relating to their branch of activity. They shall hold at the disposal of the parties legal advice given by them in contentious matters.

Chapter III

Unions of occupational associations

16. Employers' and workers' occupational associations shall be entitled to establish federations and confederations and to join the same, and any association, federation or confederation shall be entitled to affiliate with international workers' and employers' organisations.

17. The above unions shall be subject to the same obligations as the occupational associations, and shall enjoy all the rights conferred on the said associations by this Act.

[Other provisions of the Labour Code deal with contracts of employment; collective agreements; wages; conditions of work; health and safety; administrative bodies and arrangements for giving effects to the Act; and labour disputes.]

SAN MARINO

NOTE [1]

Article 23 of the Universal Declaration of Human Rights

1. In San Marino, the principle of full employment has been observed for over ten years: any citizen who has not found manual employment may apply to the State for work which will ensure him freedom from poverty.

This principle has been embodied in Act No. 34 of 4 August 1967, article 1 of which reads:

> "The State, in order to guarantee every citizen the fundamental right to work, shall ensure that there will be full employment by engaging on its own public works projects those manual labourers who have not been found other jobs by the Employment Exchange".

Articles 22 and 25 of the Declaration

2. In San Marino during periods in which public works projects are suspended—normally in winter because of bad weather—government-employed workers receive a monthly unemployment allowance, which is borne in its entirety by the State.

This practice has been made law and extended to all workers, whether publicly or privately employed, not only in cases where work is suspended, but also in cases where working hours are reduced owing to a decrease in the workload of the enterprises concerned.

The right to daily compensation in the case of suspension or reduction of work is embodied in Act No. 17 of 17 March 1967, which also specifies the amount and duration of the allowance, and the conditions which must be fulfilled for the allowance to be granted.

3. In accordance with the law for the protection of employment and workers (Act No. 7 of 17 February 1961), "in the case of incapacity due to accident or sickness, the worker is entitled to resume work at the end of his enforced absence provided it does not exceed 180 days.... In cases involving an industrial accident, the above period is extended to one year...".

In the case of tubercular diseases, Act No. 21 of 28 April 1967 extended to eighteen months the period during which the worker is entitled to keep his job.

Act No. 7 of 31 January 1967 also established for victims of tubercular diseases special financial provisions which are broader than those in force under the current social security system.

Article 4 of the Declaration

4. Inasmuch as slavery has never been practised in the Republic of San Marino, even in ancient times, the Republic on 7 September 1956 signed, mainly for the moral value of such an act, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery.

The Convention has been ratified by the Grand General Council of the Republic (Decree No. 27 of 23 June 1967).

Article 27 (2) of the Declaration

5. By Decree No. 28 of 23 June 1967 the Universal Copyright Convention and annexed Protocols were also ratified.

The above-mentioned laws and decrees are enclosed.

[1] Note furnished by the Government of San Marino.

SENEGAL

ACT No. 67-04 OF 24 FEBRUARY 1967 CONCERNING THE ELIMINATION OF EXCESSIVE EXPENDITURE ON FAMILY CEREMONIES [1]

Article 1

GENERAL PROVISIONS

Everyone shall be free to hold ceremonies, in accordance with the rites of his creed or custom, in celebration of the family events of baptism, circumcision, first Communion, betrothal, marriage, return from pilgrimages to the Holy Places, deaths and burials.

However, those who hold or take part in such ceremonies must observe strictly the regulations set forth in this Act.

Article 2

BAPTISM

On the occasion of a baptism:

1. No more than one animal shall be sacrificed for each child to be baptized when the rites include a sacrifice of this nature;

2. Total expenditure for purchases and services of all kinds, excluding the value of the sacrificed animal or animals, shall not exceed 10,000 francs;

3. It shall be prohibited at all times to give offerings, donations, gifts or presents, in cash or in kind, to any person whomsoever, with the exception of those given to a minister of religion in accordance with the rite performed.

It shall be prohibited for anyone to solicit, request or accept negotiable instruments, sums of money or similar items of value.

4. All gatherings shall end not later than 11 a.m. in the case of a morning ceremony and 8 p.m. in the case of an afternoon ceremony.

[1] *Journal officiel de la République du Sénégal*, specia edition, No. 3879 of 1 March 1967.

Article 3

CIRCUMCISION

On the occasion of circumcision, no more than one animal shall be sacrificed for each family having children circumcised, when the rites include a sacrifice of this nature.

The provisions of article 2, paragraph 3, shall be applicable to circumcision ceremonies. Total expenditure for purchases and services of all kinds, excluding the value of the sacrificed animal or animals, shall not exceed 5,000 francs for each family having children circumcised.

Article 4

FIRST COMMUNION

On the occasion of a first Communion:

1. Total expenditure for purchases and services of all kinds shall not exceed 10,000 francs;

2. It shall be prohibited at all times to give offerings, donations, gifts or presents in cash or in kind to any person whomsoever, excepting those of a strictly religious nature given to the communicant and those given to the minister of religion.

Article 5

BETROTHAL

On the occasion of a betrothal, the value of the present in kind given to the prospective bride in accordance with usage or custom shall not exceed 5,000 francs.

Total expenditure on purchases and services incurred in connexion with the ceremony of engagement of the betrothed shall not exceed 5,000 francs.

It shall be prohibited at all times to give offerings, donations, gifts or presents, in cash or

in kind, to any person whomsoever, with exception of the present referred to in the first paragraph.

It shall be prohibited to accept negotiable instruments, sums of money or similar items of value from any person. All gatherings shall end one hour after the betrothal formalities have been completed.

Article 6

MARRIAGE

When the prospective bridegroom or his family is required to pay a bride-price in order to enter into marriage, the total value of the bride-price shall not exceed 3,000 francs, regardless of whether it is due immediately or is payable by instalments.

On the occasion of the marriage and the related ceremonies, the total expenditure on presents for the bride, members of her family or friends and on the celebrations shall not exceed 15,000 francs, excluding expenditure incurred at the time of the betrothal and the bride-price itself.

All gatherings shall end not later than three hours after the marriage formalities have been completed.

Article 7

RETURN FROM PILGRIMAGES

When one or more persons return from a pilgrimage to the Holy Places, it shall be prohibited to hold demonstrations of any kind, public or private, for any purpose whatever.

It shall likewise be prohibited to participate in or be present at any demonstration which is prohibited under the terms of the foregoing paragraph.

It shall be prohibited at all times to give offerings, donations, gifts or presents, in cash or in kind, to any person whomsoever, on return from a pilgrimage to the Holy Places, with the exception of souvenirs of a strictly religious nature brought back by the pilgrim.

Article 8

DEATH

Deaths and burials shall not serve as an occasion for any gatherings other than those required by the relevant religious rites, or those held for the purpose of expressing the grief caused by the bereavement.

All gatherings giving rise to celebrations shall be prohibited at such times.

No one shall remain in the house of the deceased or its outbuildings for a continuous period of more than twenty-four hours after the burial unless his presence is indispensable to the close relatives of the deceased.

The provisions of article 2 (3) concerning offerings, donations, gifts and presents shall be applicable in the case of deaths. However, in addition to making gifts to ministers of religion, it shall be permissible to donate alms voluntarily to the poor.

Article 9

CALCULATION OF EXPENDITURE

In calculating the expenditure referred to in articles 2, 3, 4, 5 and 6, account shall be taken not only of the expenses incurred by the head of the family, the organizer of the ceremony or any other person appointed by law, custom or local usage but also expenditure of any kind incurred by relatives or friends, including expenditure on food provided for those attending the ceremony.

The persons referred to in the foregoing paragraph shall be responsible for ensuring that the total expenditure does not exceed the limit established by law. They shall be held criminally responsible for any excess attributable to negligence or inadequate supervision on their part.

Article 10

DISPERSION OF GATHERINGS

Gatherings which are prohibited under the terms of this Act shall be dispersed on the initiative of the organizer of the ceremonies, demonstrations and celebrations in question, the person on whose premises they take place or the person who has given permission for them to take place.

Failing this, they may be dispersed by the police at the request of the authorities stipulated in article 11 below.

Article 11

VERIFICATION AND PROSECUTION OF OFFENCES

In addition to the authorities responsible for the verification of offences, the *chefs de circonscription administrative,* village chiefs and local urban officials shall ensure the enforcement of this Act.

If the extent of the celebrations, the public clamour created or any other indications justify the presumption that violations of this Act have been committed, village chiefs and local urban officials shall inform the nearest competent officer or constable of the criminal police. Any citizen may likewise inform the said officer or constable. When, because of the remoteness of the police authorities, there is reason to fear that the validity of the evidence will be impaired, village chiefs shall make written or oral reports to the *chef d'arrondissement* or any other judicial police official, who, after hearing explanations and justifications by the organizers of the ceremonies, shall, as appropriate, draw up a report.

. . .

ACT No. 67-06 OF 24 FEBRUARY 1967 [2]

Sole article. The President of the Republic is authorized to ratify the Charter of the African and Malagasy Common Organization signed on 27 June 1966 at Tananarive.[3]

[2] *Ibid.*, No. 3888, 17 April 1967.

[3] For extracts from the Charter, see *Yearbook on Human Rights for 1966*, p. 464

ACT No. 67-05 OF 24 FEBRUARY 1967, AUTHORIZING AMNESTY FOR CERTAIN OFFENCES [4]

Art. 1. During a period of six months from the date of promulgation of this Act, amnesty may be granted by decree to offenders prosecuted for, or convicted of, offences constituting interference or attempts to interfere with a political interest of the State or a political right of the citizens, and related offences.

Art. 2. Although it can never result in restitution, amnesty shall effect the remission of all principal, accessory and supplementary penalties, and of all subsequent disabilities or forfeitures.

It shall restore to the offender to whom amnesty is granted the benefit of any suspension of sentence which may have been granted to him on a previous conviction.

Art. 3. Amnesty shall not *ipso jure* confer entitlement to reinstatement in public office or government employ.

A person granted amnesty may, however, be reinstated in public office or government employ by decree. Such reinstatement shall in no case confer entitlement to seniority, compensation or back-payment of salary.

Art. 4. Amnesty shall not impede any review proceedings that may be instituted by the competent court to establish the innocence of the convicted person.

Art. 5. Amnesty shall not prejudice the rights of third parties. In a case involving damages awarded in a civil action, the record of the case shall be made available to the court and placed at the disposal of the parties.

Where a case is already before a criminal court, prior to the signing of the amnesty decree, as a result of a summons or an order transferring the case from another court, the criminal court shall remain competent to rule in the matter of damages where such damages are involved.

Art. 6. Amnesty shall not apply to payment of the costs incurred by the State in connexion with the proceedings. Persons benefiting from the amnesty may not be imprisoned for debt except at the request of those who have suffered as a result of the offence or their assigns.

Art. 7. It is prohibited for any judge or official to mention in, or to fail to expunge completely from, a court or police record or any other document, convictions and disabilities for which remission is granted under an amnesty.

Only the minutes of judgements and court decisions deposited in the record office shall be exempt from this prohibition.

[4] *Journal officiel de la République du Sénégal*, No. 3888 of 17 April 1967.

ACT No. 67-17 OF 28 FEBRUARY 1967 AMENDING ARTICLES 12 AND 16 OF ACT No. 61-10 OF 7 MARCH 1961 DETERMINING SENEGALESE NATIONALITY [5]

Art. 1. The second paragraph of article 12 of Act No. 61-10 dated 7 March 1961 is abrogated and superseded by the following provisions:

"This term shall be reduced to five years where the person concerned is married to a Senegalese woman or has rendered outstanding services to Senegal or has served in a Senegalese government department or public corporation for five years."

Art. 2. The following paragraph is added to article 16 of Act No. 61-10 dated 7 March 1961:

"The period during which he may not be appointed to a public office may be reduced by decree by any period of service in a Senegalese government department or public corporation, on a temporary, auxiliary or contractual basis, on the favourable recommendation of the Minister under whom he has served."

[5] *Ibid.* For excerpts from Act No. 61-10 of 7 March 1961, see *Yearbook on Human Rights for 1961*, pp. 295-298.

ACT No. 67-32 OF 20 JUNE 1967 REVISING THE CONSTITUTION [6]

Art. 1. (Articles 22, first paragraph, 24, second paragraph, 31, second paragraph, 45, first paragraph, 47, third and fourth paragraphs, 49, first paragraph, 67, third paragraph, 88 and 89, fourth paragraph, of the Constitution shall be abrogated and replaced by the following provisions:

. . .

"Article 45, first paragraph

"The office of Minister or Secretary of State shall be incompatible with any public or private professional activity."

"Article 47, third paragraph

"Legislative measures put into effect by the President shall be submitted to it for ratification within fifteen days of their promulgation. Such measures shall become null and void if the bill of ratification is not laid on the table of the National Assembly within that time; the Assembly may amend the measures when approving the act of ratification."

"Fourth paragraph

"It cannot be dissolved during the exercise of exceptional powers. When the said powers are exercised after the dissolution of the National Assembly, the date of voting prescribed by the dissolution decree may not be deferred, except in case of *force majeure* duly verified by the Supreme Court, and legislative measures taken by the President shall become null and void unless the Supreme Court, within fifteen days of their promulgation, declares them to be in conformity with the Constitution. The new National Assembly shall meet as of right upon proclamation of the election results. Legislative measures previously promulgated by the President shall be submitted to it immediately for ratification."

"Article 49, first paragraph

"Deputies to the National Assembly shall be elected by universal direct suffrage at the same time as the President of the Republic. Their term of office shall be five years unless the provisions or article 75 *bis* are applied."

"Article 66

"The National Assembly may by legislative act empower the President of the Republic to take measures which are normally within the domain of the law.

"Within the limits of time and competence established by the enabling Act, the President of the Republic shall make orders which shall enter into effect upon publication but shall become null and void if the bill of ratification is not laid on the table of the National Assembly before the date prescribed by the enabling Act. The National Assembly may amend the orders when approving the act of ratification.

". . ."

[6] *Journal officiel de la République du Sénégal*, special issue, No. 3906 of 10 July 1967. Extracts from the Constitution appear in the *Yearbook on Human Rights for 1963*, pp. 256-257.

"Article 88

"The Economic and Social Council shall assist the President of the Republic and the National Assembly. It shall give its opinion on questions referred to it by either of the aforementioned.

"It shall be competent to examine bills, proposals for legislations and draft decrees of an economic and social nature, with the exception of finance bills.

"Bills relating to economic and social programmes and to national planning must be submitted to the Economic and Social Council for its opinion.

"It may be seized with and consulted on any problem affecting the economic and social life of the nation.

"An organic law shall prescribe the composition, organization and functioning of the Economic and Social Council.

"..."

Art. 2. The following new articles 53 *bis* and 75 *bis* shall be inserted in the Constitution:

"Article 53 bis

"The National Assembly may delegate to its delegation committee the power to take measures which are within the domain of the law.

"Such delegation shall be affected by a resolution of the National Assembly, of which the President of the Republic shall immediately be informed.

"Within the limits of time and competence established by the resolution provided for above, the delegation committee shall take decisions which shall be promulgated as laws. Such decisions shall be laid on the table of the National Assembly not later than the first day of the regular session following their promulgation. If not amended by the National Assembly during the first fifteen days of the session, they shall become final."

"Article 75 bis

"The President-elect of the Republic may, provided that at least three years have elapsed since the commencement of the legislature, dissolve the National Assembly by a decree indicating the reasons after consultation with the President of the Assembly.

"The time prescribed above shall be reduced to one year where the President of the Republic has been elected to complete the term of office of his predecessor in conformity with article 22.

"In case of dissolution, the President of the Republic, whose term of office is subject to renewal at the same time as that of the members of the National Assembly, shall remain in office until his successor is installed.

"The dissolution decree shall set the date of the voting for the election of the President of the Republic and of the members of the National Assembly. The voting shall take place not less than forty-five days or more than sixty days after the date of publication of the said decree.

"The Assembly shall not meet after it has been dissolved; however, the term of office of the deputies shall not expire until the date on which the election of the members of the new Assembly is proclaimed.

"..."

SIERRA LEONE

NOTE [1]

From the constitutional viewpoint, the year 1967 was an epoch-making one for Sierra Leone. On 23 March, there was a military and police takeover of the Government of Sierra Leone by the Sierra Leone Military Forces and the Sierra Leone Police Force, and the country came under the interim administration of the National Reformation Council (NRC) by Proclamation contained in Public Notice No. 28 of 1967, published as a supplement to the *Sierra Leone Gazette Extraordinary*, Vol. XCVIII, No. 29, of 25 March 1967, entitled the Administration of Sierra Leone (National Reformation Council) Decree, 1967.

The Proclamation, whose operative date was 23 March 1967, formed the basis for all constitutional changes or amending legislation during 1967, and was, in effect, the basis from which the decrees and other acts of the National Reformation Council derived their legal validity.

Paragraph 1 of the Proclamation established the National Reformation Council (NRC) constituted of the Chairman, Deputy Chairman and other members and not exceeding six in number. Paragraph 2 suspended all provisions of the Constitution (P.N. No. 78 of 1961) which are inconsistent or in conflict with the Proclamation itself, or any law made under it with effect from 23 March 1967. It also dissolved the House of Representatives as well as all political parties, and prohibited membership of the latter with effect from 23 March 1967.

Paragraph 3 empowered the National Reformation Council to make and issue decrees in the national interest and for such purposes as it thought fit, and also to amend, revoke and suspend any such decrees itself. It preserved existing laws as on 23 March 1967, subject to the Proclamation and any future National Reformation Council decrees, but in cases of conflict or inconsistency, the latter was to prevail, the former being suspended with effect from 23 March 1967.

The continued existence of the Civil Service, subject to the decrees and any direction of the National Reformation Council, was provided for in paragraph 4, whilst paragraph 5 construed all references in the Constitution[2] to the Governor-General, Prime Minister, Minister or Cabinet, or any surviving enactment under the Proclamation, as a reference to the National Reformation Council or such person as the Council might by order appoint.

Paragraph 6 of the Proclamation, as amended by Section 1 of the Administration of Sierra Leone (NRC) Proclamation (Amendment) Decree 1967 (N.R.C Decree No. 7 of 1967), gave the National Reformation Council power to detain any person by an order where it considered it necessary in the interest of public safety or public order so to do, and such an order could not be questioned in a Court.

THE LOCAL AUTHORITIES (MISCELLANEOUS PROVISIONS) ACT, 1965 — (N.R.C. DECREE NO. 8 OF 1967)

In local administration, this Decree, suspending Section 2 of the Local Authorities (Miscellaneous Provisions) Act, 1965 (Act No. 50 of 1965), empowered the National Reformation Council, where in its opinion a local authority defaulted or failed for a number of reasons in the exercise of its functions and duties, to make an Order to dissolve the local authority or direct that it ceases to exercise or perform all or any of its powers and duties until such time as the Council might direct, and also to appoint a Committee of Management to exercise and perform those powers and duties specified in such an Order for the period mentioned therein. By various Orders under this Decree, the Freetown City Council and the other District Town and Urban Councils all over the country were dissolved, and Committees of Management appointed in their places.

[1] Note furnished by the Government of Sierra Leone.

[2] For extracts from the Constitution of Sierra Leone, see *Yearbook on Human Rights for 1961*, pp. 299-308.

The Newspaper Decree 1967 (N.R.C. Decree No. 4 of 1967)

In so far as this enactment relates to a medium of information, *viz.*, the press and publication, it can be said to affect the freedom of expression guaranteed under the Constitution (Section 21). This Decree, which came into operation on 24 March 1967, suspended the existing Newspaper Act (Cap. 111). Its main purpose, among others, was to prohibit the publication of false news, as well as references to political parties, tribal affiliation, etc. Defamatory reports against the National Reformation Council were also forbidden, "though honest and constructive criticism of policies which are made in the interest of the good Government of Sierra Leone" were not prohibited.

Penalties were provided for publishers of newspapers who made references in their papers to political parties existing in Sierra Leone before 23 March 1967 (Section 10); which published defamatory matter against the National Reformation Council (Section 11); or published false news calculated to bring public officers into disrepute (Section 12), or false news likely to cause fear or alarm to the public, or to disturb the public peace (Section 13). Section 16 gave the National Reformation Council power to suspend the publication of any newspaper for up to six months at its discretion.

The Public Meetings (Prohibition) Decree 1967 (N.R.C. Decree No. 15 of 1967)

This Decree also affected and limited another of the constitutionally guaranteed freedoms, *viz.* freedom of assembly and association (Section 22). Under it, the Commissioner of Police (or any person authorised by him) was empowered to prohibit, by order published in the *Gazette*, the holding of public meetings "in such areas and for such periods as may be specified in the Order where in the opinion of the persons making the Order the interests of public order or public safety so required" and such an Order "shall not be questioned in any Court whatsoever".

"Public Meeting" is there described as including "any meeting in a public place and any meeting which the public or any section thereof are permitted to attend whether on payment or otherwise". Certain meetings, for example, dances, sports and recreational meetings, are expressly excluded under Section 2 from the provisions of the Decree, as well as any other meeting exempted in writing by the Commissioner of Police (see N.R.C Decree No. 60 of 1967—Section 1).

Constitutional Provisions (Suspension) Decree 1967 (N.R.C. Decree No. 28 of 1967)

The Constitutional Provisions (Suspension) Decree, 1967 (N.R.C Decree No. 28 of 1967) issued in June 1967, but which was made effective as from 23 March 1967, made new provisions, among other things, for the review of cases of persons detained under any decree of the National Reformation Council (Section 2), or persons under restriction Orders (Section 3). Consequently, Subsections (6) and (7) of Section 13 (Protection from Arbitrary Arrest or Detention), and Subsections (4) and (5) of Section 14 (Protection of Freedom of Movement) of the Constitution have been suspended. No cases, however, were reviewed under these subsections during this period (i.e., 1967). By Section 4 of this Decree, Section 22 of the Constitution, providing for protection of freedom of assembly and functioning of political parties or membership of such parties shall be held to be inconsistent with, or in contravention of, the enjoyment of this freedom (Subsection 3).

The Attorney-General (Qualification) Decree 1967 (N.R.C. Decree No. 5 of 1967)

By this Decree, which came into effect on 6 April 1967, the qualification for appointment to the post of Attorney-General of Sierra Leone, which under Section 59 of the Constitution requires that the person to be appointed should have been entitled to practise as a Barrister and Solicitor of the Supreme Court of Sierra Leone for a period not less than ten years, was amended to reduce the required period to seven years (Section 2).

There were no Court decisions here bearing on human rights for the year 1967.

SINGAPORE

NOTE [1]

I. LEGISLATION

(a) *Undesirable Publications Act, 1967*

This Act repeals the Undesirable Publications Ordinance and its aim is to prevent the importation, distribution or reproduction of undesirable publications. This Act is not intended to interfere with the proper exercise of a subject's right to freedom of opinion and expression or his right to impart information and ideas through any media. Under the Act, the Minister may only exercise the powers conferred therein if he is satisfied that it would be in the public interest so to do. The Act will curb all publications of either a pornographic or subversive character, publications designed to incite violence or to create racial hatred, etc.

(b) *Trade Unions (Amendment) Act, 1967*

This Act amends the Trade Union Ordinance and provides that no workman employed by specified statutory boards or bodies, shall be a member of, or shall be accepted as a member by any trade union unless the membership of such trade union is confined exclusively to persons employed by the aforesaid boards or bodies. The object of this Act is to protect the interests of the workmen, to see that they are not made use of by persons who have no interest in the general well-being of trade union movement and to ensure that they only join unions which truly represent their interests.

(c) *Singapore Parliament Elections (Amendment) Act, 1967*

This Act amends the Singapore Parliament Elections Ordinance and in Section 9 provides that it shall be an offence for any person between the day of nomination and polling day (both days being inclusive) at any election, by word, message, writing or in any other manner dissuade or attempt to dissuade any person from giving his vote at the election. This provision seeks to protect and uphold the right of the people to vote at an election. Singapore, being a parliamentary democracy, considers the right to vote of its people as sacred. Any attempt to dissuade or prevent a voter from voting is an offence and would be dealt with according to this provision.

(d) *Labour (Amendment) Act, 1967*

This Act amends the Labour Ordinance, 1955. Under the previous law, no female workman could be employed in any kind of labour during the night or any part thereof. That law was obviously intended to protect and safeguard female workmen. However, owing to the rapid industrial expansion in the State, it is considered necessary to make certain exceptions to this strict rule. Under the new Act, where it is desirable in the public interest, for the purpose of maintaining or increasing the efficiency or industry, the Minister may allow the employment of female workmen during the night or any part thereof, in any particular industry or in any industrial undertaking or any branch thereof or in any kind of labour.

(e) *Act No. 4 of 1967*

With regard to paragraph 9(*b*) of the article submitted in respect of the *Yearbook on Human Rights for 1965*, it is now, under this Act, a criminal offence for a workman employed in the water, gas or electricity services to go on strike.

II. JUDICIAL DECISIONS

A case on Administrative Law

A case on Administrative Law, which held that rules of natural justice must at all times be observed and followed by domestic tribunals of a quasi-judicial nature, was *Phang Moh Shin* v. *Commissioner of Police (1967) 2 M.L.J. 186.* The case demonstrates the supervisory function of the High Court and shows that the Court is not slow to upset the decision of a domestic tribunal, if the rules of natural justice are not observed.

[1] Note furnished by the Government of Singapore.

SOUTH AFRICA

THE PERFORMERS' PROTECTION ACT, 1967

Act No. 11 of 1967, assented to on 10 February 1967 [1]

...

2. The rights created by this Act shall in no way restrict or affect the rights provided for by any other law relating to copyright in literary and artistic works.

3. Performers shall be granted the protection provided for in section 5 of this Act in respect of their performances:

(*a*) taking place,
(*b*) broadcast without a fixation, or
(*c*) first fixed,

in the Republic.

4. The protection granted to performers by this Act shall, subject to such limitations as may hereinafter be prescribed, be extended automatically to performers in respect of their performances:

(*a*) taking place,
(*b*) broadcast without a fixation, or
(*c*) first fixed,

in a country which, being a party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations,[2] by law grants in its territory similar rights to performers in respect of their performances in the Republic.

5. (1) Subject to the provisions of this Act, no person shall without the consent of the performer:

(*a*) broadcast or communicate to the public a performance of such performer, unless the performance used in the broadcast or the public communication is itself already a broadcast performance or is made from a fixation of the performance or from a reproduction of such a fixation; or

(*b*) make a fixation of the unfixed performance of such performer; or

(*c*) make a reproduction of a fixation of a performance of such performer:

(i) if the original fixation, other than a fixation excluded by section 8 from the necessity for obtaining the consent of the performer, was itself made without his consent; or

(ii) if the reproduction is made for purposes other than those in respect of which such performer gave his consent to the making of the original fixation or of a reproduction thereof; or

(iii) if the original fixation was made in accordance with the provisions of section 8, and the reproduction is made for purposes not covered by those provisions.

(2) In the absence of an agreement to the contrary, a performer's consent to the broadcasting of his performance shall be deemed to include his consent to the rebroadcasting of his performance, the fixation of his performance for broadcasting purposes, and the reproduction for broadcasting purposes of such fixation.

6. (1) Where several performers as a group take part in the same performance, it shall suffice if the consent required under section 5 is given by the manager or other authority in charge of the group or, failing such authority, by the leader of the group.

(2) In the case referred to in subsection (1) a single payment for the use of the performance shall, unless otherwise stipulated, be made to the manager or other authority in charge of the group or, failing such manager or authority, to the leader of the group, and the manager or authority or leader, as the case may be, shall distribute the proceeds as agreed by the performers or, in default of agreement, the right to remuneration of the respective performers shall be determined in accordance with the provisions

[1] Statutes of the Republic of South Africa, 1967.

[2] For extracts from this International Convention, see *Yearbook on Human Rights for 1961*, pp. 452-454.

of the Arbitration Act, 1965 (Act No. 42 of 1965), or alternatively, at the option of the majority of the performers, by the Copyright Tribunal established by the Copyright Act, 1965 (Act No. 63 of 1965).

7. The prohibition against the use of a performance without the consent of the performer as provided for in section 5, shall commence upon the day when the performance first took place or, if incorporated in a phonogram, when it was first fixed on such phonogram, and shall continue for a period of twenty years calculated from the end of the calendar year in which the performance took place or was incorporated in a phonogram, as the case may be.

8. (1) If a performer consents to the incorporation of his performance in a visual or audio-visual fixation, section 5 (1) shall cease to apply in respect of the performance so fixed.

(2) A performance, a fixation of a performance or a reproduction of such a fixation may be used without the consent required by section 5:

(*a*) if it is for the purposes of private study or personal and private use; or

(*b*) if it is for the purposes of criticism or review or for the purpose of reporting on current events, provided that not more than short excerpts from the performance are used and, whenever possible, the performer's name or the names of the leading performers are acknowledged; or

(*c*) if it is for the purposes of teaching or scientific research; or

(*d*) if it is for the purpose of legal proceedings; or

(*e*) if it is for the demonstration of recording, amplifying or similar apparatus, provided that the demonstration is made by a licensed dealer on his premises to a specific client.

(3) (*a*) The Corporation may make by means of its own facilities a fixation of a performance and reproductions of such fixation without the consent required by section 5, provided that, unless otherwise stipulated:

(i) the fixation and the reproductions thereof are used solely in the broadcasts made by the Corporation;

(ii) the fixation and any reproductions thereof, if they are not of an exceptional documentary character, are destroyed before the end of the period of six months commencing on the day on which the fixation was first made; and

(iii) the Corporation pays to the performer, whose performance is so used, in respect of each use of the fixation or of any reproduction thereof, an equitable remuneration, which, in the absence of agreement, shall be determined in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), or alternatively, at the option of the performer, by the Copyright Tribunal established by the Copyright Act, 1965 (Act No. 63 of 1965).

(*b*) The fixation and the reproductions thereof made under the provisions of this subsection may, on the grounds of their exceptional documentary character, be preserved in the archives of the Corporation but shall, subject to the provisions of this Act, not be further used without the consent of the performer.

(4) The general exceptions from copyright protection of literary and artistic works provided by sections 7 and 10 of the Copyright Act, 1965, shall apply *mutatis mutandis* in respect of performances.

9. (1) Any person:

(*a*) who knowingly contravenes any of the provisions of section 5 (1); or

(*b*) who knowingly sells or lets for hire or distributes for the purposes of trade, or by way of trade exposes or offers for sale or hire, any fixation of a performance or a reproduction of such a fixation made in contravention of section 5; or

(*c*) who makes, or has in his possession, a plate or similar contrivance for the purpose of making fixations of a performance or reproductions of such fixations in contraventions of section 5,

shall be guilty of an offence and liable on conviction:

(i) in the case of a contravention referred to in paragraph (*a*), to a fine not exceeding fifty rand or to imprisonment for a period not exceeding three months, and the court convicting him may in addition, on the application of the performer whose rights have been infringed, and without proof of any damages, order him to pay to the performer as damages such amount, not exceeding one hundred rand, as may in the circumstances of the case appear to it to be reasonable;

(ii) in the case of a contravention of paragraph (*b*), to a fine not exceeding ten rand in respect of each fixation or reproduction; and

(iii) in the case of a contravention of paragraph (*c*), to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) Any order made under subsection (1) for the payment of damages to a performer may be executed as if it were a civil judgment in favour of that performer.

10. Any person who infringes the rights of any performer may be sued in any court of law by such performer for:

(*a*) an amount not exceeding one hundred rand, and such court may, without proof of any damages and in addition to the costs of the action, award as damages such amount, not exceeding the said amount, as may in the circumstances of the case appear to it to be reasonable; or

(*b*) damages or an interdict or for both damages and an interdict, and such court may, in addition to the costs of the action, award such damages as may appear to it to have been suffered by the performer, or award as damages such amount as it may determine in terms of paragraph (*a*), or grant an interdict or both award damages and grant an interdict.

11. The court before which any legal proceedings are taken under this Act may order that all fixations, reproductions of fixations or plates (including contrivances similar to plates) in the possession of the accused or the defendant, which appear to the court to have been made in contravention of this Act, be destroyed or otherwise dealt with as the court may in its discretion determine.

12. (1) Where in any legal proceedings under this Act it is proved:

(*a*) that the fixation, the reproduction of a fixation, the broadcast or the public communication to which the legal proceedings relate, was made with the consent of a person who, at the time of giving the consent, represented that he was authorized by the performers to give it on their behalf, and

(*b*) that the person who made the fixation, the reproduction of a fixation, the broadcast or the public communication had no reasonable grounds for believing that the person giving the consent was not so authorized,

the provisions of this Act shall apply as if it had been proved that the performers had themselves consented to the making of the fixation, the reproduction of the fixation or the broadcast or the public communication, as the case may be.

(2) Where:

(*a*) a fixation, a reproduction of a fixation, a broadcast or a public communication is made with the consent of a person who, at the time of giving the consent, represented that he was authorized by the performers to give it on their behalf when, to his knowledge, he was not so authorized, and

(*b*) if legal proceedings were brought against the person to whom the consent was given, the consent would by virtue of subsection (1) afford a defence to those legal proceedings,

the person who gave the consent shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand, or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.

13. Notwithstanding the provisions of this Act any performer may enter into any contract with any user or prospective user of his performance in respect of the use of his performance, but such contract shall be enforceable only in the Republic.

14. (1) The rights acquired by any performer prior to the commencement of this Act shall not be prejudiced by this Act.

(2) This Act shall not apply to performances which took place before the commencement of this Act.

. . .

THE SUPPRESSION OF COMMUNISM AMENDMENT ACT, 1967

Act No. 24 of 1967, assented to on 27 February 1967 [3]

. . .

1. Section 5*ter* of the Suppression of Communism Act, 1950 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister may by notice in the *Gazette* prohibit all persons whose names appear on any list in the custody of the officer referred to in section 8 or who were office-bearers, officers or members of any organization which has under section 2(2) been declared to be an unlawful organization or in respect of whom any prohibition under this Act by way of notices addressed and delivered or tendered to them is in force, from:

"(*a*) being or becoming office-bearers, officers or members,

"(*b*) making or receiving any contribution of any kind for the direct or indirect benefit, or

"(*c*) participating in any way in any activity,

of any particular organization or any organization of a nature, class or kind specified in such notice, except with the written consent of the Minister or a magistrate acting in pursuance of his general or special instructions: Provided that the Minister shall not issue any such notice in relation to any employers' organization or trade union registered under the Industrial Conciliation Act, 1956 (Act No. 28

[3] *Statutes of the Republic of South Africa, 1967.*

of 1956), except after consultation with the Minister of Labour."

2. The following section is hereby inserted in the principal Act after section 5 *ter*:

"*5quat* (1) Notwithstanding anything to the contrary in any law contained:

"(*a*) no person shall be admitted by the court of any division of the Supreme Court of South Africa to practise as an advocate, attorney, notary or conveyancer, unless such person satisfies such court that his name does not appear on any list in the custody of the officer referred to in section 8 and that he has not before or after the commencement of this section been convicted of an offence under section 11(*a*), (*b*), (*b*)*bis*, (*b*)*ter* or (*c*);

"(*b*) the court of any division of the Supreme Court of South Africa shall, on an application made by the Secretary for Justice, order that the name of any person be struck off the roll or list of advocates, attorneys, notaries or conveyancers to be kept in terms of the relevant law relating to the admission of advocates, attorneys, notaries or conveyancers, if the court is satisfied that such person's name appears on any list referred to in paragraph (*a*) or that he has before or after the commencement of this section been convicted of an offence referred to in paragraph (*a*).

"(2) Notwithstanding the provisions of paragraph (*a*) of subsection (1), the court may admit any person convicted of an offence referred to in that paragraph if he produces a certificate signed by the Minister to the effect that the Minister has no objection to the admission of such person on account of his having been so convicted."

3. Section 12 of the principal Act is hereby amended by the insertion of the following subsection after subsection (3):

"(3A) If in any prosecution for a contravention of section 11 (*i*) it is proved that the accused communicated with a person whose name appears on any list in the custody of the officer referred to in section 8 or in respect of whom any prohibition under this Act or the Riotous Assemblies Act, 1956 (Act No. 17 of 1956), is in force, and that the name of that person corresponds substantially with a name which appears on a list or an extract from a list or in particulars which have been published in the *Gazette* in terms of section 8 (4) or section 10*ter* of this Act or section 2 (3)*bis* (*b*) of the Riotous Assemblies Act, 1956, it shall be presumed that the accused, when he communicated with that person, knew that the name of that person appeared on a list in the custody of the officer referred to in section 8 or that a prohibition under this Act or the Riotous Assemblies Act, 1956, was in force in respect of that person, as the case may be, unless the contrary is proved beyond a reasonable doubt."

4. The following section is hereby substituted for section 14 of the principal Act:

"14. (1) Any person who is not a South African citizen by birth or descent and who is deemed by the State President, or in the case of an inhabitant of the territory of South-West Africa, by the Administrator of the said territory, to be an undesirable inhabitant of the Republic or of the said territory, as the case may be, because he is a communist or has been convicted of any offence under paragraph (*a*), (*b*), (*b*)*bis*, (*b*)*ter*, (*c*), (*d*), (*e*), (*f*), (*f*)*ter*, (*g*), (*h*) or (*i*) of section 11, may be removed from the Republic or from the said territory, and pending removal, may be detained in custody in the manner provided for the detention, pending removal from the Republic or from the said territory, of persons who are prohibited persons within the meaning of the relevant law relating to the regulation of the admission of persons to the Republic or the said territory; and thereafter such person shall, for the purposes of such law, be deemed to be a prohibited person.

"(2) The State President or, in the case of an inhabitant of the territory of South-West Africa, the Administrator of the said territory, may exercise the powers referred to in subsection (1) without prior notice to any person."

. . .

THE INDECENT OR OBSCENE PHOTOGRAPHIC MATTER ACT, 1967

Act No. 37 of 1967, assented to on 15 March 1967 [4]

. . .

2. (1) Any person who has in his possession any indecent or obscene photographic matter shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[4] *Ibid.*

(2) The provisions of subsection (1) shall not apply in respect of any photographic matter :
(*a*) which in terms of a statement by the board under the Publications Act[5] is not undesirable in its opinion;
(*b*) which in terms of a decision by the board under the Customs Act is not indecent, obscene or objectionable;
(*c*) if the board has in terms of the Publications Act or the Customs Act issued or caused to be issued a permit for the importation of such photographic matter;
(*d*) with reference to the printing or publishing of which the provisions of section 5 of the Publications Act shall not apply by virtue of subsection (4) of that section;
(*e*) which is in possession of any person or institution exempted under section 5 (5) of the Publications Act;
(*f*) which has been approved or exempted under the provisions of section 9 of the Publications Act.

3. No prosecution in respect of an offence under this Act shall be instituted except on the written authority of the attorney-general having jurisdiction in the area concerned or of a member of his staff designated by him in writing.

4. Notwithstanding anything to the contrary in any law contained, a magistrate shall have jurisdiction to try any offence under this Act and to impose any penalty prescribed by this Act.

. . .

[5] The Publications Act means the Publications and Entertainments Act, 1963 (Act No. 26 of 1963). Extracts from this Act appear in the *Yearbook on Human Rights for 1963*, pp. 273-277.

THE NATIONAL EDUCATION POLICY ACT, 1967

Act No. 39 of 1967, assented to on 22 March 1967 [6]

. . .

2. (1) The Minister may, after consultation with the Administrators and the council, from time to time determine the general policy which is to be pursued in respect of education in schools (hereinafter called the national education policy), within the frame work of the following principles, namely, that:

(*a*) the education in schools maintained, managed and controlled by a department of State (including a provincial administration) shall have a Christian character, but that the religious conviction of the parents and the pupils shall be respected in regard to religious instruction and religious ceremonies;
(*b*) education shall have a broad national character;
(*c*) the mother tongue, if it is English or Afrikaans, shall be the medium of instruction, with gradual equitable adjustment to this principle of any existing practice at variance therewith;
(*d*) requirements as to compulsory education, and the limits relating to school age, shall be uniform;
(*e*) education (including books and stationary) shall be provided free of charge in schools maintained, managed and controlled by a department of State (including a provincial administration) to pupils whose parents reside in the Republic or are South African citizens (other than pupils receiving instruction on a part-time basis and apprentices);
(*f*) education shall be provided in accordance with the ability and aptitude of and interest shown by the pupil, and the needs of the country, and that appropriate guidance shall, with due regard thereto, be furnished to pupils;
(*g*) co-ordination, on a national basis, of syllabuses, courses and examination standards and research, investigation and planning in the field of education shall be effected, regard being had to the advisability of maintaining such diversity as the circumstances may require;
(*h*) the parent community be given a place in the education system through parent-teachers' associations, school committees, boards of control or school boards or in any other manner;
(*i*) consideration shall be given to suggestions and recommendations of the officially recognized teachers' associations when planning for purposes of education; and

[6] *Ibid.*

(j) conditions of service and salary scales of teachers shall be uniform.

(2) (a) The Administrators shall take such steps as may be necessary to carry into effect the policy so determined by the Minister.

(b) If the Minister is satisfied that in any province such policy is not being carried out, he may in respect of such province make such regulations by notice in the *Gazette* and issue such directions as may be necessary to give effect thereto.

(c) If the provisions of any ordinance or any regulation or direction in terms of an ordinance are in conflict with any regulation made or direction issued in terms of paragraph (b), the last-mentioned regulation or direction shall prevail.

(d) A regulation referred to in paragraph (b) may provide for penalties for a contravention thereof or failure to comply therewith.

(3) Notice of any steps taken by the Minister in terms of subsection (1) shall be given by notice published in the *Gazette*.

. . .

THE TRAINING CENTRES FOR COLOURED CADETS ACT, 1967

Act No. 46 of 1967, assented to on 22 March 1967 [7]

. . .

Part I

TRAINING CENTRES FOR COLOURED CADETS

2. The Minister may, in consultation with the Minister of Finance, out of moneys appropriated by Parliament for the purpose, establish and maintain training centres for the training of cadets for any kind of employment, having due regard to their ages, ability, educational qualifications, physical condition, customs, financial position and needs.

3. (1) The Minister shall appoint a committee of management for every training centre to advise the Minister in connection with matters relating to the training centre concerned and to perform such other functions and exercise such powers as may be prescribed by this Act.

. . .

5. (1) The Minister may appoint one or more ministers of religion or other persons on a part-time basis for any training centre or group of training centres, to tend to the spiritual needs of cadets and to perform such other functions or exercise such powers as may be prescribed or stated in their letters of appointment.

(2) The Minister may at any time terminate an appointment referred to in subsection (1).

. . .

6. The Minister of Health may, subject to the laws governing the public service and in consultation with the Minister appoint for any training centre a medical officer who shall exercise such powers and perform such functions as may be prescribed by this Act.

Part II

REGISTRATION OF COLOURED MALES FOR TRAINING

7. The Minister shall, subject to the laws governing the public service, appoint a chief registering officer to exercise such powers and perform such functions as may be prescribed by this Act.

8. (1) Every Coloured person:

(a) who at the date of commencement of this Act is between eighteen and twenty-four years of age or who becomes eighteen years of age in the year during which that date falls, shall within three months after the said date apply to a registering officer, in the prescribed manner and on the prescribed form, for registration under this Part;

(b) to whom the provisions of paragraph (a) does not apply, shall so apply during the month of February of the year in which he becomes eighteen years of age.

(2) Any registering officer shall issue a certificate of registration in the prescribed form to any person who has applied in terms of this section or who has been convicted of a contravention of or failure to comply with subsection (1), and may issue such a certificate to any person arrested for contravening or failing to comply with any provision of this section.

(3) If at the registration of any person under this Part no or insufficient evidence of the age of such person is available, a registering officer may estimate the age of such person according to his appearance or on evidence which may be available, and for the purposes of this Act the person whose age has been so estimated shall be deemed to have attained the estimated age on the date on which the estimate took place, unless another age is subsequently proved to be the true age of the said person.

(4) Any recruit shall at any time after a date to be determined by the Minister by notice in the *Gazette*, produce his certificate of registration to any registering officer within seven days of demand by such registering officer.

[7] *Ibid.*

(5) Any registering officer may arrest without warrant any person whom he has reasonable grounds to suspect of having contravened or failed to comply with any provision of subsection (1) or (4), and shall deal with the arrested person in accordance with the provisions of section 27 of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).[8]

9. Every recruit not being a cadet, shall notify a registering officer in such manner and within such time as may be prescribed, of every change in his address after a certificate of registration has been issued to him, unless the chief registering officer has exempted him from the obligation of notifying such change.

Part III

Designation of recruits for training

10. (1) The Minister shall appoint a selection board consisting of not fewer than three members, one of whom shall be designated by him as chairman.

...

14. The board may at any time of its own accord or on application by any recruit or on his behalf on the prescribed form, exempt any recruit permanently or for such period and on such conditions as the board may determine, from his liability to report for training or to undergo training or to complete his training, if the board is satisfied that:

(*a*) the recruit is or will be receiving full-time instruction at any school or university;
(*b*) the recruit is permanently employed in full-time employment or is serving under a contract of apprenticeship;
(*c*) the recruit is not fit to undergo training, owing to bodily or mental defects;
(*d*) any person will be exposed to undue hardship if the recruit undergoes training;
(*e*) for any reason the recruit is not fit to undergo training or should not undergo training.

Part IV

Cadets

15. Training to be undergone by cadets, may among other things include participation in physical exercises, sport, drilling exercises and the performance of any kind of work, but shall consist mainly of training for any kind of employment.

...

18. Any cadet shall, subject to such conditions as may be prescribed, have the right of personal access to any committee.

19. (1) The principal of any training centre may:

(*a*) in accordance with such powers as may be conferred upon him by regulation and such procedure as may be prescribed, take disciplinary action against any cadet alleged to have contravened or failed to comply with any regulation or rule, and may on conviction impose on the cadet any prescribed punishment; or
(*b*) cause any such cadet to be brought before a magistrate's court for trial.

...

23. (1) If the Minister is satisfied after due enquiry that it is necessary for a cadet to undergo an operation or medical treatment attended with serious danger to life, and that a parent or guardian whose consent to the operation or medical treatment is required, unreasonably refuses such consent or that such parent or guardian cannot be found or is deceased or is incompetent to give his consent owing to any mental disorder, the Minister may give the consent required.

(2) If the principal of a training centre has reasonable grounds for believing that an operation or medical treatment is necessary to save the life of a cadet or to save him from serious and permanent physical injury or disability, and that the need for the operation or medical treatment is so urgent that it admits of no delay for the purpose of obtaining the consent of a parent or guardian whose consent to the operation or medical treatment is required, the said principal may give the consent required.

24. Any policeman or any officer employed at a training centre may without warrant arrest any cadet:

(*a*) whom he has reasonable grounds to suspect of being absent from a training centre without leave or of attempting to abscond from a training centre;
(*b*) who is discharged from prison after having served any sentence of imprisonment,

and may remove such cadet in custody to a training centre or, in the case of a cadet arrested under paragraph (*a*), deal with him in accordance with the provisions of section 27 of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

...

[8] For extracts from the Criminal Procedure Act, 1955, see *Yearbook on Human Rights for 1955*, pp. 235-243.

THE IMMORALITY AMENDMENT ACT, 1967

Act No. 68 of 1967, assented to on 22 May 1967 [9]

...

1. Section 8 of the Immorality Act, 1957 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Any person found in or upon such house or place who, when called upon to do so by the police officer conducting the search, refuses to furnish his name and address or furnishes a name or address which is false in any material particular or refuses to disclose the name or identity of the keeper of such house or place or to produce any book, receipt, paper, document or thing which he has in his possession or custody or under his control, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred rand and in default of payment to imprisonment for a period not exceeding six months."

2. The following section is hereby inserted in the principal Act after section 12:

"12A (1) Any person who, with intent that any female, whether a particular female or not, be unlawfully carnally known by any male, performs any act or does anything or furnishes any information which is calculated or likely to enable such male to communicate with or to establish the whereabouts of or so trace any such female, shall be guilty of an offence.

"(2) No prosecution in respect of an offence under subsection (1) shall be instituted except on the written authority of the attorney-general having jurisdiction in the area concerned or of a member of his staff designated by him in writing."

3. Section 21 of the principal Act is hereby amended by the addition of the following subsection:

"(4) Whenever in any prosecution for an offence under section 12A it is proved that the accused has performed any act or has done anything or has furnished any information, which was calculated or likely to enable any male to communicate with or to establish the whereabouts of or to trace any female who the accused had reason to believe to be a prostitute, the accused shall be presumed to have performed such act or to have done such thing or to have furnished such information, as the case may be, with intent that such female be unlawfully carnally known by such male, unless the contrary is proved."

...

[9] *Ibid.*

THE TERRORISM ACT, 1967

Act No. 83 of 1967, assented to on 12 June 1967 and, except sections 3, 6 and 7, deemed to have come into operation on 27 June 1962 [10]

...

2. (1) Subject to the provisions of subsection (4), any person who:

(*a*) with intent to endanger the maintenance of law and order in the Republic or any portion thereof, in the Republic or elsewhere commits any act or attempts to commit, or conspires with any other person to aid or procure the commission of or to commit, or incites, instigates, commands, aids, advises, encourages or procures any other person to commit, any act; or

(*b*) in the Republic or elsewhere undergoes, or attempts, consents or takes any steps to undergo, or incites, instigates, commands, aids, advises, encourages or procures any other person to undergo any training which could be of use to any person intending to endanger the maintenance of law and order, and who fails to prove beyond a reasonable doubt that he did not undergo or attempt, consent or take any steps to undergo, or incite, instigate, command, aid, advise, encourage or procure such other person to undergo such training for the purpose of using it or causing it to be used to commit any act likely to have any of the results referred to in subsection (2) in the Republic or any portion thereof; or

(c) possesses any explosives, ammunition, firearm or weapon and who fails to prove

[10] *Ibid.*

beyond a reasonable doubt that he did not intend using such explosives, ammunition, fire-arm or weapon to commit any act likely to have any of the results referred to in subsection (2) in the Republic or any portion thereof,

shall be guilty of the offence or participation in terroristic activities and liable on conviction to the penalties provided for by law for the offence of treason: Provided that, except where the death penalty is imposed, the imposition of a sentence of imprisonment for a period of not less than five years shall be compulsory, whether or not any other penalty is also imposed.

(2) If in any prosecution for an offence contemplated in subsection (1) (*a*) it is proved that the accused has committed or attempted to commit, or conspired with any other person to aid or procure the commission of or to commit, or incited, instigated, commanded, aided, advised, encouraged or procured any other person to commit the act alleged in the charge, and that the commission of such act, had or was likely to have had any of the following results in the Republic or any portion thereof, namely:

(*a*) to hamper or to deter any person from assisting in the maintenance of law and order;
(*b*) to promote, by intimidation, the achievement of any object;
(*c*) to cause or promote general dislocation, disturbance or disorder;
(*d*) to cripple or prejudice any industry or undertaking or industries or undertakings generally or the production or distribution of commodities or foodstuffs at any place;
(*e*) to cause, encourage or further an insurrection or forcible resistance to the Government or the Administration of the territory;
(*f*) to further or encourage the achievement of any political aim, including the bringing about of any social or economic change, by violence or forcible means or by the intervention of or in accordance with the direction or under the guidance of or in co-operation with or with the assistance of any foreign government or any foreign or international body or institution;
(*g*) to cause serious bodily injury to or endanger the safety of any person;
(*h*) to cause substantial financial loss to any person or the State;
(*i*) to cause, encourage or further feelings of hostility between the White and other inhabitants of the Republic;
(*j*) to damage, destroy, endanger, interrupt, render useless or unserviceable or put out of action the supply or distribution at any place of light, power, fuel, foodstuffs or water, or of sanitary, medical, fire extinguishing, postal, telephone or telegraph services or installations, or radio transmitting, broadcasting or receiving services or installations;
(*k*) to obstruct or endanger the free movement of any traffic on land, at sea or in the air;
(*l*) to embarrass the administration of the affairs of the State,

the accused shall be presumed to have committed or attempted to commit, or conspired with such other person to aid or procure the commission of or to commit, or incited, instigated, commanded, aided, advised, encouraged or procured such other person to commit, such act with intent to endanger the maintenance of law and order in the Republic, unless it is proved beyond a reasonable doubt that he did not intend any of the results aforesaid.

(3) In any prosecution for an offence under this section, any document, book, record, pamphlet, publication or written instrument:

(*a*) which has been found in or removed from the possession, custody or control of the accused or of any person who was at any time before or after the commencement of this Act an office-bearer, officer, member or active supporter of an organization of which the accused is or was an office-bearer, officer, member or active supporter;
(*b*) which has been found in or removed from any office or other premises occupied or used at any time before or after the commencement of this Act by an organization of which the accused is or was an office-bearer, officer, member or active supporter or by any person in his capacity as office-bearer or officer of such organization; or
(*c*) which on the face thereof has been compiled, kept, maintained, used, issued or published by or on behalf of an organization of which the accused is or was an office-bearer, officer, member or active supporter or by or on behalf of any person having a name corresponding substantially to that of the accused,

and any photostatic copy of any such document, book, record, pamphlet, publication or written instrument, shall be admissible in evidence against the accused as *prima facie* proof of the contents thereof.

(4) No person shall be convicted of an offence under subsection (1) committed at any place outside the Republic, if such person proves that he is not a South African citizen and has not at any time before or after the commencement of this Act been resident in the Republic and that he has not at any time after such commencement, entered or been in the Republic in contravention of any law.

3. Any person who harbours or conceals or directly or indirectly renders any assistance to any other person whom he has reason to believe to be a terrorist, shall be guilty of an offence and liable on conviction to the penalties provided by law for the offence of treason: Provided that, except where the death penalty is imposed, the imposition of a sentence of imprisonment for a period of not less than five years shall be compulsory, whether or not any other penalty is imposed.

. . .

6. (1) Notwithstanding anything to the contrary in any law contained, any commissioned officer as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958), of or above the rank of Lieutenant-Colonel may, if he has reason to believe that any person who happens to be at

any place in the Republic, is a terrorist or is withholding from the South African Police any information relating to terrorists or to offences under this Act, arrest such person or cause him to be arrested, without warrant and detain or cause such person to be detained for interrogation at such place in the Republic and subject to such conditions as the Commissioner may, subject to the directions of the Minister, from time to time determine, until the Commissioner orders his release when satisfied that he has satisfactorily replied to all questions at the said interrogation or that no useful purpose will be served by his further detention, or until his release is ordered in terms of subsection (4).

(2) The commissioner shall, as soon as possible after the arrest of any detainee, advise the Minister of his name and the place where he is being detained, and shall furnish the Minister once a month with the reasons why any detainee shall not be released.

(3) Any detainee may at any time make representations in writing to the Minister relating to his detention or release.

(4) The Minister may at any time order the release of any detainee.

(5) No court of law shall pronounce upon the validity of any action taken under this section, or order the release of any detainee.

(6) No person, other than the Minister or an officer in the service of the State acting in the performance of his official duties, shall have access to any detainee, or shall be entitled to any official information relating to or obtained from any detainee.

(7) If circumstances so permit, a detainee shall be visited in private by a magistrate at least once a fortnight.

7. (1) Notwithstanding anything to the contrary in any law contained, any warrant, summons, subpoena or other process issued under any law of the Republic or of the territory in connection with any criminal proceedings, shall be of force and effect throughout the Republic and the territory.

(2) Whenever any person has been arrested in the territory under any warrant aforesaid issued in the Republic, or has been arrested in the Republic under any such warrant issued in the territory, he shall, as soon as possible, be taken to the place mentioned in such warrant or, if no such place is mentioned in the warrant, to the place where the warrant was issued, and if such person has escaped or has been rescued from custody, be may be arrested without warrant at any place in the Republic or the territory by any person.

8. No trial for an offence under this Act shall be instituted without the written authority given personally by an attorney-general or acting attorney-general.

. . .

SPAIN

DECREE No. 779/1967, OF 20 APRIL, APPROVING THE AMENDED TEXTS OF THE BASIC LAWS OF THE NATION [1]

Art. 1. The attached amended texts of the Basic Laws of the Nation are approved.[2]

Art. 2. The Basic Laws of the Nation shall continue in full force without interruption in the form in which they are given in the Amended Texts. Any provisions contrary to those texts are revoked.

[1] *Boletin Oficial del Estado*, No. 95 of 21 April 1967.

[2] The schedules include the Basic Law Proclaiming the Principles of the National Movement of 17 May 1958, the Charter of the Spanish People of 17 July 1945, amended by the Organic Law of the State of 10 January 1967, the Labour Charter of 9 March 1938, amended by the Organic Law of the State of 10 January 1967, the Law Constituting the Cortes of 17 July 1942, amended by the Organic Law of the State of 10 January 1967, the Law Providing for Succession to the Office of Head of State of 26 July 1947, amended by the Organic Law of the State of January 1967, and the Law of the National Referendum of 22 October 1945. The Organic Law of the State of 10 January 1967 referred to above, was approved by the Spanish people in an *ad hoc* referendum held on 14 December 1966 and published the subsequent year in *Boletín Oficial del Estado*, No. 91 of 11 January 1967. Extracts from the Organic Law of the State appear in the contribution of the Government of Spain to the *Yearbook on Human Rights for 1966* (see pp. 343-347).

ACT No. 3 OF 8 APRIL 1967 AMENDING CERTAIN ARTICLES OF THE PENAL CODE AND THE ACT ON CRIMINAL PROCEDURE [3]

Art. 1. The Penal Code shall be amended as follows:

. . .

(*g*) In book II, title I, chapter I, article 123 shall be redrafted; the first chapter of title II, "Offences against the Head of State, the higher organs of the nation, the form of Government and the Fundamental Laws" shall be divided into four sections, of which the first, "Offences against the Head of State", shall undergo no amendments; the second, "Offences against the higher organs of the nation", shall include, in addition to the present articles 149 and 159, the articles comprising the third section, article 160 as now worded, and redrafted versions of articles 161 and 162; the fourth section, with its present heading, shall become the new third section and, under the heading "Offences against the Fundamental Laws", there shall be a fourth section consisting of the new articles 164 *bis* (*a*) and 164 *bis* (*b*), in the second chapter of the same title, articles 165 and 174 shall be redrafted and an article 165 *bis* shall be added; in the ninth chapter, article 246 shall be amended.

These articles shall be worded as follows:

. . .

(g) *Book II. Title I. Chapter I.*

Art. 123. Affronts to the Spanish nation or to its sense of unity, to the State or its political form, or to its symbols or emblems shall be

[3] *Boletín Oficial del Estado*, No. 86 of 11 April 1967.

punishable by minor imprisonment (*prisión menor*) and, if attended by publicity, by major imprisonment (*prisión mayor*).

Book II. Title II. Chapter I. "Offences against the Head of State, the higher organs of the nation, the form of Government and the Fundamental Laws".

Section II. Offences against the higher organs of the nation.

Art. 161. The penalty of major imprisonment shall be applied in respect of:

(1) Persons who seriously insult or threaten the Regency Council, the Government, the Council of the Realm, the National Council of the Movement or the Supreme Court of Justice.

(2) Persons who use force or intimidation to prevent members of the aforesaid bodies from attending their respective meetings.

Art. 162. Where the insult or threat referred to in the foregoing article is not serious, the offender shall be punished by minor imprisonment.

Section III. Offences against the form of Government.

Section IV. Offences against the Fundamental Laws:

Art. 164 bis (*a*). Persons who commit acts or conduct propaganda against the principles of the National Movement, which have been pronounced permanent and immutable, shall be punished by minor imprisonment and a fine ranging from 10,000 to 100,000 pesetas.

The same penalties shall apply when the acts or propaganda in question are intended to revoke or modify, outside the legal channels, the other rules of the Fundamental Laws of the nation.

Art. 164 bis (*b*). Insults directed against the National Movement or against the person exercising supreme leadership thereof, and abuse or other offensive behaviour directed against its heroes, its fallen, its flags or emblems, shall be punishable by minor imprisonment and a fine ranging from 5,000 to 25,000 pesetas, in the case of a heinous offence, and by major arrest (*arresto mayor*) and a fine ranging from 5,000 to 10,000 pesetas if not heinous.

Chapter II. Section I.

Art. 165. The authors, managers, publishers or printers of clandestine publications shall be punished by major arrest.

As such shall be considered any persons not satisfying the conditions required by existing law on the press and printing.

Chapter II.

Art. 165 bis (*a*). Any persons unlawfully impeding the free exercise of freedom of expression and the right to disseminate information, by means of monopolies or other means of exerting pressure on public opinion, shall be punished by minor imprisonment.

Art. 165 bis (*b*). The penalties of major arrest and a fine ranging from 5,000 to 50,000 pesetas shall apply in respect of persons using printed matter to violate the restrictions imposed by law on freedom of expression and the right to disseminate information, by publishing false information or reports likely to endanger morality or good conduct, or reports contrary to the requirements of national defence, the security of the State and the maintenance of public order internally and peace externally, or who attack the principles of the National Movement or the Fundamental Laws, show a disrespect for institutions or persons by criticizing political or administrative action, or who seek to impair the independence of the courts.

If, in the opinion of the court, the offence is manifestly heinous, the penalty shall be minor imprisonment and a fine ranging from 10,000 to 100,000 pesetas.

Art. 174 (1), fourth paragraph. Where the actions punishable under the foregoing paragraph are not of a heinous nature, or where the association was not actually established, the court may inflict, on those who merely participated, the punishment next in descending order of severity or banishment and a fine ranging from 5,000 to 25,000 pesetas.

Chapter IX. Public disorders.

Art. 246. Any persons producing an uproar or serious disturbance of order in the auditorium of a court or tribunal, at the public function of any authority or corporation, in any electoral college, office or public establishment, at shows, ceremonies or large meetings, shall be punished by major arrest and a fine ranging from 5,000 to 25,000 pesetas.

Any persons who, without belonging to a teaching establishment, commit in such an establishment acts which interfere with or are likely to interfere with its normal activity, to impair the freedom to teach or encourage disobedience to the academic authorities shall be punished by minor imprisonment.

SUDAN

THE LOCAL GOVERNMENT ORDINANCE AMENDMENT OF SECOND SCHEDULE ORDER 1967 [1]

In exercise of the powers conferred upon it by Sub-Section (2) of Section 21 of the Local Government Ordinance, 1951, the Council of Ministers hereby makes the following order:

The Second and Third Schedules to the Local Government Ordinance, 1951 are hereby cancelled and the following Schedule substituted therefor:

SECOND SCHEDULE

ELECTORAL RULES

. . .

3. (1) The Province Authority shall appoint in writing a Returning Officer and an Electoral Committee for each Council area.

. . .

4. (1) Any person who is qualified under the Ordinance to be elected a member of the Council for an electoral ward and who is writing to stand may be nominated as a candidate for that electoral ward.

. . .

(8) An appeal by any interested person shall, subject to payment of such fees as the Supreme Civil Court may prescribe, lie to a District Judge against the refusal or acceptance of any nomination, but every such appeal shall be submitted in writing not more than 3 days after such publication.

(9) The Supreme Civil Court shall make rules for the hearing and disposal of such appeals, and may in addition, prescribe the amount of court fees to be paid in respect of such appeals.

5. (1) A candidate, at any election may in writing appoint any person to be his Election Agent and such appointment shall be subject to the approval of the Returning Officer, provided that the Returning Officer shall not withhold his approval if the person proposed as an Election Agent is qualified under the rule next following:

(2) No person shall be qualified to be an Election Agent unless he is a Sudanese and not less than 30 years of age; but be shall not be a person:

(*a*) who holds an office of profit under the Government of the Sudan, or under one of the Local Government Councils, other than an office declared by Law not to disqualify its holder from membership of a Local Council, or

(*b*) who has within the past seven years been sentenced to a term of imprisonment for a period of not less than two years, or

(*c*) who has within the past seven years been convicted of corrupt practice or any abetment thereof at any Parliamentary or Local Government Elections, or

(*d*) who is of unsound mind, or

(*e*) who is an illiterate.

(3) Save for the matters which should, either by express provision in the ordinance or in these rules or by necessary implication, be personally performed by the candidate, an Election Agent may do any act which can lawfully be done by the candidate in connection with the election.

. . .

(20) No person shall on the date or dates on which a poll is taken at any polling station commit any of the following acts within the polling station or in any public or private place within a distance of three hundred yards of the polling station namely:

(*a*) Canvassing for votes; or

(*b*) Soliciting for the votes of any voter; or

(*c*) Persuading any voter not to vote for any candidate; or

(*d*) Persuading any voter not to vote in the election; or

(*e*) Exhibiting any notice or sign (other than the official one relating to the election).

[1] *Special Legislative Supplement to the Republic of the Sudan Gazette*, No. 1033 of 1 April 1967, Supplement No. 1 : General Legislations.

any person contravening this rule shall be punished with a fine which may extend to 25 Sudanese pounds.

. . .

10. The Minister of Local Government may allow voting by voting tokens instead of ballot papers in any ward or Local Government area and such voting shall take place in accordance with Regulations issued by the Minister or Local Government.

. . .

14. (1) No person shall convene, hold or attend any public meeting within the ward on the date or dates on which a poll is taken for election in that ward.

(2) Any person who contravenes the provisions of sub-rule (1) above shall be punishable with a fine which may extend to 50 Sudanese pounds.

15. (1) No person may on the date or dates on which a poll is taken at any polling station:

(*a*) Use or operate within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof any apparatus for amplifying or reproducing the human voice such as a megaphone or any other loudspeaker.

(*b*) Shout or otherwise act in a disorderly manner, within or at the entrance of the polling station or in any public or private place in the neighbourhood thereof, so as to cause annoyance to any person visiting the polling station for the poll or so as to interfere with the work of the Officers and other persons on duty at the polling station.

(2) Any person who contravenes or abets the contravention of this rule shall be punishable with imprisonment which may extend to three months or with fine or with both.

16. (1) Any person who, during the hours fixed for the poll at any polling station, misconducts himself or fails to obey the lawful directions of the Presiding Officer may be removed from the polling station by the Presiding Officer or by any Police Officer or by any person authorized in this behalf by such Presiding Officer.

(2) Any person contravening this rule shall be punishable with imprisonment which may extend to three months or to a fine not exceeding 50 Sudanese pounds or to both.

. . .

18. No election shall be invalidated merely by reason of non-compliance with these rules if the Returning Officer certifies to the Province Authority, and the Province Authority is satisfied by such certificate that the election was conducted in accordance with the principles laid down by the Ordinance and these rules, and that such non-compliance was not such as to affect the result of the election.

. . .

THE SUPREME CIVIL COURT ACT, 1967

(1967 Act No. 15) [2]

. . .

3. The Court shall consist of the Chief Justice and six judges who shall be members thereof.

4. No person shall be qualified to be a Chief Justice or a member of he Court unless:

(1) he is a Sudanese.

(2) he is not less than forty years of age.

(3) he has served for a period not less than fifteen years in the legal profession.

5. (1) In addition to those administrative powers conferred in it under the Constitution, the Court shall exercise such other administrative powers as conferred on it from time to time by any law.

(2) In addition to those powers and jurisdiction conferred upon the Chief Justice, the Civil Court of Appeal or the Criminal Court of Appeal under any law for the time being in force, the Court shall have jurisdiction over appeals from decisions of judges or the High Court in Constitutional matters and shall have any other jurisdiction conferred on it by any law.

. . .

7. (1) All petitions relating to appeals, revisions, reviews, confirmations or any other petition raised to the Chief Justice before the commencement of this Act and still pending shall be heard and determined in accordance with the provisions of this Act.

(2) The Code of Criminal Procedure, the Civil Justice Ordinance and any other law in force at the commencement of this Act shall be deemed amended to the extent required by this Act and in case of discrepancy the provisions of this Act shall prevail.

. . .

9. The Court may make such regulations as it may deem necessary for the carrying into effect of the provisions of this Act.

[2] *Ibid.*, No. 1033 of 10 April 1967, Supplement No. 1: Special Legislations.

THE SUPREME SHARIA COURT ACT, 1967

(1967 Act No. 24) [3]

. . .

3. The Court shall consist of the Grand-Kadi and six Kadis who shall be members thereof.

4. No person shall be qualified to be a Grand-Kadi or a member of the Court unless:

(1) he is a Sudanese.

(2) he is of not less than forty years of age.

(3) he has served for a period for not less than fifteen years in the legal profession.

5. (1) The Court shall exercise the powers and jurisdiction conferred upon it by the Constitution and the Sudan Mohammedan Law Courts Ordinance, 1902 and any other jurisdiction as may be conferred upon it by any other law.

(2) The Court shall exercise its appellate judicial powers and jurisdiction in circuits and according to such organization as it may deem suitable.

. . .

[3] *Ibid.*, No. 1039 of 5 June 1967, Supplement No. 1: General Legislations.

THE DEFENCE OF THE SUDAN (GENERAL) REGULATIONS, 1967

(1967 Legislative Rules and Orders No. 13) [4]

. . .

3. All persons shall be bound to furnish to the best of their ability and knowledge all information reasonably requested by or on behalf of the competent authority, being information which the authority or person making the request considers to be necessary or expedient in the interests of public safety.

4. No person required to furnish information under these Regulations or other Regulations or orders made under the Defence of the Sudan Ordinance shall make any statement which he knows to be false in a material particular, or recklessly make any statement which is false in a material particular.

5. No person shall send from or bring into the Sudan any letter or other like document otherwise than through the post.

. . .

8. (1) It shall be lawful for a competent authority where for any of the purposes set out in section 3 (1) of the Defence of the Sudan Ordinance it is necessary so to do:

(*a*) to take possession of any land and to construct buildings and works of every description, including roads thereon, and to remove trees, fences and hedges therefrom;

(*b*) to take possession of any buildings or other property including works for the supply of gas, electricity or water and of any sources of water supply;

(*c*) to take steps as may be necessary for placing any buildings or structures in a state of defence;

(*d*) to cause any buildings or structures to be destroyed, or any property to be moved from one place to another, or to be destroyed;

(*e*) to prohibit access of any building or place which has suffered damage or been affected by enemy action;

(*f*) to require the authority or person controlling any harbour, dock, wharf, waterworks, gasworks, electric light or power station, or other structure, to prepare a scheme for destroying or rendering useless the equipment or facilities of the harbour, dock, wharf, waterworks, gasworks, station or structure or such part thereof as may be specified by him;

(*g*) to take possession of any arms, ammunition, explosive substances, equipment, fuel or warlike stores (including lines, cables and other apparatus intended to be laid

[4] *Ibid.*, No. 1039 of 7 June 1967, Supplement No. 1: General Legislations.

or used for telegraphic or telephonic purposes;

(*h*) to do any other act involving interference with such property as aforesaid which is necessary for the purpose aforesaid.

(2) If after a competent authority has issued a notice that it has taken or intends to take possession of any movable property in pursuance of this regulation any person having control of any such property sells, removes or secretes it without the consent of a competent authority he shall be guilty of an offence against this regulation.

9. A competent authority and any person duly authorized by it shall have right of access to any land or buildings or other property whatsoever.

. . .

17. (1) Any person who has in his possession any item of service stores or equipment shall be guilty of an offence against this regulation unless he satisfies the Court of Magistrate that he had such possession in virtue of a proper authority or that he did not know and had no means of knowing that the said item was such an item as aforesaid or that he had a reasonable excuse for being in such possession.

. . .

18. A competent authority may, by order require every person within any area specified in the order, other than a person who is in possession of a permit in writing from the Minister of the Interior, such competent authority or some person duly authorized by one of them, to remain within doors between such hours as may be specified in the order.

19. (1) Where a person is suspected of acting, or of having acted, or of being about to act in a manner prejudicial to the public safety or the defence of the Sudan, the Minister of the Interior may by order prohibit him from residing in or entering any area or areas which may be specified in the order, and upon the making of such an order the person to whom the order relates shall, if he resides in any specified area leave that area within such time as may be specified by the order, and shall not subsequently reside in or enter any area specified in the order. Any order made as aforesaid may require the person in respect of whom it is made to comply with such conditions as to residence, reporting to the police, restriction on movements or otherwise as may be imposed on him.

(2) Any such order may further require the person to whom the order relates to report for approval his proposed place of residence to the police and to proceed thereto and report his arrival to the police within such time as may be specified in the order, and not subsequently to change his place of residence without leave of the Minister of the Interior.

20. (1) Where the construction of any military defence works, roads or landing grounds or the loading or unloading of any ship or ships is necessary for the defence of any locality or where any work is necessary for the removal of any stores, goods, or articles and such removal is expedient for the public safety or the defence of the Sudan and no sufficient voluntary labour is available therefor, a competent authority may require any adult male native of the Sudan being a labourer or being an artisan usually employed in the class of work in question to assist in and work upon such construction, loading, unloading or removal and in any work incidental thereto provided that no such person shall be required to work in the face of the enemy.

(2) All such work shall be paid for at the current local rate of wages for manual labour.

. . .

22. The Minister of the Interior may by order require the whole or any part of the inhabitants of any area specified in the order to leave that area if the removal of such inhabitants from that area is necessary for military reasons and if any person to whom the order relates fails to comply with the order a competent authority may cause such steps to be taken as may be necessary to enforce compliance therewith.

. . .

26. (1) Where a competent authority or any person duly authorized by him has reason to suspect that any person who is about to leave the Sudan is attempting to do so for the purpose of communicating directly or indirectly with the enemy, he may prevent such person leaving the Sudan.

(2) Where such person has been so prevented from leaving the Sudan the case shall be reported to the Minister of the Interior, and the Minister of the Interior may, if he thinks fit, by order prohibit that person at any time subsequently from leaving the Sudan so long as the order is in force.

. . .

28. If he shall deem it necessary so to do in the interests of the public safety or the defence of the Sudan the Minister of the Interior may establish a censorship and may make such orders and regulations as may be necessary for that purpose and to ensure that no such newspaper, periodical, book, circular or other printed publication as may be specified in such orders or regulations shall be printed or published without the permission of the censor and without the prior approval by the censor either of the whole or of any specified part or parts thereof.

29. (1) No person shall by word of mouth or in writing or in any newspaper, periodical, book, circular or other printed publication or by any other means:

(a) spread false reports or make false statements; or

(*b*) spread reports or make statements intended or likely to cause disaffection to the Government or to interfere with or prejudice the operations of the Armed Forces or the military forces serving in the Sudan or to prejudice the relations of the Government with foreign powers; or

(*c*) spread reports or make statements intended or likely to prejudice the recruiting, training, discipline or administration of any military forces serving in the Sudan, or the discipline of any police or volunteer force, labour corps or fire brigade; or

(*d*) spread reports or make statements intended or likely to undermine public confidence

in any bank or currency notes which are legal tender in the Sudan or any part thereof, or to prejudice the success of any financial measures taken or arrangements made by the Government with a view to overcoming the emergency; and no person shall produce any performance on any stage or exhibit any picture or cinematograph film or commit any act which is intended or likely to cause any such disaffection, interference or prejudice as aforesaid.

(2) If any person without lawful authority or excuse has in his possession or in premises in his occupation or under his control any document containing a report or statement the publication of which would be a contravention of the foregoing provisions of this regulation, he shall be guilty of an offence against these regulations unless he proves that he did not know and had no reason to suspect that the document contained any such report or statement, or that he had no intention of transmitting or circulating the document or distributing copies thereof to or amongst other persons.

30. Where the Minister of the Interior is satisfied that any newspaper, periodical, book, circular or other printed publication or any film or gramophone record contains or records reports or statements the publication of which in the Sudan would be a contravention of regulation 29, he may prohibit the importation thereof, including, in the case of a newspaper or periodical, any subsequent issue thereof, and any such matter which is sent or conveyed to the Sudan in contravention of such an order may be detained or destroyed.

. . .

33. The Minister of the Interior may appoint one or more persons to censor postal correspondence, and the persons so appointed may examine any letter, document or other matter sent through the post or by telegraph or submitted to the censor in accordance with the second provision to regulation 5 and detain and confiscate any such letter, document or matter if in his opinion the transmission of the contents or any part thereof would or might be prejudicial to the public safety or the defence of the Sudan or he may render illegible any such part.

34. (1) Any person entering or leaving the Sudan and any person who by reason of his occupation or habits has special opportunities of communicating with the crews and passengers of vessels, trains, aircraft, motor cars or other means of conveyance shall, on being required to do so by a competent authority or any person duly authorized by him or by a police or customs officer, make a declaration as to whether or not he is carrying or conveying any letters, written messages or memoranda or any written or printed matter (including plans, photographs and other pictorial representations) and, if so required, shall produce to the person making the requisition any such letters, written messages or the memoranda or written or printed matter; and the competent authority or the person authorized by him or police or customs officer may search any baggage with a view to ascertain whether any such person or the persons to whom the baggage belongs is carrying or conveying any such letters, messages, memoranda or written or printed matter.

(2) The competent authority or person authorized by him or police or customs officer may examine any letters, messages memoranda or written or printed matter so produced to him or found on such search, and if they concern or touch upon any matter relating to the public safety or the defence of the Sudan shall transmit them to an officer appointed to censor postal correspondence who may deal with the same as if they were postal correspondence.

(3) If any person knowingly makes any false declaration under this regulation he shall be guilty of an offence against this regulation.

. . .

59. A competent authority or any person duly authorized by him or any police or special police officer or man may, if he has reason to suspect that any house, building, land, vehicle, vessel, aircraft or other premises or any things therein are being or have been constructed, used or kept for any purpose or in any way prejudicial to the public safety or the defence of the Sudan or that an offence against these regulations is being or has been committed thereon or therein, enter, if need be by force, the house, building, land, vehicle, vessel, aircraft or premises at any time of the day or night and examine, search and inspect the same or any part thereof, and may seize anything found therein which he has reason to suspect is being used or intended to be used for any such purpose as aforesaid, or is being used or kept in contravention of these regulations (including, where a report or statement in contravention of regulation (29) has appeared in any newspaper, any type or other plant used or capable of being used in the printing or publication of the newspaper or publication), and a Magistrate of the first class may order anything so seized to be destroyed or ortherwise disposed of.

. . .

61. Any commissioned officer or any soldier, sailor or airman engaged on sentry patrol or other similar duty, and any police or special police officer or man, may stop any vehicle travelling along any public highway, and if he has reason to suspect that the vehicle is being used for any purpose or in any way prejudicial to the public safety or the defence of the Sudan, may search and seize the vehicle and seize anything found therein which he has reason to suspect is being used or intended to be used for any such purpose as aforesaid.

62. (1) It shall be the duty of any person, if so required by a commissioned officer, or by any soldier, sailor or airman on sentry patrol or other similar duty, or by a police or special police officer or man, or any person duly authorized in that behalf by the Minister of the Interior to stop and answer to the best of his ability and knowledge any questions which may be reasonably addressed to him.

(2) A competent authority may by order require any person or persons of any class or description

to furnish it, either verbally or in writing, with such information as may be specified in the order, and the order may require any person to attend at such time and such place as may be specified in the order for the purpose of furnishing such information.

63. (1) A competent authority or any police or customs officer or any commissioned officer of any force operating in the Sudan may arrest without warrant any person who is found within 40 miles of any frontier dividing the Sudan from enemy or enemy occupied territory or in the neighbourhood of military works or operations who is unable to give a satisfactory reason for his presence or whose behaviour is of such a nature as to give reasonable ground for suspecting that he has acted or is acting or is about to act in a manner prejudicial to the public safety or the defence of the Sudan, or upon whom may be found any article, book, letter or other document or thing the possession of which gives grounds for such a suspicion or who is suspected of having committed an offence against these regulations, or of being in possession of any article or document which is being used or intended to be used for any purpose or in any way prejudicial to the public safety or the defence of the Sudan; and any military policeman being a member of the Special Investigation Branch of any corps of Military Police serving in the Sudan may arrest any person who is suspected of having committed an offence against regulation (17) of these regulations;

. . .

66. (1) Any person holding, taking out or participating in any procession or meeting in any public place shall be guilty of an offence against these regulations.

(2) Any such procession or meeting shall, for the purposes of sections 115-126 (inclusive) of the Penal Code and sections 93-98 (inclusive) of the Code of Criminal Procedure be deemed to be an unlawful Assembly.

67. All members of trade unions and associations shall not cease from work if this is likely to cause national injury or damage or grave inconvenience to the community and if they so cease from work shall be guilty of an offence under these Regulations.

. . .

THE STATE OF EMERGENCY ORDER, 1967

(1967 Legislative Rules and Orders No. 14) [5]

. . .

2. (1) All officers, non-commissioned officers and other ranks of the Armed Forces shall have and exercise all the powers under this Order or under any other legislation of the nearest corresponding rank of the Sudan Police Force, and all acts done by such officers, non-commissioned officers or other ranks aforesaid in the execution of their duty shall be deemed to have been done by members of the Sudan Police Force.

(2) Any policeman may in the course of his duty arrest without warrant and detain any person whom he on reasonable grounds suspects of intending to commit an offence or of being a source of danger to the public safety and well-being of the community, and any person so arrested may on the order of the Commandant of Police be detained in any place specified in the said order: Provided that no person shall be detained under this paragraph for more than fourteen days without being brought before a Magistrate and charged with a specific offence.

(3) In the event of riot, civil disturbance or looting, the police shall have the same powers for maintaining public order and security they would have if martial law were proclaimed.

[5] *Ibid.*

SWEDEN

NOTE [1]

1. An increase in the national basic pensions became effective on 1 July 1967. The annual pension—apart from municipal rent allowances—is, as from July 1967, Sw. Kr. 4,931 for a pensioner alone or a total of Sw. Kr. 7,696 for two pensioned spouses together.

2. As from January 1968, the provisions for an alien to benefit from the health insurance scheme and the supplementary scheme have been amended. This amendment implies that an alien merely by setting up house-keeping in Sweden can be entitled to medical benefits and sickness allowance and that pension-carrying income can be calculated from the year he took up residence in Sweden. Earlier he had to be census-registered (*mantalsskriven*) in order to qualify for these benefits.

At the same time, new rules have come into force concerning the right of a Swedish citizen to receive a pension. Previously he must have been census-registered in Sweden during the year he reached 62 years of age and for the immediately preceding five years, whereas now the qualification to receive a pension on reaching retirement age is that the person is residing or takes up residence in Sweden.

3. As from January 1968, considerable improvements have been made in the industrial injury insurance scheme. Old annuities for industrial injury have been increased by 10 per cent to 25 per cent and the basis of indemnity for new annuities has been increased. Both the old and the new annuities for industrial injury are protected from fluctuation in value by relating them to the base amount for compensation in the national insurance scheme.

4. The medicine benefits under the health insurance scheme have been improved as from January 1968, in the first place for persons who have considerable expenses for medicines. According to the new regulations, the maximum amount charged for a single purchase of medicine prescribed by a doctor is Sw. Kr. 15. At the same time, the list of medicines which are entirely free of charge has been extended. As from 1 January 1968, there is a further increase in the refund from the social insurance offices of expenses for medical care. The new rates of refund imply an average increase of 35 per cent.

5. The central national administration of public health and sick care, on the one hand, and social welfare, on the other, was taken over on 1 January 1968, by a new administrative authority, the National Board of Health and Welfare. By the amalgamation of the medical care and the social welfare into one single administration, better possibilities have been provided for the integration also between subordinated bodies in charge of the practical aspects of this care.

[1] Note furnished by the Government of Sweden.

SWITZERLAND

FEDERAL AND CANTONAL LEGISLATION CONCERNING HUMAN RIGHTS [1]

I. FEDERAL LAW

A. *Protection of life and health*

Ordinance No. 1 of the Department of the Interior, dated 3 May 1967, concerning aerosol bombs [*Recueil officiel,* hereinafter referred to as *RO*, 1967, p. 929].

Ordinance of the Federal Council, dated 8 August 1967, concerning the prevention of accidents in construction work [*RO* 1967, p. 1221]. Order of the Federal Council, dated 24 October 1967, concerning federal inspection of installations for high-intensity current [*RO* 1967, p. 1591].

Order of the Federal Council, dated 3 November 1967, amending the Ordinance regulating trade in food-stuffs and miscellaneous household items [*RO* 1967, p. 1571].

Ordinance of the Federal Council, dated 17 November 1967, concerning the prevention of accidents in roofing work and in work done on roofs [*RO* 1967, p. 1680].

B. *Protection of workers*

Order of the Federal Council, dated 17 March 1967, prescribing a model contract for workers in cheese-dairies [*RO* 1967, p. 753], See also legislation under item A.

II. INTERNATIONAL AGREEMENTS

Legal protection

Federal Order of 27 September 1966 approving six Conventions of the Council of Europe [*RO* 1967, p. 845].

The six Conventions approved [*RO* 1967, pages 854, 871, 886, 893, 898 and 908] are as follows:

— The European Convention on Extradition, dated 13 December 1957;
— The European Convention on Mutual Assistance in Criminal Matters, dated 20 April 1959;
— The European Agreement on regulations governing the movement of persons between member States of the Council of Europe, dated 13 December 1957;
— The European Agreement on the abolition of visas for refugees, dated 20 April 1959;
— The European Agreement on travel by young (persons on collective passports between the member countries of the Council of Europe, dated 16 December 1961;
— The European Convention on the International Classification of Patents for Invention, dated 19 December 1954.

III. CANTONAL LEGISLATION

EXAMPLES

1. *Protection of life and health*

Bern: Ordinance of 6 June 1967 concerning automatic dispensers for the sale of food.

Vaud: Act of 21 November 1967 concerning careers (see articles 12, 14, 15, 16, 17 and 18).

Act of 27 November 1967 amending the Act of 9 December 1952 concerning public health organization.

Act of 5 December 1967 establishing a medical and social welfare agency in the Canton of Vaud.

2. *Protection of youth*

Bern: Ordinance of 15 December 1967 concerning dancing events for youth.

3. *Vocational training*

Vaud: Order of 28 February 1967 amending the regulations of 12 March 1948 governing examinations for café and restaurant owners and hotel-keepers.

[1] Collected by the Justice Division of the Swiss Federal Department of Justice and Police.

SYRIA

NOTE [1]

I. SOCIAL AND LABOUR LEGISLATION

The Syrian Arab Republic has ratified the following conventions of the International Labour Organisation which are recognized as specifically human rights conventions:

1. Conventions No. 29 concerning Forced Labour and No. 105 on the Abolition of Forced Labour.

2. Convention No. 87 on Freedom of Association and Protection of the Right to Organise.

3. Convention No. 98 concerning the Applications of the Principles of the Right to Organise and to Bargain Collectively.

4. Convention No. 11 concerning the Right of Association and Combination of Agricultural Workers.

5. Convention No. 111 concerning Racial Discrimination in Respect of Employment and Occupation.

6. Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

It is to be observed that Syrian legislation, in force on matters of labour, are fully in consonance with the above-mentioned conventions.

II. AGRARIAN REFORM

A. In the field of agrarian reform, the following laws, decrees and decisions may be mentioned:

1. The Agrarian Reform Law (No. 161 of 27 September 1958) and its Enforcement Act contained in Decision No. 1418 of the same year.

2. Decision (Karar) No. 201/T of 7 August 1961, concerning the sale and distribution of seized lands and public domain lands to small peasants.

3. Decree-law No. 88 of 23 June 1963, as amended by the Agrarian Reform Law and Decision No. 1418 referred to in point 1 above.

4. Decree-law No. 145 of 3 December 1966, as amended by the Agrarian Reform Law and its Enforcement Act contained in decision No. 17/T of 1 January 1967.

5. Decision No. 172/T of 15 May 1967, concerning the lease of seized lands (seized for agrarian reform purpose).

B. Transfer of ownership of public domain lands to small peasants are dealt with in the following laws:

1. Decision-law No. 251 of 10 October 1959, and its Enforcement Decision issued under No. 21/T on 12 April 1960.

2. The Second Enforcement Act of the Law on Public Domain No. 260 of 11 November 1962.

3. Decree-law No. 220 of 1963 exempting occupants of public domain lands or seized lands from rents, in case they exploit these lands themselves.

III. AGRICULTURAL CO-OPERATIVES

1. Decision-law No. 91 of 1959 and its Enforcement Decision No. 307 of 1958.

2. Decision-law No. 58 of 1961.

3. Decree-law No. 39 of 1967 concerning the organization of co-operatives.

4. Decree-law No. 123 of 29 November 1964 and Enforcement Decision No. 272 of 20 April 1965, concerning the transfer of agricultural machinery to and its installation for co-operatives.

5. Decree-law No. 56 of 24 September 1964, concerning the deferment of payment of debts due by co-operatives and tenants to the Agrarian Reform Foundation.

6. Decree-law No. 5 of 17 January 1968, concerning ways to be followed in collecting debts or in deferring payment thereof.

[1] Note furnished by the Government of Syria.

THAILAND

NOTE [1]

I. LEGISLATION

1. *Dangerous Chemicals Act, B.E. 2510 (1967)*

The purpose of this Act is to lay down stringent regulations for the import, export, sale or having in possession for sale of dangerous and poisonous chemicals or for the giving of service in preventing or suppressing diseases, pests, etc., by employing those chemicals, which may cause fatal accidents if improperly administered. Thus, to safeguard the health and welfare of the public, the Act specifies that all containers of dangerous and poisonous chemicals must bear a sign warning of danger, consisting of a skull and crossbones and the word "Poison". In the case of sale within the Kingdom, there must be an additional leaflet in Thai giving details of the name and quantity of the poison, the names of other ingredients, the producer and place of production, the expiry date, the instructions for use, the words of caution, and the possible preventive measures (Section 21). Any person importing, exporting or producing dangerous and poisonous chemicals must obtain from the competent official (Sections 11, 12) an annual licence, without which such person is liable to imprisonment not exceeding one year or a fine not exceeding four thousand bahts, or both. The applicant for the renewal of an annual licence, if unreasonably refused, has the right to appeal to the Minister in charge and in control of this Act whose decision is final. Section 24 of this Act authorizes officials to enter, during office hours, a plant producing dangerous and poisonous chemicals or to board vehicles for the purpose of inspecting chemicals, containers, accounts, documents, and anything connected with the plant's production and also to take samples for analysis: It is an offence punishable with three months imprisonment or a fine of one thousand bahts for any person to make false or untrue advertisement as to the quality of the dangerous and poisonous chemicals.

[1] Note furnished by the Government of Thailand.

2. *Loss Insurance Act, B.E. 2510 (1967) and Life Insurance Act, B.E. 2510 (1967)*

Previously both loss and life insurance business came under the Act for the Central Insurance of Commercial Undertakings Affecting the Public Safety and Welfare, B.E. 2471, the provisions of which in the present-day business complexity were found to be inadequate and unsuitable to provide a safeguard for the insured and as a result thereof were considered to a certain degree indirectly to undermine the economy of the country. Thus, the Loss Insurance Act and the Life Insurance Act have been enacted to provide a statutory control over loss and life insurance companies. According to these two Acts, no person can conduct a loss or a life insurance business unless he has obtained a licence therefor (Section 11 of the Loss Insurance Act, and Section 12 of the Life Insurance Act). Both Acts stipulate that a loss insurance or a life insurance company must be registered as a limited company in accordance with the Civil and Commercial Code of Thailand and that, after due compliance with the Ministerial Regulations, the company must apply for a business licence from the Minister of Economic Affairs. To eliminate financial crisis, the minimum capital holding is regulated by the Acts which also prescribe the amount of security to be deposited with the Registrar. The amount of the deposit and the capital holding vary according to the types of insurance and the kinds of risk undertaken by an insurance company (Section 19 of the Loss Insurance Act, and Section 14 of the Life Insurance Act). The rate of premiums fixed by a company must have been approved first by the Registrar (Section 22 of the Loss Insurance Act, and Section 24 of the Life Insurance Act). The Acts also prescribe specific qualifications for agents or sales representatives of an insurance company (Section 7 of the Loss Insurance Act, and Section 11 of the Life Insurance Act). These statutory requirements are conditions precedent to the issue of a licence for an insurance company, agent or sale representative, violation of which

is punishable according to law (Chapter 6 of the Loss Insurance Act, and that of the Life Insurance Act). They also provide for a close supervisory control of the operation of insurance companies in order to ensure these companies' proper conduct of business.

3. *War Veterans Organization Act, B.E. 2510 (1967)*

The purpose of this Act is to extend the war veterans' assistance programmes to ex-service soldiers, policemen, civil servants and civilians who have helped in the defence against and the suppression of any acts endangering the nation in order to preserve the safety and security of the country. Such assistance programmes are also extended to Korean War veterans who have served under the United Nations Command, and their families. For this purpose, the War Veterans Organization is established to carry out the assistance programme under this Act. In the operation of the Organization's work, a War Veterans Council is set up as the governing body. The Minister of Defence and the Director and Assistant-Director of the War Veterans Organization are *ex officio* President, Vice-President and Councillor, respectively. The other sixteen Councillors are to be appointed from war veterans by the Minister of Defence (Section 14).

In order to carry out its functions, the War Veterans Organization being a juristic person, may hold, transfer, buy, sell, lease or dispose of any rights in movable and immovable properties and may lend money on security or provide capital necessary to initiate a business either as a loan or in partnership with a war veteran (Section 10).

4. *Act Abolishing the War Criminal Act, B.E. 2488, B.E. 2510 (1967)*

This Act repeals the War Criminal Act which came into force in B.E. 2488 (1945). The latter, having as its purpose the suppression of war crimes, contained provisions as to the definition of war crimes (including crimes against humanity), the prosecution, jurisdiction and procedure of the Court (Supreme Court), as well as the Court procedure and the punishment for war crimes. Moreover, the War Criminal Act made itself clear that it came into force with retroactive effect, the provision in respect of which, however, was declared unconstitutional by the Supreme Court (Judgement No. 24/2489).

It is the opinion of the Government and the legislature that the nature of "war crimes", though generally understood and recognized, is as difficult to be defined in words as that of "war" itself. When it has been defined in a national law, it opens to a wide range of interpretation which sometimes depends not on purely legal consideration alone. In the present circumstances when wars, whether conventional or not, are being waged around the country and military co-operation and assistance between neighbouring countries are needed, it is more practical and rational to abolish the national law on war crimes, in order that the people, military and civilian, can perform their duties in the defence of the country against aggression free from fear of the misuse through misinterpretation of the War Criminal Act. Nonetheless, neither the Government nor the legislature likes to leave war criminals at liberty. Before passing the Act, consideration has therefore been given to the methods under international law used after the Second World War to cope with this kind of criminal.

5. *Act on Rules of Practice on Relegation under the Penal Code, B.E. 2510*

The purpose for the enactment of this Act is to prescribe the method of relegation which is one of the measures of safety under the Penal Code. According to this Act, the Director-General of the Department of Corrections is empowered to issue regulations, stipulations and rules of practice concerning the welfare and discipline of the detainees, as well as the types of weapon to be carried by wardens. However, the Act imposes stringent conditions before fire-arms can lawfully be used. Only in the following cases mentioned in Section 8, can a warden use fire-arms against a detainee:

(1) Where the detainee is in possession of fire-arms and has refused to surrender them and there is no other way of disarming him;
(2) Where three or more detainees start a riot, open or destroy or attempt to open or destroy doors, fences or walls of the relegation centre; and
(3) Where the detainee causes or attempts to cause injury to a warden or other person by the use of a weapon.

As a safeguard against abuse of the statutory power, the Act provides that the order of the highest ranking warden or office must have been given before such fire-arms can be used. Detainees have to comply with disciplinary measures and rules of the relegation centre, and failure to comply therewith is a punishable offence (Sections 15, 17 and 20).

6. *Medicine Act, B.E. 2510 (1967)*

For the safety and welfare of the people, the Medicine Act, B.E. 2510, abolished five previous Acts on the sale of medicine and incorporated extensive provisions for the manufacture and sale of medicine, whether of modern innovation or from an ancient formula. Under this Act, no person may manufacture, sell, or import medicine into the country without a licence (Section 12) and the licencee must comply with the statutory requirements as prescribed in Section 14.

The Act also sets up a "Medical Commission" consisting of the Under-Secretary of State for Public Health, the Director-General of the Medical Science Department, the Director-General of the Medical Department, the Director-General of the Hygiene Department, the Head of the Medical Registration Division, the Head of the Food and Drugs Control Division, and fifteen other qualified members appointed by the Minister of Health. The function of the Commission is to advise and to give opinion to the Minister of Public Health as regards the issue of licences to manufacture, sell, or import medicine and the revocation and suspension of such licences, as well as the conditions for the method of manufacturing, selling and importing medicine (Section 10).

It is a punishable offence for those who manufacture, sell, or import fake, false or inferior quality medicine, or medicine made from an unregistered formula or from a formula which has been declared invalid by the Minister (Sections 117, 118, 119, 120 and 122). Section 88 of the Act imposes certain conditions for the advertisement of medicine, namely, that it must not contain false, exaggerating, or incredulous statements or indecent words, or that the medicine has magic ingredients for immediate cure or words which are likely to convey such meaning, violation of which is punishable with a fine not exceeding ten thousand bahts or imprisonment not exceeding six months or both (Section 124). Medicine cannot be advertised by way of gift or lottery.

7. *Act Abolishing the Revolutionary Party's Proclamations Nos. 34, 40 and 55, B.E. 2510 (1967)*

This Act may be considered one of the most important laws in so far as human rights are concerned. Owing to circumstances in the year 1958, when the security of the nation was dangerously threatened and which led to the assumption of power by the Revolutionary Party, the elections for local government (District and Municipal Assemblies) have been suspended by the Revolutionary Party's Proclamations Nos. 34, 40 and 55. Now that the present situation seems to have improved so that the elections for local government can be held, the said Revolutionary Party's Proclamations are therefore abolished by this Act, which provided further that all elections for District and Municipal Assemblies, save those in the Capital area (Districts of Bangkok and Thon Buri), are to take place within ninety days after its enforcement. The reason for delaying elections for local government in the Capital area has been given as to permit the improvement of the administrative system for the Capital, the draft law in respect of which has been in the deliberation of the Government Departments concerned and expected to come into force in the near future.

8. *Royal Proclamation on the Coming into Force of the Agreement between the Thai Government and the South-East Asia Treaty Organization* (SEATO) and *Act on the Protection of the Operation of the Asian Institute of Technology, B.E. 2510 (1967)*

The establishment of the Asian Institute of Technology represents a great step towards the promotion of the right to education through the co-operation of nations on a regional basis (South East Asia). Formerly, the co-operation in this field was in the form of financing and providing facilities and qualified professors to the SEATO graduate School of Engineering, a higher education institute annexed to a Thai University (Chulalonkorn University). The time has come for the transformation of the School of Engineering into an independent regional institution to be known as the Asian Institute of Technology (AIT). The Charter of the AIT has been drawn up and the agreement to give effect to it has been made between the Thai Government and the SEATO. On the part of the Thai Government, a law has been prepared and then passed by the National Assembly with a view to implementing the agreement (Act on the Protection of the Operation of the Asian Institute of Technology, B.E. 2510 (1967)).

The purposes of the AIT as stipulated in its Charter are the operation on a non-profit basis of an institute of technology, including colleges, schools and research organizations thereof, within or outside Thailand, specializing in graduate education; the promotion, advancement, evaluation and dissemination of learning by instruction, study and research in engineering, science and allied fields; the awarding of certificates, diplomas and degrees; and the engagement and participation in projects of instruction, study and research on a regional basis.

All powers of the Institute are vested in the Board of Trustees consisting of not less than seventeen and not more than sixty members, as fixed from time to time in the manner specified in its bye-laws. As required in the Charter, the Board of Trustees must be international in character and composition to the highest degree as practicable. Next to the Board of Trustees is the Executive Committee, which is appointed by the Board and is the administrative body exercising the powers as delegated by the Board.

A number of privileges has been provided for by the Act on the protection of the operation of the AIT in order to ensure the achievement of its purposes. The Institute is recognized as a juristic person and deemed to have domicile in Thailand. It is not subject to the provisions of the Private School Law and the Law relating to the National Education Board. Furthermore, the Institute is exempted from stamp duties, customs duties, business tax, house and land taxes, and local tax in so far as the educational operation of the Institute is concerned. Laws relating to immigration are relaxed for members of the Board of Trustees and the Executive Committee, for the staff of the Institute and for students as well as their spouses, children, relatives and domestic servants under certain conditions (Section 6 of the Act).

II. JUDICIAL DECISIONS

1. *Judgement of the Supreme (Dika) Court No. 38/2510*

The accused was charged with violating Section 10 and Section 66 of the Traffic of Land Act, B E. 2477 (1934) which made overtaking on the left an offence. The accused drove a private motor vehicle and overtook a motor-cycle and a car on the left. He was found guilty and was fined one hundred bahts. An appeal to the Appeal Court was dismissed.

The accused appealed to the Supreme (Dika) Court on the ground that Section 4 of the Traffic on Land Act (No. 4), B.E. 2508, which was enacted during the hearing of the Court of Appeal, abolished Section 10 of the Traffic on Land Act, B.E. 2477, under which the accused had been found guilty. Therefore, Section 2, paragraph 2, of the Penal Code of Thailand, which

stated that "if, according to the law provided afterwards, such an act is no more an offence, the person having done the act shall be relieved from being an offender; and if there is a final judgement inflicting the punishment, such a person shall be deemed as not having ever been convicted by the judgement for committing such offence", should be applied to the case before the Supreme (Dika) Court.

The Supreme (Dika) Court held that Section 2, paragraph 2, of the Penal Code of Thailand was applicable and the appeal was accordingly upheld.

2. *Judgement of the Supreme (Dika) Court No. 162/2510*

The accused was charged with assaulting and causing grievous bodily harm to two police officers who came to arrest him at his house at 5.40 a.m. in connexion with a complaint of robbery committed a week earlier. The officers had neither an arrest warrant nor a search warrant or a special permission from the Provincial Governor, since they thought the case was urgent, whereupon they acted accordingly. The accused, who at that time did not know who the intruders were, immediately attacked the arresting officers with a knife and caused serious injury to one of them.

The Supreme (Dika) Court concurred with the decision of the Appeal Court, which reversed the judgement of the Court of first instance, and held that the entry into a dwelling house by the police officers without an arrest or a search warrant was unlawful, contrary to Section 81 (1) and Section 96 of the Criminal Procedure Code of Thailand, which prohibit an arrest or a search at night in a dwelling house except in special cases. The fact that a warrant or a special permission could not be obtained in time did not automatically make the case one of extreme urgency as to bring it within the exception mentioned in Section 96 (2). The entry was unlawful and the accused's action in self-defence, under the circumstances, was reasonable. The accused was therefore found not guilty of the charge.

3. *Judgement of the Supreme (Dika) Court No. 261/2510*

This case involved the right of the accused to be legally represented.

The accused was charged with negligently causing death by dangerous driving, and the maximum penalty prescribed in Section 291 of the Penal Code of Thailand for such an offence is ten years imprisonment and maximum fine of twenty thousand bahts. Neither the prosecutor nor the accused called a witness to testify, and the accused was sentenced at the end of the trial to 18 months imprisonment.

The Court of Appeal and the Supreme (Dika) Court both held that the accused was not legally represented by a lawyer in the course of the trial in accordance with Section 173 of the Criminal Procedure Code of Thailand which provides that in the case of serious offences punishable with maximum punishment of ten years or upwards, the Court, before commencing the trial, shall ask the accused whether he has a counsel or not; if he has none and requires one, the Court shall appoint one for him. Failure to ask the accused whether he has or requires a counsel or not in this case, is tantamount to a mistrial even though there was no apparent injustice or disadvantage caused to the accused during the course of the trial. Nevertheless both Courts were of opinion that the case should be sent back for a proper trial to the Court of first instance.

III. ECONOMIC AND SOCIAL DEVELOPMENT

The Second Five-Year National Economic and Social Development Plan (1967-1971)

Planning for economic development in Thailand has improved steadily since the establishment of the National Economic Development Board in 1959 as the central planning agency. After the first Economic Development Plan (1961-1966), which was an operational programme of action for the central Government's development expenditures, comes the Second Five-Year National Economic and Social Development Plan (1967-1971) which constitutes another important move towards the acceleration of the economic growth rate and the improvement of the living standard of the Thai people.

The scope of the Second Plan has been broadened to permit more realistic assessment of the potential of the economy as a whole and of the measures necessary to realize development objectives. While the central part of the Plan continues to be the estimation of public sector resources and the sectoral programmes of development expenditures, special emphasis is placed upon the social development to assure that the benefits of economic growth result in improved living standards for all groups in society. Regional planning is introduced to accelerate development in the remote areas of the country; and private sector policies and manpower considerations have become an integral part of the planning process. The comprehensive scope of the Plan has permitted the construction of a target for the over-all economic balance, which projects the movement and interrelationship of investment, consumption and foreign trade for the first time.

The following are the principal policy guidelines of the Plan:

(1) To strive towards further acceleration of the economic growth rate, with emphasis on more equitable distribution of income and social benefits.

(2) To reduce the degree of income inequality and geographical imbalance, emphasis will be put on rural development as a measure to increase income of the rural population in remote areas.

(3) To expand employment opportunities and to improve the quality of human resources, the Plan will emphasize the elevation of workers' skills to meet the economic and social demands of the society.

(4) To accelerate private industrial investment, private economic activities will be strongly promoted and stimulated by the provision of neces-

sary economic infrastructure and healthy environment. The Government's role will be to assist but not to interfere or compete with private business activities.

(5) The primary emphasis will be put on the development of intensive agriculture and the raising of productivity by the greater use of capital and improved techniques, as a means to provide food and employment for a growing population, to provide basic material for an expanding industry and to provide foreign exchange for the payments of imports.

(6) To accelerate the role of science and technology, particularly in the adaptation and application of modern knowledge to the special needs of the country.

(7) Economic and social development must be geared to the necessity to strengthen national security.

(8) Financial stability must be maintained as a means of assuring a healthy economic growth without disturbing the balance of economy and of inspiring international confidence.

(9) Development projects will be implemented in accordance with their priority and will be designed to yield the greatest benefit at the least possible cost.

Thailand's economy progressed satisfactorily during the period of the First Plan (1961-1966), with gross domestic product increasing at an annual rate of 7.2 per cent, from 56,000 million bahts[2] in 1960 to 87,000 million bahts in 1966. The economic growth of the past six years has increased the productive capacity of the nation and improved its structural balance. Agricultural production has been diversified, with new commodity lines contributing to the substantial increases in export earning. Political stability, sound fiscal and monetary policies, stable exchange rates, combined with the marked rise in private and public investment have contributed to the healthy expansion of the economy. The target of the Second Plan is to raise gross domestic product in real terms by an average rate of 8.5 per cent per year. Assuming an increase in population of 3.3 per cent per year, average per capita income will increase at the rate of over 5 per cent per year and rise to about 3,900 bahts by 1971.

Furthermore, the perspective of the Second Plan extends beyond the limits of the five year period. The economic outlook is for a continued rapid growth in output during the Third and Fourth Plans, as the private sector responds to the physical and social infrastructure and the investment climate built under the Second Plan. Gross domestic product is expected to rise by at least 7 per cent per year, doubling the present per capita income by 1981 if the current population growth rate continues.

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[2] SUS 1.00 = 20.80 bahts.

TOGO

NOTE [1]

No decisions relating to human rights were handed down by the Togolese courts during 1967.

The Togolese Constitution of 5 May 1963[2] has been suspended since 13 January 1967 and will be replaced by a new Constitution, which is now in preparation.

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[1] Note communicated by the Government of Togo.

[2] See *Yearbook on Human Rights for 1963*, pp. 307-308.

TUNISIA

ACT No. 67-3 OF 4 JANUARY 1967 AMENDING ACT No. 66-12 OF 14 FEBRUARY 1966 CONCERNING LITERARY AND ARTISTIC COPYRIGHT [1]

Art. 1. Article 3 of Act No. 66-12 of 14 February 1966 concerning literary and artistic copyright is hereby abrogated and replaced by the following provisions:

"*Article 3 (new).* In the absence of proof to the contrary, the author of a work is the person under whose name the work is published.

"However, subject to the provisions of article 21 below, where the work is produced by the agents of a public or private legal person in the exercise of their functions, the copyright belongs to the said agents unless the contract between the person and the agents stipulates otherwise."

Art. 2. Article 21 of the aforesaid Act No. 66-12 of 14 February 1966 is hereby abrogated and replaced by the following provisions:

"*Art. 21 (new).* With regard to cinematographic works, the copyright belongs to the producer of the work.

"The producer of a cinematographic work is the physical or legal person on whose initiative the work is produced and under whose responsibility it is undertaken."

[1] *Journal officiel de la République tunisienne*, No. 28- dated 6 January 1967. The text of Act No. 66-12 of 14 February 1966 is in the *Journal officiel de la République tunisienne*, No. 8, dated 15 February 1966.

Art. 3. Article 37 of the aforesaid Act No. 66-12 of 14 February 1966 is hereby abrogated and replaced by the following provisions:

"*Article 31 (new).* This Act applies to all works which, at the time of its entry into force, are not in the public domain.

"It applies, *inter alia*, to:

"(1) all works the original copyright-holder of which, at the time of completion of the work:

"(*a*) is a national of the Tunisian Republic or is domiciled in the territory of the Tunisian Republic or, being stateless or a refugee, is a permanent resident of Tunisia, in the case of a natural person;

"(*b*) is under the jurisdiction of Tunisia, in the case of a legal person;

"(2) works published for the first time in the territory of the Tunisian Republic or published in that territory within thirty days of the first publication in a foreign country;

"(3) architectural works erected in the territory of the Tunisian Republic and works of art forming an integral part of a building situated in the territory of the Tunisian Republic.

"In the case of a work of collaboration, this Act shall apply even if only one of the collaborators satisfies the conditions set forth in sub-paragraph (1) of the second paragraph of this article."

ACT No. 679-28 OF 30 JUNE 1967, INSTITUTING THE FAMILY RECORD BOOKLET [2]

Art. 1. When a marriage is solemnized or registered, the Civil Registrar shall prepare a family record booklet which he shall remit to the husband on payment of a fee to be determined as prescribed in article 106 *bis* of the municipal law.

Art. 2. The family record booklet shall consist of a folder of standard format conforming to the attached model; it shall contain all information regarding marital status and all changes which occur during the lives of the members of the family.

The family record booklet shall include:

—an extract from the spouses' marriage certificate;
—extracts from the spouses' birth certificates;
—extracts from the birth certificates of children born of the marriage and of adopted children;
—extracts from the death certificates of children who died before marrying;
—extracts from the death certificate of each spouse.

The family record booklet shall also contain any remarks or endorsements which are required to be shown in birth, marriage and death certificates by law or a court decision.

Art. 3. The family record booklet is the document to which the head of the family shall refer whenever he is required to produce documentary evidence concerning the birth, marriage or death of any member of his family.

Each extract or endorsement entered in the family record booklet shall have the probative force attached to extracts from birth, marriage and death certificates and to endorsements in the margin of such certificates.

Art. 4. The husband shall keep the family record booklet and shall be responsible for keeping it up to date by inserting all useful information and endorsements concerning each member of his family.

Art. 5. The clerk of the civil registry who receives or transcribes a registration or any court decision which must be entered or mentioned in the family record booklet shall require the notifier or person who applies for the transcription to produce the booklet for the requisite entries to be made in it without delay.

Art. 6. If the head of the family who kept the family record booklet dies or is deprived of civil rights pursuant to a court decision, the spouse shall, in the absence of any court decision to the contrary, assume responsibility for keeping the family record booklet.

Art. 7. In the event of a divorce, a divorcee who does not remarry shall be entitled, at her request, to receive a duplicate copy of the family record booklet.

Art. 8. When a widow remarries, the marriage shall be entered in the first family record booklet, which, in the absence of any court decision to the contrary, shall remain in her possession.

. . .

Art. 14. No person other than a duly authorized clerk of the civil registry shall be allowed to enter any observation or endorsement in the family record booklet.

Art. 15. Any person who wilfully uses documentary evidence concerning a birth, marriage or death based on an incomplete or incorrect booklet, shall be liable to one year's imprisonment and a fine of 240 dinars.

[2] *Ibid.*, No. 28, 4 July 1967.

DECREE No. 67-391 OF 6 NOVEMBER 1967 RESPECTING HEALTH AND SAFETY AND THE EMPLOYMENT OF WOMEN AND CHILDREN IN ESTABLISHMENTS ENGAGED IN COMMERCE, INDUSTRY AND THE LIBERAL PROFESSIONS [3]

(EXTRACTS)

1. The provisions of this Decree shall apply to establishments engaged in commerce, industry and the liberal professions and to the outbuildings of such establishments, irrespective of their nature and whether public or private, denominational or non-denominational, and even if engaged in vocational training or charitable purposes.

They shall also apply to handicraft establishments, lawyers' offices, non-trading corpor-

[3] *Journal officiel*, No. 47 of 7-10 November 1967. The text of the Decree in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series*, 1967—Tun. 1.

ations, co-operative societies, trade unions, associations and establishments where only the members of one family are employed under the authority of the father, mother or guardian.

2. The establishments referred to in section 1 of this Decree shall be kept in a constant state of cleanliness and fulfil such hygiene conditions as are necessary for the health of the persons employed in them.

They shall be installed in such a way as to guarantee the workers' safety.

All machines, mechanical equipment, transmission gear, tools and appliances shall be installed and maintained in the best possible safety conditions.

. . .

6. Orders made by the Secretary of State for Youth, Sports and Social Affairs after consultation with the trade union organisations concerned shall lay down:

(1) the general safety and health measures applicable to all establishments covered by this Decree, including such measures as lighting, ventilation, drinking water, sanitation, the removal of dust and fumes, fire precautions, protection against electric currents, sleeping arrangements for the employees, etc.;

(2) as and when the need arises, special provisions relating to certain occupations or types of work.

7. For the purpose of giving effect to the orders referred to in the preceding section a labour inspector shall, before reporting an offence, give the head of an undertaking notice to comply with those provisions of the orders in respect of which this procedure has been laid down.

. . .

8. No head of an establishment, director, manager, superintendent, supervisor or yard foreman or other person having authority over the employees shall allow a person in a state of drunkenness to enter or remain in any establishment covered by section 1 of this Decree.

9. Children shall not be employed in or admitted to any establishment covered by section 1 of this Decree unless they are physically fit to perform the work entrusted to them.

10. In all convent needlework schools, orphanages and charity workshops attached to religious or lay establishments a notice shall be permanently displayed in each workroom showing in easily legible characters the conditions and daily arrangements for the children's work (hours of manual work, meal times, hours of study and rest). This notice shall be approved and signed by the labour inspector.

A complete list of the children being educated in such establishments, giving their full names and dates and places of birth and certified by the head of the establishment concerned shall be produced for the inspector at his request and shall indicate any changes that have taken place during the last quarter.

. . .

ACT No. 67-47 OF 21 NOVEMBER 1967 REGARDING THE PLACING OF CHILDREN IN FOSTER-HOMES [4]

Art. 1. Children who have no family, who are abandoned or whose families are temporarily or permanently unable to provide for their care and upbringing, may be placed with families chosen for this purpose by the State Secretariat of Youth, Sports and Social Affairs. These families shall have custody of them, with the agreement of their legal guardian, if any.

Art. 2. A family accepting such children shall undertake to provide for their care and upbringing during the period agreed upon with the State Secretariat of Youth, Sports and Social Affairs. With the agreement of the State Secretariat, the family may replace this foster-care arrangement by unofficial guardianship or possibly even by adoption, in conformity with the provisions of Act No. 58-27 of 4 March 1958 on public guardianship, unofficial guardianship and adoption.

Art. 3. Families with which children are placed shall receive material compensation to be fixed by an order of the State Secretariat of Youth, Sports and Social Affairs, to enable them to meet the cost of caring for and bringing up the children.

Furthermore, where a child is placed in a foster-home pursuant to this Act, the head of the family accepting him shall thereby become entitled to a family allowance, being placed on the same footing as a person having legal custody of a child, as provided in article 53, paragraph 4, of Act No. 60-30 of 14 December 1960, respecting the social security schemes.

Art. 4. The child welfare services of the State Secretariat of Youth, Sports and Social Affairs shall periodically check on children placed in foster-homes pursuant to this Act.

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[4] *Ibid.*, No. 49 of 24 November 1967.

Art. 5. The families concerned shall undertake to treat the children placed with them as their own children.

They shall undertake in particular to provide them with an education and not to burden them with household duties other than those normally assigned to their own children.

Should the undertakings specified in the preceding paragraph not be fulfilled or should the checks to be carried out by the child welfare services of the State Secretariat of Youth, Sports and Social Affairs be obstructed, the head of the family concerned shall be liable to a fine of 20 to 100 dinars.

TURKEY

LABOUR ACT

Act No. 931 of 28 July 1967 [1]

(EXTRACTS)

Chapter I

GENERAL PROVISIONS

1. The term "employee" means any person working under a contract of employment in any job for wages; the term "employer" means any person or body corporate employing an employee, and the term "undertaking" means any place where such work is performed.

All premises used by reason of the nature and execution of the work and all facilities such as restrooms, day nurseries, dining rooms, dormitories, bathrooms, rooms for medical examinations and nursing, places for physical or vocational training and courtyards shall be deemed to be part of the undertaking.

The term "employer's representative" means any person acting in the undertaking on behalf of the employer and charged with the direction of the work and workplace. The employer shall be answerable for the conduct of his representative and shall be bound by the obligations contracted by the latter as his representative in relation to the other employees.

Any obligations and responsibilities for which the employer is liable under this Act shall also be assumed by his representative. Duties carried out by the employer's representative as such shall not affect the employees' rights and obligations under this Act.

Where a subcontractor operates a specified section of the undertaking or one of its subordinate facilities, the principal employer and the subcontractor shall be jointly liable for the obligations ensuing from this Act or from the contracts of employment of any employees of the subcontractor working exclusively in the undertaking in question or its subordinate facility.

2. This Act shall apply to all undertakings, except those mentioned in section 5, and to all employers, employers' representatives and employees of those undertakings, regardless of the character of the operations involved.

3. Every employer who establishes or takes over an undertaking covered by this Act, who completely or partly changes the nature of his business, or who permanently closes down an undertaking because of the completion of the work or for any other reason shall, within one month in the case of an undertaking providing continuing employment, notify the Regional Directorate of Labour of the name and address of the undertaking, the number of employees, the type of business, the date on which the undertaking began to operate or was closed down, his own name and address and the names and addresses of his representatives, if any.

The responsible authority in the Regional Directorate of Labour shall acknowledge receipt of such notice by issuing a formal notification.

4. All undertakings, employers, employers' representatives and employees shall be subject to this Act as from the date on which they fall within the purview of section 2, regardless of the notification date referred to in section 3.

. . .

8. Employment which owing to its nature does not last more than 30 working days shall be deemed to be temporary employment and employment for a longer period shall be deemed to be permanent employment.

. . .

[1] *Resmî Gazete*, No. 12672 of 12 August 1967. Translations of the Act into English and French have been published by the International Labour Office as *Legislative Series*, 1967—Tur. 1.

Chapter II

CONTRACTS OF EMPLOYMENT

9. Contracts of employment for a fixed period of one year or more shall be concluded in writing.

. . .

If no written contract is concluded, the employer shall be required, if so requested at any time, to deliver to the employee a document bearing his signature and stating the general and special conditions of employment.

. . .

10. A contract concluded between an employer and a gang of employees represented by an employee acting as the ganger shall be known as a "gang contract".

Every gang contract shall be concluded in writing, irrespective of its duration.

. . .

[Other provisions of the Act deal with wages; organization of work; employees' health and safety; employment service; supervision and inspection of working conditions; and social insurance.]

UGANDA

THE POLICE (AMENDMENT) ACT, 1967

Act No. 1 of 1967, assented to on 8 February 1967 and entered into force on 9 February 1967 [1]

. . .

1. The Police Act is hereby amended by the insertion of the following new section after section 27 thereof.

"27A. (1) Any police officer not below the rank of Assistant Inspector of Police making an investigation into any offence may in writing,

"(*a*) require the attendance before him of any person whom he has reason to believe has any knowledge which will assist in the investigation; and

"(*b*) require the production of any document, matter or thing relevant to the offence under investigation.

"(2) The attendance required under the provisions of the preceding subsection may be required at the nearest police station or police office situated within the area within which that person resides or for the time being is or is found.

"(3) Subject to the provisions of the next succeeding subsection, any person who having been requested to attend or to produce a document or other matter or thing under the provisions of subsection (1) of this section,

"(*a*) fails to attend as required,

"(*b*) refuses, having so attended, to give his correct name and address,

"(*c*) refuses to answer truly any question that may be lawfully put to him, or

"(*d*) refuses to produce any relevant document, matter or thing which may be in his possession or under his authority,

commits an offence and shall be liable on conviction to a fine not exceeding five thousand shillings or to a term of imprisonment for a period not exceeding six months or to both such fine and imprisonment.

"(4) No person shall be required to answer any question under the provisions of this section which might tend to expose him to any criminal charge, penalty or forfeiture.

"(5) Any police officer may record any statement made to him under the provisions of this section and take possession of any relevant document, matter or thing produced by the person making the statement, whether or not such person is suspected of having committed an offence.

"(6) Where a police officer has decided to charge any person with an offence, he shall before recording a statement from such person pursuant to the provisions of the immediately preceding subsection, administer the caution required to be administered under the provisions of the Evidence (Statements to Police Officers) Rules, 1961.

". . ."

[1] Printed and published by the Government Printer, Entebbe, Uganda.

THE JUDICATURE ACT, 1967

Act No. 11 of 1967, assented to on 12 June 1967 and entered into force on 14 June 1967 [2]

...

PART I

COURTS OF JUDICATURE

1. (1) The Courts of Judicature shall be,

(*a*) the High Court as established by the Constitution; and

(*b*) the Court of Appeal as established under the Appellate Jurisdiction Act.

(2) Each court of judicature shall have and exercise such jurisdiction as is conferred upon it by or under the Constitution and by this or any other enactment.

PART II

THE HIGH COURT

JUDGES, JURISDICTION AND LAW

2. The judges of the High Court shall be the Chief Justice and such number of puisne judges not being less than six as may be prescribed by resolution passed in that behalf by the National Assembly.

3. (1) Pursuant to the provisions of clause (3) of article 91 of the Constitution, the High Court shall be a superior court of record and shall have full jurisdiction, civil and criminal, over all persons and over all causes and all matters in Uganda.

(2) Subject to the provisions of the Constitution and of this Act, the jurisdiction of the High Court shall be exercised,

(*a*) in conformity with the written law including any law in force immediately before the commencement of this Act;

(*b*) subject to any written law and in so far as the same does not extend or apply, in conformity with,

(i) the common law and the doctrines of equity;

(ii) any established and current custom or usage; and

(iii) the powers vested in, and the procedure and practice observed by, the High Court immediately before the commencement of this Act in so far as any such jurisdiction is consistent with the provisions of this Act; and

(*c*) where no express law or rule is applicable to any matter in issue before the High Court, in conformity with the principles of justice, equity and good conscience.

(3) The applied law, the common law and the doctrines of equity shall be in force only in so far as the circumstances of Uganda and of its peoples permit, and subject to such qualifications as circumstances may render necessary.

(4) Subject to the provisions of subsection (3) of this section, in every cause or matter before the High Court, the rules of equity and the rules of common law shall be administered concurrently; and, if there is a conflict or variance between the rules of equity and the rules of common law with reference to the same subject, the rules of equity shall prevail.

(5) For the purposes of this section, the expressions "common law" and "doctrines of equity" mean those parts of the law of Uganda, other than the written law, the applied law or the customary law, observed and administered by the High Court as the common law and the doctrines of equity respectively, immediately before the commencement of this Act.

4. The High Court shall have jurisdiction to hear and determine all matrimonial causes.

5. The High Court shall be a Court of Probate and shall exercise probate jurisdiction in all matters relating to the estates of deceased persons.

6. The High Court shall be a Court of Admiralty and shall exercise admiralty jurisdiction in all matters arising upon any lake or other navigable inland waters or otherwise relating to ships or shipping and shall, in the exercise of such jurisdiction, have regard to international law and the comity of nations.

7. The High Court shall be a Prize Court and shall exercise all jurisdiction in matters of prize and shall have power to enforce any order or decree of the Court of Appeal in a prize appeal.

8. (1) Nothing in this Act shall deprive the High Court of the right to observe or enforce the observance of, or shall deprive any person of the benefit of, any existing custom, which is not repugnant to natural justice, equity and good conscience and not incompatible either directly or by necessary implication with any written law.

(2) No party to a suit shall be entitled to claim the benefit of any custom if it appears from express contract or from the nature of the transaction out of which the suit or question has arisen that such party agreed that his obligations in connection with the transaction shall be regulated exclusively by law, other than by the customary law.

9. The High Court shall have power to appoint and control,

(*a*) guardians of infants and the estates of infants;

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[2] Printed and published by the Government Printer, Entebbe, Uganda.

(*b*) keepers of persons and estates of idiots, lunatics and persons of unsound mind who are unable to govern themselves and their estates.

10. (1) Subject to the provisions of this Act, the High Court shall have jurisdiction to hear and determine appeals which lie to it by virtue of any enactment from decisions of magistrates' courts in the exercise of their original or appellate jurisdiction.

(2) The High Court shall determine any questions of law referred to it by way of case stated by a magistrate in accordance with any enactment.

11. The High Court shall exercise general powers of supervision over magistrates' courts.

. . .

PROVISIONS RELATING TO CERTAIN TRIALS

21. Where any person is charged with any offence committed on any vessel registered in Uganda upon the sea or any other waters outside the jurisdiction of the High Court, any public officer and the High Court shall have and exercise the same authorities and jurisdiction for inquiring into, trying and determining such offence as by the law of Uganda would have been exercised if the offence had been committed upon any waters situate within Uganda.

. . .

INQUIRIES AND TRIALS BY REFEREES, ETC

25. (1) The High Court may in accordance with Rules of Court refer to an official or special referee for inquiry and report any question arising in any cause or matter, other than in a criminal proceeding.

(2) The report of an official or special referee may be adopted wholly or partly by the High Court and if so adopted may be enforced as a judgment or order of the High Court.

. . .

REMEDIES

32. The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, any written law or this enactment, grant, absolutely or on such terms and conditions as it thinks just, all such remedies whatsoever as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicities of legal proceedings concerning any of those matters avoided.

33. (1) The High Court,

(*a*) may, at any time, where a person is deprived of his personal liberty otherwise than in execution of a lawful sentence (or order) imposed on him by a competent court, upon complaint being made to the High Court by or on behalf of that person and if it appears by affidavit made in that behalf that there is a reasonable ground for such complaint, award under the seal of the court, a writ of habeas corpus *ad subjiciendum* directed to the person in whose custody the person deprived of his liberty is; and when the return is made the judge, before whom such writ is returnable, shall inquire into the truth of the facts set out in the affidavit and may make any order as the justice of the case requires;

(*b*) may award a writ of habeas corpus *ad testificandum* or habeas corpus *ad respondendum* for bringing up any prisoner detained in any prison before any court, a court-martial, an official or special referee, an arbitrator or any commissioners acting under the authority of any commission from the President, for trial, or as the case may be, to be examined touching any matter to be inquired into by or pending before a court, a court-martial, an official or special referee, an arbitrator or the commissioners.

(2) The Chief Justice may, by statutory instrument make rules prescribing the procedure to be followed in application and award of a writ of *habeas corpus* in cases under this section.

34. (1) The High Court may make an order as the case may be of,

(*a*) mandamus, requiring any act to be done;
(*b*) prohibition, prohibiting any proceedings or matter; or
(*c*) certiorari, removing any proceedings or matter into the High Court.

(2) No order of mandamus, prohibition or certiorari shall be made in any case in which the High Court is empowered, by the exercise of the powers of review or revision contained in this or any other enactment, to make an order bearing the like effect as the order applied for or where the order applied for would be rendered unnecessary.

(3) No return shall be made to any order made under the provisions of this section and no pleadings in prohibition shall be allowed and subject to any right of appeal the order shall be final.

(4) The Chief Justice may make rules of court,

(*a*) prescribing the procedure and the fees payable on documents filed or issued in cases where an order of mandamus, prohibition or certiorari is sought;
(*b*) requiring, except in such cases as may be specified in the rules, that leave shall be obtained before an application is made for any such order;
(*c*) requiring that, where leave is obtained, no relief shall be granted and no ground relied upon, except with the leave of the court, other than the relief and grounds specified when the application for leave was made.

(5) Subject to the provisions of subsection (6) of this section, rules made under subsection (4) of this section may prescribe that applications for an order of mandamus, prohibition or certiorari shall, in specified proceedings, be made within six months or such shorter period as may be prescribed after the act or omission to which the application for leave relates.

(6) In the case of an application for an order of certiorari to remove any judgment, order,

decree, conviction or other proceeding for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of the proceedings or such shorter period as may be prescribed under any Act; and where the proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

35. (1) The High Court may grant a mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the High Court to be just or convenient to do so.

(2) An order may be made under the provisions of this section unconditionally or on such terms and conditions as the High Court thinks just.

36. (1) The High Court shall have power to grant an injunction to restrain any person from doing any act as may be specified by the High Court.

(2) Where an injunction is granted restraining any person from acting in any office in which he is not entitled to act, the High Court may declare the office to be vacant.

(3) Where before, at or after the hearing of any cause or matter, an application is made for an injunction to prevent a threatened or apprehended waste or trespass, an injunction may be granted, if the High Court thinks fit,

(*a*) whether or not the person against whom the injunction is sought is in possession under any claim of title or claims a right to do the act sought to be restrained under any colour of title; and

(*b*) whether the estates claimed by the parties or any of the parties are legal or equitable.

PROVISIONS RELATING TO APPEALS FROM THE HIGH COURT

37. (1) Subject to the provisions of subsection (2) of this section, the High Court may, where any appeal lies from its judgment, extend the time,

(*a*) for giving notice of intention to appeal, or

(*b*) for making an application for leave to appeal, or

(*c*) for a certificate that the case is fit for appeal,

notwithstanding that the time for giving such notice or making such application has already expired.

(2) In a criminal case the High Court shall not extend the time under this section after the issue of the warrant for the execution of a sentence of death.

...

THE CONSTITUENT ASSEMBLY ACT, 1967

Act No. 12 of 1967, assented to on 12 June 1967 and entered into force on 14 June 1967 [3]

...

1. The National Assembly may from time to time resolve itself into a Constituent Assembly with full power to enact such provisions for or in connection with the establishment of a new Constitution as it thinks fit.

...

6. (1) Any proposals for a new Constitution if adopted by the Constituent Assembly under this Act shall become law and constitute the Constitution of Uganda as by law established notwithstanding that the President has not given his assent thereto.

(2) Any proposals for a new Constitution shall not be adopted in the Constituent Assembly unless they have been supported on the motion for the enactment or adoption of the Constitution by the votes of a majority of all the members of the Constituent Assembly.

...

[3] Printed and published by the Government Printer, Entebbe, Uganda.

THE PUBLIC ORDER AND SECURITY ACT, 1967

Act No. 20 of 1967, assented to on 21 October 1967 and deemed to have come into force immediately after the commencement of the Constitution [4]

. . .

Restriction and detention orders

1. (1) Where it is shown to the satisfaction of the President,

(*a*) that any person has conducted, is conducting or is about to conduct himself so as to be dangerous to peace and good order in Uganda or any part thereof, or that he has acted, is acting or is about to act in a manner prejudicial to the defence or security of Uganda or any part thereof; and

(*b*) that it is necessary to prevent such person from so conducting himself or so acting,

the President may by order under his hand and the Public Seal, direct the restriction or detention of that person.

(2) For the purposes of this section any information given to the President shall be on oath unless the President is satisfied that it is not feasible or practicable to require such information to be given on oath.

(3) Where a police officer of or above the rank of Inspector of Police has reasonable suspicion that any person has conducted, is conducting or is about to conduct himself or has acted, is acting or is about to act in such a manner as is referred to in paragraph (*a*) of subsection (1) of this section, he may apprehend that person without a warrant and place him in protective custody for a period not exceeding fourteen days pending any order under this section.

2. Where a person is detained under or by virtue of the Emergency Powers Act and the President is satisfied that in the interests of public order, security or defence of Uganda or any part thereof, the continued detention or restriction of such person is necessary when the emergency proclamation ceases to have effect, the President may, by order under his hand and the Public Seal, direct the restriction or detention of that person.

Restriction

3. A restriction order may contain such provisions as the President considers necessary in respect of the person in respect of whom the order is made,

(*a*) restricting that person to his own residence or, in case restriction to his own residence is for special reasons undesirable, to any other residence, place or area;

(*b*) prohibiting or restricting the possession or use by that person of any articles or classes of articles;

(*c*) imposing restrictions on his association or communication with other persons;

(*d*) requiring him to notify his movements in such manner, at such times and to such authority as may be so specified.

4. (1) A restriction order made under the provisions of section 1 of this Act shall be served by a police officer of or above the rank of Assistant Superintendent of Police.

(2) A police officer serving a restriction order under the provisions of the immediately preceding subsection or any other person acting under his authority may search without a warrant the person, property, office or place of business of the person in respect of whom a restriction order is in force.

5. (1) Any person in respect of whom a restriction order is in force who contravenes any of the conditions of the restriction order commits an offence and shall be liable on conviction for the first offence to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding three years, and on conviction for a second or subsequent offence to imprisonment for a term not exceeding five years.

(2) Any person who knowingly attempts to communicate or who communicates with any person in contravention of any of the conditions of a restriction order, commits an offence and shall be liable on conviction for the first offence to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding three years, and on conviction for a second or subsequent offence to imprisonment for a term not exceeding five years.

6. Any person in respect of whom a restriction order is in force who commits an offence under this Act may be arrested without a warrant.

Detention

7. A detention order shall constitute an authority to any police officer to arrest the person in respect of whom it is made and for any police or prison officer to detain such person as a civil prisoner.

8. The President may, by statutory instrument, make regulations,

(*a*) applying to persons detained under this Act any of the provisions of the Prisons Act or of any rules made thereunder relating to convicted criminal prisoners and disapplying in relation to such persons any of such provisions relating to civil prisoners; and

(*b*) prohibiting, regulating and controlling visits to, and correspondence to or from, such persons,

[4] Printed and published by the Government Printer, Entebbe, Uganda.

and where the President makes any such regulations, the Prisons Act and any rules made thereunder shall have effect in relation to such persons subject to the provisions of such regulations.

GENERAL

9. Where a restriction or detention order is made, a notification shall be published in the *Gazette* not more than thirty days after the commencement of the restriction or detention stating that the person in respect of whom the restriction or detention order is in force has been restricted or detained under the provisions of this Act.

10. For the purposes of article 10 of the Constitution, there is hereby established a tribunal which shall consist of a chairman to be appointed by the Chief Justice and not less than two nor more than five other members to be appointed by the President.

11. The President may,

(*a*) rescind any order made under this Act;

(*b*) direct that the operation of an order made under this Act be suspended subject to such conditions, if any, as may be specified in such direction,

(i) requiring the person in respect of whom the order is made to notify his movements in such manner, at such times and to such authority or person as may be so specified; and

(ii) requiring him to enter into a bond with or without sureties for the observance of any such conditions aforesaid,

and if that person fails to comply with a condition attached to such a direction, he shall, whether or not the direction is revoked, be restricted or detained under the original order.

12. The powers and duties conferred upon the President under this Act may be exercised by such Minister as the President may authorise in that behalf.

. . .

THE SOCIAL SECURITY ACT, 1967

Act No. 21 of 1967, assented to on 21 October 1967 [5]

. . .

ESTABLISHMENT OF SOCIAL SECURITY FUND

1. (1) There is hereby established, under the control and management of the Minister, a fund to be called the Social Security Fund into which there shall be paid all contributions and all other payments made in accordance with the provisions of this Act and out of which there shall be paid all benefits and other payments required by this Act to be paid out of the Fund.

. . .

2. (1) There shall be constituted a council to be called the Social Security Advisory Council to advise and assist the Minister in the performance of his functions under this Act and to perform any other functions under this Act assigned to it by the Minister.

. . .

ELIGIBILITY, MEMBERSHIP AND REGISTRATION

3. (1) Any employee of or above the age of sixteen years and under the age of sixty-five years, except,

(i) an employee employed in excepted employment;

(ii) a temporary employee;

(iii) an employee not employed in Uganda;

(iv) a non-resident employee,

is, for the purposes of this Act, an eligible employee.

(2) Notwithstanding the provisions of subsection (1) of this section, the Minister may, by statutory order, declare the following employees or class of employees eligible employees, that is to say,

(*a*) any temporary employees or any class of temporary employees,

(*b*) any non-resident employees or any class of non-resident employees,

(*c*) any employees not employed in Uganda or any class of employees not employed in Uganda,

and he may, in such order or in a subsequent order, modify the application of this Act to any or all such employees or class of employees mentioned in the order.

4. (1) The Minister may, by statutory order,

(*a*) specify any class or description of eligible employees as persons who shall be registered as members of the Fund, and

(*b*) specify any class or description of employers as persons who shall be registered as contributing employers.

(2) When the Minister has made an order under the immediately preceding subsection, any person to whom such order applies shall register himself in the prescribed manner; and any

[5] Printed and published by the Government Printer, Entebbe, Uganda.

employer of a class or description specified in the order as a contributing employer, whether such employer is registered or not, shall be subject to the same extent to those provisions of this Act which apply to a registered contributing employer.

. . .

6. Any person registered as a contributing employer who,

(*a*) no longer employs an eligible employee; or

(*b*) throughout the two years immediately preceding his application under this section has employed fewer than the minimum number of employees required by or under this Act for compulsory registration,

may apply to the director, in the form approved by the Minister, for the cancellation of his registration; and the director shall, if he is satisfied with the information contained in such application, cancel the registration.

. . .

BENEFITS

16. (1) Benefits shall be of the following descriptions, namely,

(*a*) age benefit;

(*b*) withdrawal benefit;

(*c*) invalidity benefit;

(*d*) emigration grant;

(*e*) survivor's benefit.

. . .

UKRAINIAN SOVIET SOCIALIST REPUBLIC[1]

In 1967, which was the fiftieth anniversary of the Ukrainian Soviet Socialist Republic, new successes were achieved in the development of all branches of the national economy, science, culture and in the further raising of the level of living of the population.

The data given below from the report of the Central Statistical Board of the Council of Ministers of the Ukrainian SSR on the fulfilment of the State plan for the development of the national economy of the Ukrainian SSR in 1967 offer striking evidence of the practical implementation of social, economic and cultural rights in the Ukrainian SSR.

The average annual number of manual and non-manual workers employed in the national economy of the Ukrainian SSR was 14,530,000, an increase of 557,000 over 1966.

In the past year, the changeover to a five-day working week with two days off for manual and non-manual workers was carried out.

The average monthly cash wage for manual and non-manual workers in the national economy of the Ukrainian SSR increased to more than 97 roubles, a rise of 3 per cent over the preceding year. With the addition of payments and benefits from social consumption funds, average monthly earnings rose from 131 roubles in 1966 to 134.8 roubles a month in 1967. The wages of collective farm workers for collective production increased by 3 per cent over 1966. A total of 82.4 per cent of the collective farms changed over to a guaranteed monthly wage, based on the wage rates of the corresponding categories of State farm workers.

Payments and benefits received by the population from social consumption funds totalled 8,800 million roubles in 1967 as against 8,200 million roubles in 1966. From these funds, the population of the Republic was provided with pensions and allowances, social insurance and social security payments, free education and medical care, education grants, and free or reduced-rate passes to sanatoria and rest homes; paid vacations; maintenance of children in nurseries and crèches, and other social and cultural facilities.

Housing construction was carried out on a large scale. More than 400,000 apartments and individual houses with a total floor (living) space of 19.1 million square metres financed by State and co-operative undertakings and organizations, collective farms and individuals were brought into occupancy in towns and rural localities in the Republic. About 1.8 million people either moved into new dwellings or improved their living conditions in existing housing.

A large number of general education schools, children's pre-school establishments, hospitals and polyclinics, and many other cultural and social facilities were built with funds provided by the State and collective farms.

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

More than 13.6 million people in the Republic have been receiving education in various forms. Some 8.5 million persons are studying in general education schools of all kinds, 767,000 in higher educational establishments, and 749,000 in technical schools and other specialized secondary educational establishments.

In the past year, 785,000 persons graduated from eight-year schools and 535,000 persons graduated from general education secondary schools.

Enrolment in extended day schools and groups exceeded 911,000, an increase of more than 140,000 over the previous year.

In 1967, there were 383,000 persons enrolled in higher and specialized secondary educational establishments, including 153,000 in higher educational establishments and 230,000 in technical schools.

The number of specialists with higher and specialized secondary education absorbed into the national economy exceeded the figure for 1966 by 34,200 or 16 per cent. Some 92,900 persons graduated from higher educational establishments in the past year, and 156,800 graduated from specialized secondary educational establishments.

More than 160,000 skilled workers were trained at vocational-technical colleges and schools. In addition, by means of individual and group apprenticeship and course instruction given directly at enterprises and collective farms, about

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

3.3 million persons improved their qualifications or learned new trades.

The number of scientific workers employed in scientific institutions, higher educational establishments and other institutes and organizations was approximately 105,000 at the end of the year.

In 1967, there were 27,300 cinema installations in operation in the Republic, and cinema attendance totalled more than 860 million.

Medical services to the population improved. There was an increase in the number of doctors in all branches of medicine and in the number of beds in hospitals, sanatoria, rest homes and boarding schools.

The population of the Republic on 1 January 1968 was 46.4 million.

(From the newspaper, *Pravda Ukrainy*, 22 January 1968.)

There were no fundamental changes in 1967 in the legislation of the Ukrainian SSR concerning human rights. However, a few legislative and regulatory measures were adopted during the year for the further protection and implementation of human rights.

The Presidium of the Supreme Soviet of the Ukrainian SSR adopted an Order dated 7 January 1967 concerning arrangements for voting at elections to the Supreme Soviet and local Soviets of Working People's Deputies of the Ukrainian SSR for voters who, because of transport difficulties, are unable to reach the polling centres to vote on election day. The Order provides that district electoral boards may organize the collection of voting papers at points where particular groups of voters are located.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, 1967, No. 2, page 19.)

By a decree of 28 February 1967, the Presidium of the Supreme Soviet of the Ukrainian SSR confirmed the Regulation on supervisory boards of executive committees of district and city Soviets of Working People's Deputies of the Ukrainian SSR. The supervisory boards were entrusted with the following duties:

(*a*) To exercise continuous public supervision over the activities of correctional labour institutions and organs which execute judicial sentences of compulsory change of residence, exclusion from present place of residence and correctional labour without deprivation of liberty, ensuring that those institutions and organs comply with the regulations and conditions governing the maintenance of convicted persons; and similarly to supervise the correct use of those persons' labour and the organization of their labour, general education and vocational and technical training, the conduct of rehabilitation work and the correct use of penalties imposed on and incentives offered to convicted persons; and to provide the necessary assistance to those institutions and organs in carrying out the activities in question;

(*b*) To encourage the public to provide assistance to the authorities administering the correctional labour institutions and organs which execute judicial sentences of compulsory change of residence, exclusion from present place of residence and correctional labour without deprivation of liberty, in the task of reform and re-education of convicted persons;

(*c*) To provide assistance to public organizations and working people's collectives in the re-education and reform of persons for whose good behaviour they have been made responsible, convicted persons who are conditionally at liberty, or persons on whom a penalty not entailing deprivation of liberty has been imposed, and to supervise the organization and conduct of this work in undertakings, institutions and organizations;

(*d*) To record, and to exercise public supervision over the behaviour, in their daily life and at work, of persons who have been sentenced more than once, after they have served their sentences and have returned from the places in which they have been detained;

(*e*) To provide the necessary assistance for the working and living arrangements of persons who have been released from the places in which they have been detained or who have served sentences entailing compulsory change of residence or exclusion from previous place of residence.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, 1967, No. 10, page 89.)

The Central Committee of the Communist Party of the Ukraine, the Council of Ministers of the Ukrainian SSR and the Ukrainian Republican Council of Trade Unions adopted a joint order dated 27 March 1967 on the changeover to a five-day working week with two days off for manual and non-manual workers in undertakings, institutions and organizations. The order stipulated that the changeover to a five-day working week for manual and non-manual workers, without affecting the existing total of working time per week, should be completed by the end of 1967.

(*Collection of Orders of the Ukrainian SSR*, 1967, No. 3, page 23.)

In accordance with an order of the Presidium of the Supreme Soviet of the Ukrainian SSR of 24 May 1967 concerning the organization of the work of codifying the legislation of the Ukrainian SSR, it is intended shortly to prepare new Codes regulating juridical family and marriage relationships, and juridical relationships in the sphere of administrative management and correctional labour law.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, 1967, No. 21, page 178.)

A decree of the Presidium of the Supreme Soviet of the Ukrainian SSR of 28 July 1967 confirmed the Regulation concerning the liability to disciplinary action of judges of the Ukrainian SSR. The provisions of that instrument are aimed at ensuring the strict and undeviating observance by judges at the various levels of the judicial system of the Ukraine of existing laws and moral

standards and their unimpeachable conduct when discharging their functions. The Regulation enumerates the misdemeanours of judges that are subject to disciplinary action, the forms of disciplinary penalties which may be applied to judges and the procedure for applying them.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, 1967, No. 31, page 227.)

On 15 December 1967, the Council of Ministers of the Ukrainian SSR approved an order concerning measures to expand the network of homes for elderly and disabled persons, and to improve living conditions in such homes. Under that order, Ministry of Social Security of the Ukrainian SSR and the local authorities are to provide for the construction and bringing into occupancy of homes for elderly and disabled persons, the adaptation of certain homes to accommodate persons suffering from nervous and mental diseases, the allocation of an additional number of doctors, and the improvement of the relevant services.

(*Collection of Orders of the Ukrainian SSR*, 1967, No. 12, page 177.)

By order of 28 December 1967, the Council of Ministers of the Ukrainian SSR confirmed the Regulation concerning pension award boards attached to the executive committees of district (city) Soviets of Working People's Deputies. The main tasks of such boards are: the correct and prompt award of pensions; assistance to citizens in obtaining documents required for the award of pensions; assistance to pension boards of factory and workshop committees and local committees of trade unions in the organization of their work; further expansion of public participation in the activities of social security institutions.

(*Collection of Orders of the Ukrainian SSR*, 1967, No. 12, page 195.)

UNION OF SOVIET SOCIALIST REPUBLICS

MEASURES TO IMPROVE THE WELL-BEING OF THE SOVIET PEOPLE [1]

In implementation of the decisions of the XXIII Congress of the Communist Party of the Soviet Union concerning the further increase in the material well-being of the Soviet people, the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the Union of Soviet Socialist Republics decide as follows:

From 1 January 1968, the following measures to improve the well-being of the Soviet people shall be put into effect:

(*a*) The minimum pay of manual and non-manual workers in all branches of the national economy shall be raised to 60 roubles a month;

For this purpose, the wage rates and salary scales for manual and non-manual workers shall be fixed at a level of not less than 60 roubles a month, and for certain categories of workers such rates and scales shall be raised to up to 70 roubles a month;

During the first half of 1968, the rates of machine operators in machine-building and metal-working plants and workshops in all branches of the national economy shall be raised on an average by 15 per cent;

(*b*) Differentials shall be introduced in the pay of manual and non-manual workers in enterprises and organizations concerned with light industries, the food industry, education, health, housing and utilities, science, culture and other branches of the economy in regions of the Far East and the European North in which such differentials did not hitherto apply;

(*c*) Benefits enjoyed by persons working in the regions of the Far North and in localities assimilated to such regions shall be extended: payments in such regions and localities of the regular percentage pay supplements shall be made after a shorter period of employment, bonuses shall be paid to manual and non-manual workers employed in newly opened-up areas, and other measures shall be taken to extend benefits for such persons;

(*d*) The period of leave for workers at present entitled to a total of twelve working days shall be increased to fifteen working days;

(*e*) Taxes on the wages and salaries of manual and non-manual workers shall be further reduced or abolished. For this purpose, the tax on wages and salaries of from 61 to 80 roubles shall be reduced by an average of 25 per cent;

(*f*) The level of allowances to temporarily incapacitated manual and non-manual workers shall be raised to 100 per cent of their wages or salary after more than eight years' employment and to 80 per cent of the said wages or salary after from five to eight years' employment;

(*g*) For the purpose of improving pension provisions:

The pension levels for disabled ex-servicemen with the rank of private, sergeant or sergeant-major, who were disabled as a result of wounds, shell-shock or multilation incurred in the defence of the USSR or in the performance of other military duties, or as a result of illness connected with their presence at the front, shall be raised by 15 roubles a month, up to the maximum limits, for disabled veterans in groups I and II, while from 1 May 1968, the minimum pension level for disabled veterans in group III shall be raised from 21 to 30 roubles a month;

The pension levels for disabled veterans with the rank of officer or of senior and intermediate common personnel who were disabled as a result of a wound, shell-shock or mutilation incurred in the defence of the USSR or in the performance of other military duties, or as a result of illness connected with their presence at the front, shall be raised by 25 roubles a month, up to the maximum limits, for disabled ex-servicemen in groups I and II, calculated on their rate of functional pay, regardless of their pay according to rank, and form 1 May 1968, the minimum pension level for disabled ex-servicemen in group III shall be raised to 40 roubles a month;

The age for receipt of an old-age pension for ex-servicemen who were disabled as a result of a wound, shell-shock or mutilation incurred in the

[1] Text furnished by the Government of the Union of Soviet Socialist Republics.

defence of the USSR or in the performance of other military duties, or as a result of illness resulting from their presence at the front, shall be lowered from sixty to fifty-five years for men and from fifty-five to fifty years for women;

The age at which women workers in various occupations in undertakings of the textile industry, who are engaged in more intensive work are entitled to an old-age pension, shall be lowered by five years, i.e., from fifty-five years to fifty. The age at which members of collective farms are entitled to an old-age pension shall be reduced by five years, from sixty-five to sixty for men and from sixty to fifty-five for women.

For members of collective farms, the minimum pension levels shall be raised for disability in group I, as a result of mutilation during employment or of an occupational disease from 18 to 30 roubles a month, and as a result of an ordinary illness from 15 to 25 roubles a month, and for disability in group II, from 14 to 20 roubles a month and from 12 to 16 roubles a month respectively;

Pension coverage shall be introduced for collective farmers for disability in group III as a result of mutilation during employment or of an occupational disease;

An allowance of 16 roubles a month shall be provided for persons disabled from childhood in groups I and II on attainment of the age of 16 years.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET

On the increase in benefits for persons working in the regions of the Far North and in localities assimilated to such regions

For the purpose of amending and supplementing the Decree of the Presidium of the Supreme Soviet of 10 February 1960 concerning the Adjustment of Benefits for Persons Working in the Regions of the Far North and in localities Assimilated to such Regions, the Presidium of the Supreme Soviet resolves that:

1. All manual and non-manual workers in State, co-operative and public undertakings, institutions and organizations shall be paid a supplement to their monthly remuneration (not counting regional differentials and long-service bonuses) in accordance with the following scales:

(*a*) In the Chukchi national area and the North Evensk district of the Magadan region, the Koryak National area and the Aleut district of the Kamchatka region and also in the islands of the Arctic Ocean and its areas (excluding the White Sea)—10 per cent at the end of the first six months of work, with a 10 per cent increase every six months thereafter. The maximum supplement shall be raised in the above-mentioned districts and localities to 100 per cent of the remuneration or to 300 roubles per month;

(*b*) In other districts in the Far North—10 per cent at the end of the first six months with an increase of 10 per cent every six months thereafter, and on attaining a supplement of 60 per cent—10 per cent each year thereafter;

(*c*) In localities assimilated to the Far North—10 per cent at the end of the first year of work with an increase of 10 per cent for every year thereafter.

Supplements to the wages and salaries received by manual and non-manual workers on 1 January 1968 in percentages of their monthly remuneration shall not be recalculated. The further supplements shall be calculated in accordance with the present article.

2. Manual and non-manual workers who have worked not less than fifteen calendar years in the region of the Far North, and not less than twenty calendar years in localities assimilated to the Far North, shall be awarded old-age pensions on attaining the age of fifty-five years in the case of men and fifty in the case of women.

3. The period of the labour contracts providing for the right to receive the benefits specified in article 5 of the Decree of the Presidium of the Supreme Soviet of 10 February 1960, concerning the Adjustment of Benefits for Persons working in the Regions of the Far North and in Localities Assimilated to such Regions, shall be reduced from five to three years.

Persons who have gone to such regions and localities of their own initiative shall be awarded such benefits, provided they have signed a labour contract for a period of three years, or two years in the case of the islands of the Arctic Ocean.

The extraordinary grant made to young specialists assigned to work in the regions of the Far North and in localities assimilated thereto from other regions of the country on the completion of their education at higher or secondary educational institutions, shall be doubled.

4. Workers who have renewed their first labour contract for work in the regions of the Far North and in localities assimilated thereto shall be awarded an extraordinary grant amounting to 50 per cent of their average monthly remuneration

not counting their regional differentials, long-service bonuses and supplements for working in the regions of the Far North and in localities assimilated to those regions.

5. Members of the families of manual and non-manual workers working in the regions of the Far North and localities assimilated thereto, who have been engaged to perform seasonal work in those regions and localities, and women who have given up their work temporarily to look after children of pre-school age or for reasons of health, shall be deemed to have worked for an uninterrupted period entitling them to receive the benefits provided for in the present Decree.

6. The time worked on collective farms by specialists and workers holding elective offices and by other administrative workers of collective farms estimated in the regions of the Far North and localities assimilated to those regions shall be counted as part of the work period entitling them to receipt of the benefits provided for in the present Decree, provided that the interval of time between the cessation of their work on the collective farm and their employment as a manual or non-manual worker does not exceed three months (not counting travelling time to the place of work).

7. The Council of Ministers of the USSR shall adopt a regulation on the procedure for the application of this Decree and shall make the appropriate changes in the enactments of the Government of the USSR.

8. The present Decree shall come into force on 1 January 1968.

9. The present Decree shall be submitted for approval to the Supreme Soviet of the USSR.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR

Concerning the changeover of manual and non-manual workers of undertakings, institutions and organizations to a five-day working week with two days off

The Presidium of the Supreme Soviet of the USSR decrees:

1. There shall be a planned changeover of manual and non-manual workers of State, co-operative and public undertakings, institutions and organizations to a five-day working week (five working days and two days off) with the retention of the present total length of working time per week.

The changeover of manual and non-manual workers to a five-day working week is to be substantially completed by the fiftieth anniversary of the Great October Socialist Revolution.

The previous system of the working week shall be maintained for manual and non-manual workers of undertakings, institutions and organizations where, owing to the nature of the industry and the conditions of work, a changeover to a five-day working week with two days off is not expedient.

2. The present Decree shall be submitted to the Supreme Soviet of the USSR for confirmation.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR

Concerning the reduction of taxes on the pay of manual and non-manual workers

The Presidium of the Supreme Soviet of the USSR decrees:

1. From 1 January 1968, the rates of income tax, and of tax on bachelors and citizens of the USSR who live alone or have small families, levied on manual and non-manual workers whose pay at their principal place of employment ranges from 61 to 80 roubles per month inclusive, shall be reduced by an average of 25 per cent.

2. The present Decree shall also extend to servicemen, students and other citizens who are liable to income tax on the same bases as manual and non-manual workers.

3. The Council of Ministers of the USSR shall be asked to confirm the reduced rates of tax on wages and salaries in accordance with the present Decree.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR

Concerning improved arrangements for the payment and recovery of alimony for children's maintenance

With a view to improving the arrangements for the payment and recovery of funds for children's maintenance and reinforcing the liability of persons who evade payment of alimony, the Presidium of the Supreme Soviet of the USSR decrees:

1. The withholding of funds for children's maintenance from wages and salaries, pensions, student allowances or other monies which by law are subject to the recovery of alimony, shall be effected not only on the basis of a court order, but also upon a written declaration by a person who has expressed the wish to make voluntary alimony payments, addressed to the administration of the undertaking, institution or organization where the declarant works or where he receives the pension or stipend. The withholding of alimony upon a declaration shall be effected within the limits prescribed by law.

A person on whose behalf alimony is recovered on the basis of a declaration shall have the right at any time to institute court proceedings for the recovery of funds for children's maintenance under the established legal procedure.

2. On the basis of the declaration, the administration of the undertaking, institution or organization shall be required every month to withhold the alimony and to pay out (transfer) the sums withheld to the person indicated in the declaration as the recipient of the alimony within three days of the day established for the payment of the wage, pension, student's allowance or other monies.

The declarations concerning the withholding of alimony, and also concerning a change in the amount of the alimony withheld or the termination thereof, shall be kept by the administration of the undertaking, institution or organization in accordance with the established procedure for the keeping of legal instruments. In the event that the citizen, from whom the alimony is withheld by virtue of a declaration, is transferred to another employment or changes his place of residence, the withholding of alimony shall be effected on the basis of a new declaration made by him. Sums due for the period when alimony was not paid in such circumstances may be withheld from the debtor by virtue of his declaration or recovered by judicial process.

3. Alimony cannot be withheld on the basis of a declaration if the total sum subject to withholding on the basis of the declaration and of the legal instruments exceeds 50 per cent of the wages or salary and assimilated payments and allowances due to the debtor, or if alimony is being recovered from the debtor by court order for children of another mother. In such circumstances, the question of the recovery of alimony shall be decided by judicial process, concerning which the declarant, or the person in whose favour the alimony is recovered, shall be notified.

4. The administration of the undertaking, institution or organization which withheld alimony for children under a court order must inform the officer of the court of the place where the order is executed, and the person receiving the alimony, within three days, if the person paying the alimony leaves his employment, and also of his new place of work or residence, if known.

The person liable for the payment of alimony must, within the same period, inform the officer of the court of the change in his place of employment or residence and also of any additional earnings (for another post held simultaneously, etc.).

In the event of failure to communicate the above-mentioned information for insufficient reasons, a fine may be imposed on officials and citizens guilty of that omission, under the procedure and within the limits laid down in the Codes of Civil Procedure of the Union Republics.

5. The organs of the militia shall endorse the passports of persons convicted of wilfully evading the payment of alimony, or wanted by organs of the militia in connexion with evading such payment with a note (entry) to the effect that, under a court order, those persons are liable for the payment of alimony.

On paying the wage or other earnings, pension or stipend to a person whose passport contains such a note (entry), the administration of the undertaking, institution or organization shall, pending the receipt of the writ of execution, withhold alimony in accordance with the note (entry) in the passport by the established procedure for withholding under writs of execution, and shall so inform the officer of the people's court of the district (city) concerned; if the address of the person in whose favour the alimony is being recovered is not known, the sums withheld shall be deposited with the people's court. In the event of failure to fulfil that obligation, a fine may be imposed on the official at fault, under the procedure and within the limits laid down in the Codes of Civil Procedure of the Union Republics.

6. In the case of a judgement awarding children's alimony to be paid by parents who are members of collective farms, or are manual or non-manual workers deriving incomes from accessory farming of individual plots, a specific sum in money, established by the court, may also be withheld from the income derived from accessory farming by the respondent, in addition to the alimony withheld in proportion to the

income received by him for his comunal work on the collective farm or to his wage or salary.

7. In cases where the children are placed in children's institutions and are fully maintained by the State, the organs of guardianship or the children's institutions shall be entitled to apply to the court for recovery of funds for the children's maintenance from the parents, unless the latter are exempted by law from contributing to their children's maintenance. In such cases, the funds for the children's maintenance shall be recovered from each of the parents for the children's institution where the child is living, in the amount established by law for the recovery of children's alimony from parents. The court may, taking into account the material position of the parents, exempt them fully or partly from payment of those funds. In those circumstances, the recovery of alimony awarded to one of the parents (guardian, trustee) shall cease.

8. The Presidiums of the Supreme Soviets of the Union Republics shall introduce the appropriate amendments and additions stemming from this Decree into the Legislation of the Union Republics.

ORDER OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR

Concerning exemption from the entertainment tax in favour of specialized children's cinemas and cinema performances for pupils in schools providing general education

The Presidium of the Supreme Soviet of the USSR decides:

1. To exempt from the entertainment tax, as from 1 May 1967, specialized children's cinemas and cinema performances for pupils in schools providing general education.

DECREE OF THE COUNCIL OF MINISTERS OF THE USSR

Concerning monthly allowances to invalids since childhood

With reference to the Order of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR, dated 26 September 1967, concerning "Measures for further improving the welfare of the Soviet people", the Council of Ministers of the USSR decides that:

1. The Pension Commissions attached to the district (municipal) executive committees of the Council of Workers' Deputies shall determine the monthly allowance for invalids since childhood in groups I and II.

Payment of the allowances shall be charged to the State budget.

2. Instructions concerning arrangements for the monthly allowance payable to invalids since childhood in groups I and II shall be issued by the State Committee of the Council of Ministers of the USSR on labour and wages and salaries, with the consent of the Ministry of Finance of the USSR and the All-Union Central Council of Trade Unions.

DECREE No. 4 OF THE PLENUM OF THE SUPREME COURT OF THE USSR

Concerning the investigation of court cases involving infringement of the regulations on the protection of labour and safety techniques and a broadening of the role of the courts in preventing such infringements of the law

dated 30 May 1967

(EXTRACT)

The Plenum of the Supreme Court of the USSR decides that:

1. The attention of the courts shall be drawn to the need for firm action to eliminate serious deficiencies in the investigation of court cases involving infringements of the regulations on the protection of labour and safety techniques and to overcome the failure of individual legal workers to realize the public danger of such infringements.

All actions of the courts in the investigation of such cases should contribute to strict observance of the regulations on the protection of labour and safety techniques, the strengthening of labour discipline, and the promotion of order and organization of production.

2. The courts must carefully and thoroughly examine, with respect to each criminal case, the causal relationship between the infringement of the regulations on the protection of labour and safety techniques and the actual or possible consequences thereof, establish the degree of guilt of each individual responsible for such infringement, and take into account the circumstances mitigating or aggravating his responsibility.

With the aim of preventing these offences it shall be incumbent upon the courts to expose more fully the circumstances in which they were committed, to take private (special) decisions where necessary and to ensure that effective measures are taken.

Cases of infringement of the regulations on the protection of labour and safety techniques shall more frequently be considered at the actual enterprises, organizations and collective and State farms where the offences occurred, thus ensuring that the court cases are brought to the attention of the general public and economic organizations.

Convention No. 106 concerning weekly rest in commerce and offices was ratified by the Presidium of the Supreme Soviet of the USSR on 5 August 1967.

The instruments of ratification by the USSR were deposited with the Director-General of the International Labour Office on 22 September 1967.

Convention No. 120 concerning hygiene in commerce and offices was ratified by the Presidium of the Supreme Soviet of the USSR on 5 August 1967.

The instruments of ratification by the USSR were deposited with the Director-General of the International Labour Office on 22 September 1967.

Convention No. 14 concerning the application of the Weekly Rest in Industrial Undertakings was ratified by the Presidium of the Supreme Soviet of the USSR on 5 August 1967.

The instrument of ratification by the USSR was deposited with the Director-General of the International Labour Office on 22 September 1967. When the instrument of ratification was deposited, it was stated that the provisions of article 12 concerning the application of Convention No. 14 in colonies, possessions and protectorates were anachronistic and contrary to the Declaration by the United Nations General Assembly on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV) of 14 December 1960).

Convention No. 115 concerning the Protection of Workers against Ionizing Radiations was ratified by the Presidium of the Supreme Soviet of the USSR on 5 August 1967.

The instrument of ratification by the USSR was deposited with the Director-General of the International Labour Office on 22 September 1967.

FACTUAL INFORMATION ON THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE USSR IN 1967

In 1967, as in previous years, there was no unemployment in the USSR.

In 1967, manual and non-manual workers were switched over to the five-day working week with two days off.

The real per capita income of workers increased by 6 per cent in comparison with 1966. Payments and benefits received by the population from public consumption funds in 1967 totalled 49,000 million roubles, an increase of 7.7 per cent over the previous year. These funds provided pensions, allowances and payments under the social insurance and social security schemes, free education and medical care, education grants, and free or reduced-rate passes to sanatoria and rest homes; paid vacations; upkeep of nurseries and crèches and other social and cultural facilities.

The successful development of the economy, and the growth of the retail trade turnover and services, ensured the stability of the monetary circulation.

Apartments and dwellings with a total area of 103 million m^2, or 1 million m^2 more than in 1966, were brought into occupancy. More than 11 million persons moved into new dwellings, or obtained better housing conditions in existing buildings.

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

About 76 million persons were receiving education in one form or another, 49 million in general education schools of all kinds, 4.3 million in higher educational establishments and 4.2 million in technical schools and other specialized secondary educational establishments.

The number of children in permanent nurseries and crèches was about 9 million, or nearly 700,000 more than in 1966. In addition, more than 4 million children were cared for in seasonal pre-school institutions.

About 1.3 million specialists entered the economy after graduating from higher and specialized secondary educational establishments. About 500,000 of them had had higher education, and more than 800,000 had had specialized secondary education. The number of persons graduating from higher educational establishments and technical schools was nearly 170,000 higher than in 1966, an increase of 15 per cent. Enrolment at higher and specialized secondary educational establishments totalled 2.1 million—about 900,000 at the former and 1.2 million at the latter.

At the end of 1967, scientific workers numbered about 750,000.

Considerable efforts were made to bring about further improvements in medical services. The number of doctors of all types rose over the year by 24,000, and the number of beds in hospitals increased by more than 80,000. The number of beds in sanatoria, rest homes and boarding houses also increased.

The population of the Soviet Union on 1 January 1968 numbered about 237 million.

UNITED ARAB REPUBLIC

NOTE [1]

A. LEGISLATION PERTAINING TO CIVIL AND POLITICAL RIGHTS

1. *Act No. 4 of 1967 amending certain provisions of Act No. 43 of 1965 on Judicial Authority (Journal officiel, No. 60 of 11 May 1967)*

The purpose of this Act is to set the date from which the time-limit for appeals on matters of law shall run in cases which were not appealed as a result of the abolition of the Chambers of Requests under Act No. 43 of 1965.

2. *Act No. 7 of 1967 applying the general judicial system in penal matters to the Governorate of Sinai*

The purpose of this Act is to terminate the exceptional system under which the civilian population of the Governorate was subject in penal matters to the regulations adopted by the Frontier Force.

This Act was promulgated to strengthen the principle of the equal rights and duties of citizens, as provided by law.

3. *Decision of the Minister for Foreign Affairs publishing the Convention of Mutual Assistance and Collaboration in Legal and Judicial Matters between the United Arab Republic and the Democratic and Popular Republic of Algeria*

The purpose here is the exchange of technical knowledge between the two countries in the legal and judicial fields.

B. LEGISLATION PERTAINING TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1. *Act No. 21 of 1967 establishing a savings system for public employees to replace the system established by Act No. 42 of 1965*

This Act has a social purpose, namely, to encourage citizens employed in all government departments and public enterprises to save part of their income for use after their separation from the service; it also has an economic purpose, namely, to use these savings funds along with other funds in economic and social development projects, such development being sure to increase the national income.

2. *Act No. 27 of 1967 applying the provisions of Act No. 116 of 1964 on Pensions and Allowances for the Armed Forces to the members of auxiliary units (Journal Officiel, No. 72 of 27 July 1967)*

This Act generalizes the regulations concerning pensions and allowances and extends them to all persons participating in the service of the armed forces, whether in a regular or an auxiliary capacity; this Act affirms the principle that "equal duties entail equal rights".

3. *Act No. 30 of 1967 reducing allowances, of every kind, granted to members of the armed forces and civil servants (Journal Officiel, No. 72 of 27 July 1967)*

The purpose of this Act is to equalize the level of earned incomes by reducing supplementary allowances which are granted to some categories of public employees.

4. *Presidential Decree No. 888 of 1967 establishing basic regulations for the distribution of profits to employees of companies in the public sector (Journal Officiel, No. 48 of 28 February 1967)*

This Act regulates the implementation of the Act, published in 1961 following the nationalization of industries, which set the workers' share in the profits of the above-mentioned companies at 25 per cent. The new Act assigns part of the profits to be used for social purposes and another part to be paid in cash.

5. *Presidential Decree No. 1405 of 1967 establishing a rehabilitation centre for the armed forces and for ex-servicemen (Journal Officiel, No. 70 of 20 July 1967)*

The purpose of this Act is to ensure a decent life for those who performed their national service in the armed forces.

[1] Note furnished by Mr. Mohamed Nour El-Dine El Akkad, *Conseiller d'Etat adjoint*, government-appointed correspondent of the *Yearbook on Human Rights*.

6. *Presidential Decree No. 1581 of 1967 reorganizing the medical care agencies (Journal Officiel, No. 78 of 7 August 1967)*

The purpose here is to regulate the services of the above-mentioned agencies, which were set up to provide medical care to citizens free of charge or at a reduced rate.

7. *Order No. 89 of 1967 of the Minister of Social Affairs approving the regulations and conditions of service in homes and welfare institutions (Journal Officiel, No. 133 of 28 July 1967)*

The purpose of this Act is to implement the provisions of Act No. 32 of 1964 concerning private associations and foundations, and homes and welfare institutions for the aged and indigent.

8. *Order No. 8 of 1967 of the Minister of Education exempting defective children from the age requirement for admission to private educational establishments and public schools (Journal Officiel, No. 15 of 23 February 1967)*

The purpose of this Act is to provide educational opportunities for children suffering from mental or physical defects which prevent them from being subject to the regulations concerning public education.

9. *Order No. 58 of 1967 of the Minister of Labour amending certain provisions concerning unemployment insurance (Journal Officiel, No. 172 of 9 September 1967)*

The purpose of this Act is to enable a worker to obtain unemployment insurance one week after he becomes unemployed; this provides the worker with a facility which did not exist previously.

10. *The Directorate of Opinions and Legislation for the Ministry of Foreign Affairs issued on 14 October 1969*

Opinion No. 109, in which it recommended to the Minister for Foreign Affairs that the United Arab Republic should become a party to the International Covenant on Economic, Social and Cultural Rights; at the same time, it expressed its views on the desirability of the United Arab Republic's becoming a party to the International Covenant on Civil and Political Rights.

The two Covenants pertain to human rights, and the Representative of the United Arab Republic signed them on 4 August 1967.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE [1]

ARTICLE 17 (1) OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Matrimonial Homes Act 1967

This Act provides that where one spouse has a right to remain in occupation of a dwelling house which has been the matrimonial home and the other has no right, the latter is given protection against eviction, and if not in occupation, is given the right to occupy.

ARTICLES 22 AND 25 (1) OF THE UNIVERSAL DECLARATION

Social security

The Ministry of Social Security's comprehensive review of the social security schemes continues. Whilst, therefore, there was no major development during 1967, an appreciable number of improvements were effected in the course of the year.

In order to increase the resources of the Redundancy Fund for payments to employees who become redundant, contributions to the Fund for employees aged 18 or over were increased from 6 February 1967. These redundancy contributions are paid by employers only.

On 14 March 1967, the United Kingdom signed the European Code of Social Security. The purpose of the Code is to establish minimum standards of social security and thus to encourage the development of higher levels of social security protection among the eighteen member States of the Council of Europe. Ratification is permitted only in the case of those countries which have attained the minimum standards laid down. The United Kingdom ratified the Code on 12 January 1968.

The ending of the limitation on awarding arrears of national insurance benefit, when a contribution record is corrected, came into force on 17 April 1967. The six months' limitation was removed where the review of a decision on a claim is based on fresh evidence showing that the contribution record on which the original decision was based, was incorrect.

On 17 April 1967, Scottish students receiving maintenance grants were put on an equal footing with English and Welsh students for national insurance benefits. The national insurance overlapping benefit provisions require personal benefit and dependency increases to be adjusted if a training allowance under any training scheme is being paid by a Government Department. The new regulations made a technical change in the definition of a "training scheme" to ensure that Scottish students, and a few others in England and Wales, who receive maintenance grants for courses of full-time education or teacher training direct from a Government Department, are not subject to this general provision. Such grants will be treated in the same way as those paid by local education authorities in England and Wales which do not affect national insurance personal benefits or dependency increases.

Regulations effective from 5 June 1967 enable a person who has been continuously incapable of work for at least six months to go abroad for a temporary period without being disqualified for receiving sickness benefit. Normally, sickness benefit is not payable outside Great Britain except where a person goes abroad for a temporary period for the specific purpose of being treated for an incapacity which began before he left Great Britain, or by virtue of a reciprocal agreement.

With effect from 5 June 1967, there was a further easement of the earnings rule applied to retirement pensioners. The amount which a retirement pensioner can earn without any reduction of pension, was raised from £5 to £6 10s. a week. Deductions from pension of 6d. only for each 1s. 0d. earned apply to earnings between £6 10s. and £8 10s. instead of, as

[1] Note furnished by the Government of the United Kingdom.

formerly, to earnings between £5 and £6 and the earnings to be taken into account are those before P.A.Y.E. income tax deductions have been made.

On 30 June 1967, a single set of Local Advisory Committees were set up for the purpose of considering and advising the Minister or the Supplementary Benefits Commission upon questions bearing upon the administration of the national insurance, industrial injuries and supplementary benefit schemes. The new Committees replaced the existing separate sets of National Insurance and Social Security (formerly National Assistance) Local Advisory Committees.

On 16 August 1967, regulations came into force making certain changes affecting entitlement to benefits under the Industrial Injuries Act for pneumoconiosis. The persons concerned are those whose assessments for pneumoconiosis or pneumoconiosis plus tuberculosis would, if their physical condition were otherwise normal, be assessed at 50 per cent or more. In such cases, the effects of any emphysema or chronic bronchitis is treated as the effects of pneumoconiosis. The new regulations apply to both disablement benefit and industrial death benefit.

A new scheme which came into force on 31 August 1967, extended the scope of the existing scheme which catered for certain persons suffering disablement resulting from employment before the Industrial Injuries scheme began in July 1948. The new provisions extended benefit cover to men suffering from certain slowly developing neoplasms of a malignant or potentially malignant nature. They are carcinoma of the mucous membrane of the nose or associated sinuses and primary carcinoma of a bronchus or of a lung; papilloma of the bladder; and diffuse mesothelioma. Payment of allowances is made out of the Industrial Injuries Fund for disablement or death from any of these diseases.

At the end of October and beginning of November 1967, there was a further substantial increase in all national insurance and industrial injuries standard benefit rates, including dependants' allowances, and to help meet the higher cost of these benefits, flat-rate contributions were increased. At the same time, non-contributory supplementary benefits and war pensions were raised and also family allowances for the fourth and each subsequent child, the latter being an advance instalment of a general increase in family allowances effective from April 1968.

Amending regulations which came into operation on 14 October 1967, gave the Minister of Social Security a discretionary power to allow further time for the payment of national insurance contributions for periods abroad, of full-time education, or of imprisonment if failure to pay was due to ignorance or error for which the person concerned was not to blame.

Virtually all of the legislative changes referred to above, have been effected in the field of social security of Northern Ireland by parallel legislation made by the Northern Ireland Government.

Article 23 (1) of the Universal Declaration

The Carcinogenic Substances (Prohibition of Importation) Order 1967

The Carcinogenic Substances Regulations 1967

The Carcinogenic Substances (Prohibition of Importation) Order 1967 prohibits the importation into the United Kingdom of certain chemicals which can give rise to cancer and of any materials containing these compounds.

The substances concerned are betanaphthylamine, benzidine, 4-aminodiphenyl, 4-nitrodiphenyl and their salts, and any substance or article containing any of these compounds.

The Carcinogenic Substances Regulations, 1967, prohibit the manufacture and use in the United Kingdom of these particular chemicals.

The prohibition does not apply where these compounds may be present as a by-product of a chemical reaction in any substance where the total concentration does not exceed one per cent.

Her Majesty's Chief Inspector of Factories has power in specified circumstances to grant exemption from the prohibition, which be will exercise by the issue of import licences. One such instance is where the material is to be used in connexion with medical or scientific research. Provision is also made for the medical examination of persons employed in such factories and places in connexion with the making or use of any of the said substances or who have been so employed.

Article 29 (1) of the Universal Declaration

Sexual Offences Act 1967

This Act provides that a homosexual act in private between two consenting adult males shall not be a criminal offence. But there are special provisions preserving offences for such conduct between members of the armed forces, or between members of the merchant navy.

Northern Ireland

In Northern Ireland, Civil Authorities (Special Powers) Acts (Northern Ireland) 1922-1943 and Regulations made under them enable special measures to be taken for the preservation of the peace and the maintenance of order subject to the condition that the ordinary course of law, the avocations of life and the enjoyment of property are interfered with as little as possible.

The powers contained in the legislation referred to have been invoked in the course of the last year to the minor extent set out in Regulation 1967 No. 42.

Other Acts

Welsh Language Act 1967

This Act makes provision for the use of the Welsh language in legal proceedings in Wales and in the conduct of other official or public business there, with the like effect as English.

Criminal Justice Act 1967

This Act contains wide-ranging reforms in the system of criminal justice. Included among these are the introduction of a scheme for the early release on licence of selected long- and medium-term prisoners, in which the Home Secretary is advised by a Parole Board, and the introduction of suspended sentences of imprisonment into the penal system, with an obligation on courts to suspend certain categories of short sentences.

The Act also places restrictions on the powers of magistrates' courts to remand in custody those accused of offences carrying not more than six months' imprisonment, except in certain specified circumstances, and to order the imprisonment of offenders who default in the payment of fines, and makes provisions with respect to legal aid and advice in criminal proceedings.

Criminal Law Act 1967

This Act abolishes the ancient distinction, which had lost its significance, between felonies and misdemeanours, and makes the necessary amendments to the law consequential on the abolition, for example, by codifying in statutory form the previous common law powers of arrest without warrant in respect of felony. The Act also abolishes certain ancient criminal offences which have become obsolete.

Abortion Act 1967

This Act prescribes the circumstances in which a termination of pregnancy by a registered medical practitioner is lawful. Two registered medical practitioners must be of the opinion formed in good faith that the continuance of the pregnancy would involve risk, greater than if the pregnancy were terminated, to the life of the pregnant woman, or of injury to her physical or mental health, or to that of any existing children of her family. Alternatively, the two doctors must believe that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped. The Act sets out conditions as to the place of operation, and the notification of terminations of pregnancy.

Parliamentary Commissioner Act 1967

This Act makes provision for the appointment and functions of a Parliamentary Commissioner to investigate any action taken by or on behalf of a Government Department or other authority to which this Act applies, if the action is taken in the exercise of administrative functions of that department or authority.

UNITED REPUBLIC OF TANZANIA

THE EVIDENCE ACT 1967

Act No. 6 of 1967, assented to on 27 April 1967 [1]

Chapter I

PRELIMINARY

. . .

4. Whenever it is provided by this Act or any other written law that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

5. Whenever it is directed by this Act or any other written law that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

6. When one fact is declared by this Act or any other written law to be conclusive proof of another, the court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Chapter II

OF THE RELEVANCY OF FACTS

Part I

GENERAL

7. Subject to the provisions of any other law, evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue, and of such other facts as are hereinafter declared to be relevant, and of no others.

. . .

Part II

ADMISSIONS

19. An admission is a statement, oral or documentary, which suggests any inference as to a fact in issue or relevant fact, and which is made by any of the persons, and in the circumstances, hereinafter mentioned.

. . .

22. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute, are admissions.

. . .

26. Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

Part III

CONFESSIONS

27. No confession made to a police officer shall be proved as against a person accused of an offence.

28. No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a magistrate as defined in the Magistrates' Courts Act, 1963 or a justice of the peace under that Act, shall be proved as against such person.

29. No confession which is tendered in evidence shall be rejected on the ground that a promise or threat has been held out to the person confessing unless the court is of the opinion that the inducement was made in such circumstances and was of such a nature as was likely to cause an untrue admission of guilt to be made.

30. Where an inducement has been made to a person accused of an offence in such circumstances and of such a nature as are referred to in section 29 and a confession is made after the impression caused by the inducement has, in the opinion of the court, been fully removed, the confession is relevant and need not be rejected.

31. When any fact is deposed to as discovered in consequence of information received from a

[1] *Gazette of the United Republic of Tanzania*, No. 19 of 28 April 1967, Acts Supplement No. 2.

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, is relevant.

32. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

33. (1) When more persons than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court shall not take into consideration such confession as against such other person but may take it into consideration only against the person who makes such confession.

(2) In this section "offence" includes the abetment of, or attempt to commit, the offence.

. . .

Part VIII

RELEVANCY OF OPINIONS OF THIRD PERSONS

47. (1) When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger or other impressions, opinions upon that point of persons possessing special knowledge, skill, experience or training in such foreign law, science or art or question as to identity of handwriting or finger or other impressions are relevant facts.

(2) Such persons are called experts.

. . .

Part IX

RELEVANCY OF CHARACTER

54. (1) In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

(2) In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant.

55. In criminal proceedings the fact that the person accused is of a good character is relevant.

56. (1) In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant:

Provided that a previous conviction for any offence becomes relevant, after conviction in the case under trial, for the purpose of affecting the sentence to be awarded by the court.

(2) Subsection (1) does not apply to cases in which the bad character of any person is itself a fact in issue.

(3) A previous conviction is relevant as evidence of bad character.

(4) A person charged and called as a witness in pursuance of subsection (3) of section 130 shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of, or been charged with, any offence other than that wherewith he is then charged, or that he is of bad character unless:

(*a*) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or

(*b*) he has personally or by his advocate asked questions of the witness for the prosecution with a view to establishing his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or the witness for the prosecution; or

(*c*) he has given evidence against any other person charged with the same offence.

. . .

Chapter III

PROOF

Part I

FACTS REQUIRING NO PROOF

58. No fact of which the court shall take judicial notice need be proved.

. . .

Part II

ORAL EVIDENCE

61. All facts, except the contents of documents, may be proved by oral evidence.

. . .

Part III

DOCUMENTARY EVIDENCE

63. The contents of documents may be proved either by primary or by secondary evidence.

64. (1) Primary evidence means the document itself produced for the inspection of the court.

. . .

Chapter IV

PRODUCTION AND EFFECT OF EVIDENCE

Part I

THE BURDEN OF PROOF

110. (1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

. . .

119. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

. . .

121. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

. . .

Part II

ESTOPPEL

123. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

. . .

Chapter V

WITNESSES

Part I

COMPETENCY, COMPELLABILITY AND PRIVILEGE OF WITNESSES

127. (1) All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reason of tender years, extreme old age, disease (whether of body or mind) or any other similar cause.

(2) Where in any criminal cause or matter any child of tender years called as a witness does not, in the opinion of the court, understand the nature of an oath, his evidence may be received, though not given upon oath or affirmation, if in the opinion of the court, to be recorded in the proceedings, he is possessed of sufficient intelligence to justify the reception of his evidence, and understands the duty of speaking the truth:

Provided that where evidence received by virtue of this subsection is given on behalf of the prosecution, the accused shall not be liable to be convicted unless such evidence is corroborated by some other material evidence in support thereof implicating the accused.

(3) A person of unsound mind is not incompetent to testify, unless he is prevented by his condition from understanding the questions put to him and giving rational answers to them.

. . .

129. No judge or magistrate shall, except upon the special order of some court to which he is subordinate, be compelled to answer any questions as to his own conduct in court as such judge or magistrate, or as to anything which came to his knowledge in court as such judge or magistrate, but he may be examined as to other matters which occurred in his presence whilst he was so acting.

. . .

Part III

EXAMINATION OF WITNESSES

144. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and in the absence of any such law, by the discretion of the court.

. . .

Part VI

QUESTIONS BY ASSESSORS

177. In cases tried with assessors, the assessors may put any questions to the witness, through or by leave of the judge, which the judge himself might put and which he considers proper.

Chapter VI

IMPROPER ADMISSION AND REJECTION OF EVIDENCE

178. The improper admission or rejection of evidence shall not be ground of itself for a new trial, or reversal of any decision in any case, if it shall appear to the court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that if the rejected evidence had been received, it ought not to have varied the decision.

. . .

THE CINEMATOGRAPH ORDINANCE (AMENDMENT) ACT, 1967

Act No. 28 of 1967, assented to on 9 August 1967 [2]

. . .

2. Section 5 of the Ordinance is amended by deleting subsections (2), (3) and (4) and substituting therefor the following:

"(2) The licensing authority may refuse to grant a theatre licence or may grant it subject to such terms and conditions as it may think desirable for the protection of public health and for the purpose of ensuring the safety of persons attending such theatre.

"(3) If the licensing authority shall consider that public health and the safety of the persons attending presentations at such theatre are adequately provided for, it may grant a theatre licence either generally or in respect of any single presentation or for such period not exceeding twelve months as it may think fit.

"(4) A theatre licence may be revoked by the licensing authority upon the breach of any of its terms or conditions or if it shall be made to appear to the licensing authority that public health is not adequately protected or that the safety of persons attending the exhibition is or may be endangered."

. . .

3. Section 18 of the Ordinance is amended by inserting, immediately below paragraph (*d*), the following:

"(*dd*) prescribing conditions to be observed for the purpose of protecting the health of persons attending such theatre;".

[2] *Ibid.*, No. 34 of 11 August 1967, Acts Supplement No. 4.

THE PRISONS ACT, 1967

Act No. 34 of 1967, assented to on 9 August 1967 [3]

. . .

Part III

POWERS, DUTIES AND PRIVILEGES OF PRISON OFFICERS

9. (1) Every prison officer shall exercise such powers and perform such duties as are by law conferred or imposed on prison officers of his rank, and shall obey all lawful directions in respect of the execution of his office which he may from time to time receive from his senior officers.

(2) Every prison officer shall be deemed to be on duty at all times and may at any time be detailed for duty in any part of Tanganyika.

10. While in charge of prisoners for the purpose of conveying any prisoner to or from a prison or for the purpose of apprehending any prisoner who may have escaped from a prison, or who may have escaped while being conveyed to or from a prison, or for the purpose of preventing the rescue of any prisoner or for the purpose of preventing an attack on a prison, every prison officer shall have all the powers and privileges of a police officer.

11. Any prison officer may, on reasonable suspicion that any person is a deserter, arrest such person without a warrant and shall forthwith take him before a magistrate.

12. (1) Any prison officer may examine anything within, or being brought into or out of, a prison and may stop and search any vehicle or person within a prison or going into or out of a prison, or, whether within or outside a prison, any person who, or any vehicle which, is without authority close to a prisoner if he has reason to suspect that such person or vehicle is carrying a prohibited article or any property belonging to the Government in use in a prison.

. . .

(5) Any search of a woman under this section shall be made by another woman with due regard to decency.

13. (1) Any prison officer may use such force against a prisoner as is reasonably necessary in order to make him obey lawful orders which he refuses to obey or in order to maintain discipline in a prison.

. . .

15. (1) Where the defence to any suit instituted against a prison officer is that the act complained of was done in obedience to a certificate or

[3] *Ibid.*

warrant purporting to be issued by a court or other competent authority, the court shall, upon production of the certificate or warrant and upon proof that the act complained of was done in obedience to such certificate or warrant, enter judgment in favour of such prison officer.

(2) No proof of the signature on a certificate or warrant shall be required unless the court has reason to doubt the genuineness thereof; and where it shall be proved that such signature is not genuine, judgment shall nevertheless be given in favour of the prison officer if it is proved that, at the time the act complained of was committed, he believed on reasonable grounds that the signature was genuine.

...

Part VII

ADMISSION AND CUSTODY OF PRISONERS

25. (1) No prisoner shall be admitted into a prison unless accompanied by a remand warrant, certificate, warrant or other order of detention, or warrant of conviction or of committal.

...

26. A prisoner who is being removed or transferred from one prison to another, shall, while outside the prison, be kept in the custody of the prison officer directed to convey him and shall be deemed to be in the lawful custody of the officer-in-charge of the prison at which such prison officer is serving.

27. Any prisoner may be detained in a police lock-up or cell in an area where no prison has been established, for a period not exceeding seven days.

28. Male and female prisoners shall be confined in separate prisons, or separate parts of the same prison in such manner as to prevent, as far as practicable, their seeing or conversing or holding any communication with one another.

...

31. (1) Sentence of death shall be carried out in or within the precincts of a prison appointed by the Commissioner[4] for the carrying out of sentences of death.

(2) The officer-in-charge, the medical officer and such prison officers as may be necessary shall be present at an execution of a sentence of death.

(3) A minister of the religious denomination to which the prisoner belongs may be present at the execution.

(4) No other person except those authorized in subsections (2) and (3) of this section shall be present at an execution without the written authority of the Minister.

Part VIII

OFFENCES BY PRISONERS

32. The Minister may prescribe what acts or omissions by prisoners shall be deemed to be prison offences and may prescribe which of such offences shall be minor prison offences and which shall be major prison offences.

...

37. No prisoner shall be found to be guilty of a prison offence until he has had an opportunity of hearing the charge or charges against him and making his defence.

38. (1) No prisoner shall be subjected to punishment diet until certified as medically fit to undergo such punishment by a medical officer or other person appointed for such purpose by the medical officer.

(2) Punishment diet shall not be combined with labour.

39. (1) Where corporal punishment is prescribed for any offence the number of strokes shall not exceed ten in the case of persons of or under the apparent age of sixteen years, and eighteen in all other cases, and shall be inflicted with such type of cane and in such manner as may be prescribed.

(2) Every sentence of corporal punishment imposed upon a prisoner by an officer-in-charge shall be subject to confirmation by the Commissioner, who may increase or reduce the number of strokes ordered to be inflicted, or may substitute any other punishment or punishments as he is authorized by this Act to award.

(3) No sentence of corporal punishment shall be carried out unless the medical officer has certified that the prisoner is fit to undergo such punishment.

(4) A medical officer may give such directions for the prevention of injury to the health of the prisoner ordered to receive corporal punishment as he may deem necessary, and such directions shall be complied with before the punishment is inflicted; and if, during the course of the infliction of such punishment the medical officer shall direct it to be discontinued, it shall be discontinued accordingly.

(5) Corporal punishment shall not be inflicted upon any female prisoner, nor upon male prisoners under sentence of death or over the age of forty-five years, nor upon any civil prisoner nor upon any prisoner imprisoned as a vagrant.

...

Part IX

PRIVILEGES OF PRISONERS AND REMISSION OF SENTENCE

44. The religious denomination or sect of every prisoner shall be recorded and he shall be treated as a member of such religious denomination or sect. Such facilities for worship shall be provided as may be prescribed.

...

46. The privileges of prisoners to receive and send letters and to receive visitors shall be such as may be prescribed.

47. The Government shall bear the cost of postage of letters written by prisoners.

48. Every prisoner may bring to the notice of any visiting justice who is visiting the prison any matter which he considers should be brought to the visiting justice's attention.

49. (1) Convicted criminal prisoners sentenced to imprisonment may by industry and good conduct earn a remission of one-third of their sentence or sentences:

[4] As indicated in Section 1 of this Act, "Commissioner" means the Commissioner of Prisons.

Provided that in no case shall any remission be granted to a prisoner sentenced to imprisonment for life or to be detained at the President's pleasure.

...

Part XI

TRAINING AND TREATMENT OF PRISONERS

61. Every prisoner sentenced to imprisonment and detained in prison shall, subject to the provisions of this Act and subject also to any special order of the court, be employed, trained and treated, whether he is in or is not within the precincts of any prison, in such a manner as the Commissioner may determine, and for that purpose such a prisoner shall, at all times, perform such labour, tasks and other duties as may be assigned to him by the officer-in-charge or any other prison officer in whose charge he may be.

62. Every prison or any portion of a prison established or used for the admission, detention, training and treatment of female prisoners shall have a sufficient number of women prison officers, and the Commissioner shall determine whether a woman prison officer shall be in charge thereof.

63. Women prisoners shall only be employed on labour which is suitable for women.

64. The medical officer may order any prisoner to be excused labour or to perform light labour and any prisoner ordered to perform light labour shall be required to perform the labour for which he is considered fit by the medical officer.

...

73. (1) On the death of any person detained in a prison the officer-in-charge shall cause immediate notice of such death to be given to the medical officer.

...

Part XII

DETENTION AND TREATMENT OF UNCONVICTED AND CIVIL PRISONERS

74. The officer-in-charge shall detain any person remanded to prison according to the terms of the warrant of committal issued by a court or competent authority and shall cause such person to be delivered to such court or competent authority at the time named and according to the terms of such warrant.

75. Civil and unconvicted prisoners shall as far as conditions permit be kept apart from other classes of prisoners. They may be permitted to associate together in orderly manner under such conditions as the Commissioner may direct.

76. (1) An unconvicted prisoner may be permitted to maintain himself and to purchase or receive from private sources at proper hours, food, bedding, clothing or other necessaries, but subject to examination and to such other conditions as the Commissioner may direct.

...

(4) No civil or unconvicted prisoner shall be given or be compelled to wear prison clothing unless:

(*a*) the prisoner's dress is insufficient or improper or is in an unsanitary condition; or

(*b*) the prisoner's dress is required as an exhibit; and

(*c*) he is unable to procure other suitable clothing from any other source.

...

Part XIII

RELEASE AND DISCHARGE OF PRISONERS

78. (1) The officer-in-charge shall be responsible for the due discharge of all prisoners immediately upon their becoming entitled to discharge.

...

THE INTERIM CONSTITUTION OF TANZANIA (AMENDMENT) (No. 2) ACT, 1967

Act No. 40 of 1967, assented to on 27 November 1967 [5]

...

4. The Constitution is amended by adding the following new sections immediately below section 34:

34A. (1) Every member of the National Assembly to whom this section applies and who is such member on the second day of March, 1968 shall, not later than the fifth day of March, 1968, lodge with the Speaker a declaration in duplicate to the effect that he is not disqualified from being a member of the National Assembly by virtue of any of the provisions of paragraphs (*h*), (*i*), (*j*), (*k*) or (*l*) of subsection (2) of section 27 of this Constitution.

(2) Every member of the National Assembly to whom this section applies and who is elected or appointed as such member on or after the third day of March, 1968, shall, within fifteen days of taking his seat in the National Assembly, lodge with the Speaker a declaration in duplicate to the effect that he is not disqualified from being a member of the National Assembly by virtue of any of the provisions of paragraphs (*h*), (*i*), (*j*), (*k*) or (*l*) of subsection (2) of section 27 of this Constitution.

[5] *Gazette of the United Republic of Tanzania*, No. 51 of 1 December 1967, Acts Supplement No. 6.

(3) The declaration required to be lodged with the Speaker under this section shall be in such form as shall be prescribed by an Act of Parliament.

(4) This section shall apply to every member of the National Assembly other than a regional commissioner who holds his seat in accordance with paragraph (*c*) of subsection (1) of section 24 of this Constitution.

(5) The Speaker shall forward a copy of every declaration lodged with him in accordance with this section to the Attorney-General.

34B. (1) Every member of the National Assembly to whom this section applies shall, at such interval and in such form as shall be prescribed by an Act of Parliament, lodge with the Speaker a statement of affairs in duplicate giving particulars of his income and assets and of the income and assets of his spouse.

(2) This section shall apply to every member of the National Assembly other than a regional commissioner who holds his seat in accordance with paragraph (*c*) of subsection (1) of section 24 of this Constitution.

(3) The Speaker shall forward a copy of every statement of affairs lodged in accordance with this section to the Attorney-General.

(4) An Act of Parliament may provide that until such time as any statement of affairs lodged under this section is produced as evidence before the High Court in any proceedings under section 36 of this Constitution, no person other than the President, the Speaker, the Attorney-General and persons authorized by such Act shall have access to or be entitled to any information contained in such statement of affairs and may make such provision as may be necessary to ensure that no unauthorized person gains access to any statement of affairs or receives any information contained therein.

5. Section 35 of the Constitution is amended:

(*a*) in subsection (1):

(i) by deleting the proviso to paragraph (*a*) and substituting therefor the following proviso:

"Provided that:

"(i) where a member of the National Assembly or his spouse becomes a beneficial owner of a share in a company or of a house or building, or of any interest in a share, house or building, by inheritance or by operation of law the member shall not vacate his seat by reason of the provisions of paragraph (*h*) or (*j*) of subsection (2) of section 27 of this Constitution if such member or his spouse, as the case may be, shall, within three months of such share, house or building, or such interest in a share, house or building having become vested in him, take such steps as may be necessary to remove the disqualification imposed by the provisions of paragraph (*h*) or (*j*), as the case may be, of subsection (2) of section 27 of this Constitution;

"(ii) a person appointed a member of the National Assembly in accordance with section 32 of this Constitution shall not vacate his seat in the National Assembly by reason only of the fact that since his appointment he has ceased to be ordinarily resident in Zanzibar; or";

(ii) by deleting the comma at the end of paragraph (*d*), substituting therefor the semi-colon and the word "; or" and adding the following new paragraphs:

"(*e*) where a member or his spouse has lodged an undertaking under paragraph (*b*) of subsection (10) or paragraph (*c*) of subsection (12) of section 27 of this Constitution, if he or his spouse, as the case may be, fails to comply with such undertaking; or

"(*f*) in the case of a member who is required to lodge a declaration in accordance with section 34A of this Constitution:

"(i) if he fails to lodge such declaration by the date or within the period specified in that section; or

"(ii) if be is convicted of an offence under section 107 of the Penal Code in respect of such declaration; or

"(*g*) in the case of a member who is required to lodge a statement of affairs in accordance with section 34B of this Constitution, if he fails to lodge such statement of affairs by such date or within such period as may be prescribed by an Act of Parliament," and

(*b*) in subsection (2), by inserting immediately after the words "this Constitution" in the fifth line, the words "or of an offence under section 107 of the Penal Code in respect of a declaration lodged with the Speaker as required by section 34A of this Constitution".

6. Section 37 of the Constitution is hereby amended:

(*a*) by adding the following new subsections immediately below subsection (2):

"(2A) The person who holds the office of Speaker on the second day of March, 1968 shall, not later than the fifth day of March, 1968, lodge with the President a declaration in duplicate in the form prescribed by an Act of Parliament to the effect that he is not disqualified from being elected as a constituency member by virtue of any of the provisions of paragraphs (*h*), (*i*), (*j*), (*k*) or (*l*) of subsection (2) of section 27 of this Constitution.

"(2B) Every person who is elected to the office of Speaker on or after the third day of March, 1968 shall, within fifteen days of such election, lodge with the President a declaration in duplicate in the form prescribed by an Act of Parliament to the effect

that he is not disqualified from being elected as a constituency member by virtue of any of the provisions of paragraphs (*h*), (*i*), (*j*), (*k*) or (*l*) of subsection (2) of section 27 of this Constitution.

"(2C) The President shall forward a copy of every declaration lodged with him in accordance with subsection (2B) and subsection (2C) of this section to the Attorney-General.

"(2D) The Speaker shall at such interval and in such form as shall be prescribed by an Act of Parliament lodge with the President a statement of affairs in duplicate giving particulars of his income and assets and of the income and assets of his spouse.

"(2E) The provisions of subsection (3) and subsection (4) of section 34B shall, insofar as the same may be applicable, apply to any statement of affairs lodged by the Speaker under this section."; and

(*b*) in subsection (3) by deleting the full stop at the end of paragraph (*d*), substituting therefor the semi-colon and the word "; or" and adding the following new paragraphs:

"(*e*) if he fails to lodge a declaration with the President as required by subsection (2A) or subsection (2B) of this section; or

"(*f*) if he is convicted of an offence under section 107 of the Penal Code in respect of any declaration lodged in accordance with subsection (2A) or subsection (2B) of this section; or

"(*g*) if he fails to lodge a statement of affairs as required by subsection (2D) of this section by such date or within such period as may be prescribed by an Act of Parliament.".

THE PERMANENT LABOUR TRIBUNAL ACT, 1967

Act No. 41 of 1967, assented to on 27 November 1967 and entered into force on 1 December 1967 [6]

. . .

Part II

PROCEDURE FOR THE SETTLEMENT OF DISPUTES

4. (1) Any trade dispute, whether existing or apprehended, if not otherwise determined, may be reported to the Labour Commissioner by notice in writing given either by or on behalf of the employer or, on behalf of the employees, by the general secretary of a registered trade union of which the employees are members.

(2) Subject to the provisions of subsection (4), where a trade dispute has been reported to him in accordance with subsection (1), the Labour Commissioner shall appoint a labour officer, or such other person as he may think fit, to be the conciliator for such dispute:

Provided that where the Labour Commissioner considers that any machinery for the settlement of trade disputes which exists in the trade or industry or branch thereof in which the dispute has arisen has not been made use of by the parties to the dispute, he may, with the prior approval of the Minister, refer the dispute back to the parties thereto for negotiation and settlement.

(3) If, in the opinion of the Labour Commissioner, no, or not sufficient, machinery for the settlement of trade disputes exists in any trade or industry or branch thereof he shall so inform the Minister and the Minister may, on being so informed and after consultation with the employers and the trade union concerned in that trade or industry or branch thereof, establish, by order published in the *Gazette*, machinery for the settlement of trade disputes within that trade or industry or branch thereof.

(4) Notwithstanding the provisions of subsection (2) and subject to the provisions of section 36, where a trade dispute has been reported to the Labour Commissioner in accordance with subsection (1) and both the parties to such dispute apply in writing for the dispute to be referred to the Tribunal for settlement, or where the Labour Commissioner, after consultations with parties to the dispute, is of the opinion that the dispute should be referred to the Tribunal for settlement without any conciliatory measures being first taken in respect thereof, he shall report the dispute to the Minister, and the Minister shall within 21 days from the date when the dispute was reported to him either:

(*a*) refer the dispute to the Tribunal for settlement; or

(*b*) refer the dispute back to the Labour Commissioner with a direction to proceed in accordance with subsection (2):

Provided that the Minister may, if he is of the opinion that there are special circumstances which make it necessary or desirable to postpone reference to the Tribunal or reference back to the Labour Commissioner as aforesaid, postpone such reference for such further period or periods as he may in writing allow.

[6] *Ibid.* The text of the Act in English and a translation thereof into French have been published by the International Labour Office as ***Legislative Series***, 1967—Tan. 1.

(5) Where a dispute has been referred to the Tribunal under the provisions of subsection (4), the Tribunal shall proceed to consider the dispute and make an award thereon in accordance with the provisions of Part IV.

. . .

Part III

LOCKOUT AND STRIKES

11. (1) No employer shall take part in a lockout and no employee shall take part in a strike unless the conditions specified in subsection (2) and which are applicable to the occasion have been fulfilled.

(2) The conditions to be fulfilled for the purposes of subsection (1) are as follows:

(*a*) a trade dispute exists between that employer and his employees or between those employees and their employer and the dispute has been reported to the Labour Commissioner in accordance with subsection (1) of section 4; and

(*b*) the Labour Commissioner has either:

(i) appointed a conciliator for the trade dispute in accordance with subsection (2) of section 4; or

(ii) reported the trade dispute directly to the Minister in accordance with subsection (4) of section 4; and

(*c*) (i) where the Labour Commissioner has appointed a conciliator either in accordance with subsection (2) of section 4 or after the trade dispute has been referred back to him in accordance with subsection (4) of section 4:

(A) the conciliator has been unable to effect a settlement of the trade dispute and the Labour Commissioner has reported the trade dispute to the Minister under subsection (2) of section 7; and

(B) 21 days, or if any further period or periods have been allowed by the Minister under the proviso to subsection (1) of section 8, 21 days and such further period or periods, have elapsed since the date of the report to the Minister; or

(ii) where the Labour Commissioner has reported the trade dispute to the Minister in accordance with subsection (4) of section 4, 21 days, or if any further period or periods have been allowed by the Minister under the proviso to the said subsection, 21 days and such further period or periods have elapsed since the date of the report to the Minister; and

(*d*) (i) during the period referred to in paragraph (*c*), (i) the trade dispute has not:

(*a*) been settled; nor

(*b*) been referred to the Tribunal for settlement; or

(ii) during the period referred to in paragraph (*c*) (ii) the trade dispute has not:

(*a*) been settled; nor

(*b*) been referred to the Tribunal for settlement; nor

(*c*) been referred back to the Labour Commissioner in accordance with the provisions of subsection (4) of section 4.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 1,000 shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

12. Any person who procures or incites another person to take part in a lockout or strike in contravention of the provisions of section 11 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding 3,000 shillings or to imprisonment for a term not exceeding 15 months or to both such fine and imprisonment.

13. Any police officer may arrest without a warrant any person whom he reasonably suspects of having committed an offence against section 11 or section 12.

14. No prosecution for a contravention of section 11 or section 12, shall be instituted save by, or with the consent of, the Director of Public Prosecutions.

Part IV

PERMANENT LABOUR TRIBUNAL

15. There is hereby established a tribunal to be known as the Permanent Labour Tribunal.

16. The Tribunal shall have jurisdiction:

(*a*) to hear and determine any trade dispute referred to it under the provisions of this Act;

(*b*) to register negotiated agreements and voluntary agreements and to hear and determine matters relating to the registration of such agreements;

(*c*) to inquire into any matter referred to it under this Act and to report to the Minister on such matters;

(*d*) to advise the Labour Commissioner on any matter referred to it by him under section 10; and

(*e*) to exercise such functions and powers as are conferred upon it by this Act or as may be conferred upon it by any written law.

. . .

Part V

PROCEEDINGS BEFORE THE TRIBUNAL

22. Where any trade dispute or other matter is referred to the Tribunal, the Tribunal shall proceed to inquire into such dispute or matter without undue delay.

. . .

30. It shall be in the discretion of a conciliator or the Tribunal, as the case may be, to permit or not to permit any interested person to appear by advocate in any proceedings under this Act before such conciliator or the Tribunal.

31. It shall be in the discretion of a conciliator or the Tribunal, as the case may be, to admit or exclude the public or representatives of the Press from any proceedings under this Act.

32. (1) Where representatives of the Press are allowed to be present at any proceedings under this Act, and not otherwise, a fair and accurate report or summary of the proceedings including the evidence adduced thereat may be published:

Provided that until the award or the result of the inquiry has been published by the order of the Minister or of the Tribunal, no comments shall be published in respect of the proceedings or any evidence adduced thereat:

And provided that the terms of any award or negotiated agreement or the result of any inquiry shall not be published until the award or the negotiated agreement or the result of the inquiry or the decision of the Tribunal has been published by the order of the Minister or of the Tribunal.

(2) Any person who, before an award or negotiated agreement or the result of an inquiry or the decision of the Tribunal has been published by the order of the Minister or of the Tribunal, publishes:

(*a*) the terms of the award or negotiated agreement or the result of the inquiry; or

(*b*) any comment on the proceedings or any evidence adduced thereat, shall be guilty of an offence and liable on conviction to a fine not exceeding 5,000 shillings.

. . .

Part VI

SPECIAL PROVISIONS RELATING TO EMPLOYEES OF EAST AFRICAN COMMUNITY AND CORPORATIONS

34. Section 35 shall extend to and in respect of Zanzibar as well as to and in respect of Tanganyika.

35. (1) Notwithstanding the provisions of this Act or of any law in Zanzibar, where:

(*a*) a trade dispute exists between persons in the employment or service in Tanganyika or Zanzibar under the Community or any Corporation and the Community or Corporation; and

(*b*) the dispute relates to the wages or other terms and conditions of service of the persons under such employment or service; and

(*c*) any conciliatory measures taken in accordance with section 4 of this Act or in accordance with the provisions of any relevant law of Zanzibar, as the case may be, have failed to bring the parties to the dispute to a settlement,

the dispute shall be referred to the East African Industrial Court established pursuant to article 85 of the Treaty and such Court shall have power to hear and determine the dispute and to make an award thereon.

(2) Every award made by the East African Industrial Court under subsection (1) shall have the same force and effect as an award made by the Tribunal would have in Tanganyika.

36. Subsection (4) of section 4 and paragraph (*d*) (ii) (*b*) of subsection (2) of section 11 shall apply to persons in the employment or service under the Community or any Corporation in relation to any dispute relating to their wages or other terms and conditions of their service, as if references therein to the Tribunal were references to the East African Industrial Court.

. . .

THE LAND ACQUISITION ACT, 1967

Act No. 47 of 1967, assented to on 27 November 1967 [7]

. . .

Part II

COMPULSORY ACQUISITION

(a) *President may acquire lands*

3. The President may, subject to the provisions of this Act, acquire any land for any estate or term where such land is required for any public purpose.

. . .

6. If the President resolves that any land is required for a public purpose, the Minister shall give notice of intention to acquire the land to the persons interested or claiming to be interested in such land, or to the persons entitled to sell or convey the same, or to such of them as shall, after reasonable inquiry, be known to him.

. . .

9. No person shall at any time be required to yield up possession to the President of a part only of any house or other building if such person is willing and able to yield up possession of the whole of such house or building.

10. (1) Where any land acquired under this Act is a portion of land held for a Government lease or under a right of occupancy in the circumstances in which the remainder of land would be of less than half an acre, the holder of the Government lease or right of occupancy may, within thirty days of the notice that the portion of the

[7] *Gazette of the United Republic of Tanzania*, No. 51 of 1 December 1967, Acts Supplement No. 6.

land is required for a public purpose being published in the *Gazette*, by notice in writing served upon the Minister, require the President to acquire the whole of the land comprised in the Government lease or right of occupancy, as the case may be, and upon such notice being served the President shall acquire the whole of such land:

Provided that where the President is satisfied that the holder of the Government lease or right of occupancy holds a Government lease or right of occupancy in respect of land immediately adjoining the land which would remain in his possession should the acquisition of the portion required for a public purpose be completed, so that the land so remaining in his possession together with such adjoining land would exceed half an acre in area, the President may refuse to acquire the remainder of the land.

(2) This section shall not apply to any land situate within any city, municipality or township.

(b) *Compensation*

11. (1) Subject to the provisions of this Act, where any land is acquired by the President under section 3 the Minister shall on behalf of the Government pay in respect thereof, out of moneys provided for the purpose by Parliament, such compensation as may be agreed upon or determined in accordance with the provisions of this Act.

(2) Notwithstanding any provision of the Land Ordinance to the contrary, the President may, with the consent of the person entitled to compensation under subsection (1) and shall, in cases where it is so required by subsection (3) of section 12, make to the person entitled to compensation a grant of public land not exceeding in value the value of the land acquired, for an estate not exceeding the estate acquired and upon the same terms and conditions as the land acquired was held, so far as the same may be practicable, in lieu of or in addition to any compensation payable under this section.

UNITED STATES OF AMERICA

HUMAN RIGHTS IN 1967

Landmark actions by Federal, State and other Governmental authorities

(Compiled by the Department of State in collaboration with other interested Departments and Agencies of the Federal Government) [1]

INTRODUCTION

Human rights and fundamental freedoms are assured the people of the United States through constitutional and legislative provisions of both the United States (i.e., Federal) Constitution and the Constitutions of the various States. Official action at all levels of government must conform with constitutional requirements. Remedy may be sought through the Federal Courts, initially or by appeal, for any violation of the rights guaranteed in the Federal Constitution. 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 for 1967 is necessarily selective and is confined to official acts of importance on the federal level.

As in previous years, the people of the United States celebrated the anniversaries of the Universal Declaration of Human Rights on 10 December and the United States Bill of Rights, 15 December. On 11 October, the birthday of the late Human Rights champion, Mrs. Eleanor Roosevelt, President Johnson designated 10-17 December as Human Rights Week. A Presidential Proclamation called upon all Americans and all government agencies "to use this occasion to deepen our commitment to the defense of human rights and to strengthen our efforts for their full and effective realization both among our own people and among all peoples of the United Nations".

In 1967, the Federal Congress devoted itself to the perfecting of existing social legislation through extensive use of the amendment process. Key amendments extended the benefits of landmark legislation such as the Appalachian Regional Development Act of 1965, the Economic Opportunity Act, and the Public Health Service Act to many more people. The volume of federal assistance in these and other projects increased. Urban action programmes, such as the Job Corps and the Neighborhood Youth Corps, and rural area programmes designed to aid migrant workers and those seasonally employed were strengthened and their scope was enlarged. Congressional emphasis centred on the effective utilization of existing mechanisms for societal betterment.

The Congress also extended the life of the Commission on Civil Rights until 31 January 1973. A sum of $2,650,000 was allocated for each year of the Commission's operation.

During 1967, the Department of Justice filed a record number of civil rights suits concerning jobs, school and public accommodations. The cases were brought under various sections of the Civil Rights Act of 1964. In addition, the Attorney General ordered the reopening of a number of cases to bring court-ordered desegregation plans up to current legal standards.

Enforcement of the 1965 Voting Rights Act during 1967 included the assignment of federal voting examiners to counties throughout the South. More than 175,000 Negroes registered to vote in the five States where the Voting Rights Act had its principal impact: Alabama, Georgia, Louisiana, Mississippi and South Carolina. Negro registration in these States was estimated at 1.25 million, an increase of 78 per cent in the months since the passage of the Voting Rights Act. The rate of adult Negroes registered rose from 28 to 52 per cent.

SIGNIFICANT LEGISLATION

The Age Discrimination in Employment Act of 1967 had as its purpose the promotion of the employment of the older worker based on ability

[1] Information furnished by the Government of the United States of America.

rather than age. The Act prohibits arbitrary discrimination in employment while helping employers and employees to find ways of meeting problems arising from the impact of age on employment. Employment agencies and labour organizations also come within the scope of the legislation. The Act vests in the Secretary of Labor the power to investigate and to issue appropriate rules and regulations. Where voluntary compliance is not forthcoming, the Secretary of Labor is charged with securing enforcement through legal proceedings. An aggrieved individual may also bring suit under the Act. In order to explore the potential of older workers for continued employment and contribution to the national economy, the Act mandates that the Department of Labor undertake research and carry on a programme of education and information concerning the needs and abilities of older employees.

Although public schools in the United States have always been administered and funded by local school boards, the Federal Government has provided financial assistance to meet special localized needs and to strengthen the quality of educational opportunities. 1967 amendments to the Elementary and Secondary Education Act of 1965 authorized the appropriation of 1.5 billion dollars for such assistance. Notable among the many programmes funded by the 1967 amendments were the establishment and operation of national centres for the training of handicapped children and of projects designed to assist children of limited English-speaking ability to obtain elementary and secondary education. Adult education programmes already in effect were extended until 1970.

The Federal Congress also enacted the Education Professions Development Act of 1967 which created new teacher training programmes designed to attract qualified persons to the profession in areas of critical need. The Act continued the National Teachers Corps which has contributed to the reduction of teacher shortages in low income areas.

The Air Quality Act of 1967 provided for control of air pollution problems on a regional basis in accordance with air quality standards and enforcement plans developed by the States. State standards and enforcement plans must be consistent with air quality criteria and control technology data published by the Secretary of Health, Education and Welfare. In addition, the Act authorized the appropriation of $125 million for the years 1968-1969 for research into the combustion of fuels. The Secretary of Health, Education and Welfare, upon finding that a particular pollution source or combination of sources presents an "imminent and substantial endangerment to the health of persons", is empowered to seek an injunction against the emission of such contaminants as may be necessary to protect public health. The States, political subdivisions and intermunicipal or interstate agencies remain free, however, to adopt and implement more stringent standards than those approved by the Secretary.

Partnership for Health Amendments of 1967 established expanded programmes for research and demonstration projects on new methods of organization, development and financing of health services, facilities and resources of hospitals and medical centres. The amendments authorize the Secretary of Health, Education and Welfare to make a comprehensive survey of serious hunger and malnutrition, and of health problems related thereto in the United States.

Mental health programmes benefited from the Appropriation of $230 million for the construction of community mental health centres and the training of professional and technical staffs to operate such centres.

JUDICIAL ACTION

Fair trial and hearing (articles 3, 5, 9, 10 and 11 of the Universal Declaration of Human Rights)

The Fifth Amendment of the United States Constitution provides, *inter alia*, that "... nor shall (any person) be compelled in any criminal proceeding to be a witness against himself...".

The Sixth Amendment of the United States Constitution provides, *inter alia*, that "(i)n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial ... to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense".

In 1967, the Supreme Court held that juvenile proceedings to determine "delinquency," which may lead to commitment to a State institution, must be regarded as criminal for purposes of Fifth and Sixth Amendment guarantees. (*In Re Gault*, 387 U.S. 1.) In such proceedings, a juvenile and his parents must be advised of their right to be represented by counsel. Where indigence precludes the parents' securing of counsel, the authorities shall appoint counsel to represent the child. The Fifth Amendment privilege against self-incrimination was also held to apply to juvenile proceedings. An admission by a juvenile may not be used against him in the absence of clear and unequivocal evidence that the admission was made by him with knowledge that he was not obliged to speak and would not be penalized for remaining silent. The *Gault* decision held that the State must afford a juvenile the Sixth Amendment rights of confrontation and sworn testimony of witnesses available for cross-examination.

In *Washington* v. *Texas*, 388 U.S. 14, the Supreme Court extended the Sixth Amendment right of a defendant in a Federal criminal case to have compulsory process for obtaining witnesses in his favour to State proceedings, holding that this was required by the due process clause of the Fourteenth Amendment.

The Supreme Court, in 1967, held that by indefinitely postponing prosecution on an indictment over petitioner's objection and without stated justification, North Carolina had denied petitioner the right to a speedy trial guaranteed to him by the Sixth and Fourteenth Amendments of the Federal Constitution (*Klopfer* v. *North Carolina*, 386 U.S. 213).

In two important cases decided in 1967, the Supreme Court amplified the meaning of the "critical stage in a criminal proceeding" doctrine first enunciated in *Powell* v. *Alabama*, 287 U.S. 45, and consistently repeated.[2] This doctrine derives from the Court's interpretation of the

Sixth Amendment's guarantee of a right to counsel. The Court has held that an accused's right to counsel applies not only at his trial but at any critical confrontation with prosecutional authorities where the result might well determine his fate and where the absence of counsel might derogate from his right to a fair trial.[3] In *United States* v. *Wade*, 388 U.S. 218, the Supreme Court, in affirming a lower court ruling, held that a post-indictment line-up was a critical prosecutive stage at which the respondent was entitled to the aid of counsel. According to the majority, counsel's presence at the line-up would significantly promote fairness at the confrontation and a full hearing on the issue of identification at trial. The Supreme Court also found the time of sentencing to be a critical stage in a criminal case at which counsel's presence was necessary to ensure that the conviction and sentence were not based on misinformation or a misreading of court records (*Mempa* v. *Rhay*, 389 U.S. 128). The services of counsel at the deferred sentencing stage are imperative to ensure that certain rights, such as that of appeal, are asserted in a timely manner.

Right to privacy (article 12)

The Fourth Amendment of the United States Constitution provides, *inter alia*, that "(t)he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation . . .".

The Fourth Amendment's protections include conversation, and the use of electronic devices to capture it constitutes a "search" within the meaning of the amendment, (*Berger* v. *New York*, 388 U.S. 41). It governs not only the seizure of tangible items but extends as well to the recording of oral statements (*Silverman* v. *United States*, 365 U.S. 505). Commenting that the Fourth Amendment protects "people not places, the Supreme Court in 1967 excluded from evidence, in a gambling trial, information electronically intercepted from a public telephone booth (*Katz* v. *United States*, 389 U.S. 347). The Court held that the Government's eavesdropping activities violated the privacy upon which an individual justifiably relies while using a telephone booth. And Justice Stewart noted:

> "Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures" (*Katz* v. *United States*, 389 U.S. 347, 359).

In the *Berger* case, the Supreme Court struck down a New York statute which authorized eavesdropping, on the grounds that it did not meet Fourth Amendment strictures. Thus in 1967, the Court's interpretations of the scope of Fourth Amendment protections kept pace with the revolution in technology.

The Fourth Amendment applies not only to searches by police in their investigation of crime but also to searches by other public officials charged with duties of inspection. In two related cases in 1967, *Camara* v. *San Francisco*, 387 U.S. 523, and *See* v. *Seattle*, 387 U.S. 541, the Supreme Court held that the Fourth Amendment required a suitable warrant procedure to effect unconsented administrative entry and inspection of premises. The *Camara* case involved a private dwelling while the *See* decision dealt with a place of business. Since virtually all administrative codes are enforceable through the criminal process, the Supreme Court insisted that the codes guarantee the protections that are attached to the criminal process.

Right to a Nationality (article 15)

The Fourteenth Amendment of the United States Constitution provides, *inter alia*, that "(a)ll persons born or naturalized in the United States . . . are citizens of the United States . . .".

In 1967, the Supreme Court indicated that this Fourteenth Amendment provision completely controls the status of citizenship in the United States and prevents cancellation of citizenship absent the voluntary renunciation thereof. In *Afroyim* v. *Rusk*, 387 U.S. 253, petitioner contested an attempt to deprive him of U.S. citizenship for having voted in a foreign election. The Supreme Court held that Congress has no express power to strip a person of citizenship and that no such power can be sustained as an implied attribute of sovereignty.

Marital rights (article 16)

In the 1967 case of *Loving* v. *Virginia*, 388 U.S. 1, the Supreme Court did away with Virginia's anti-miscegenation law. The Court unequivocally pronounced that Virginia's statutory scheme to prevent marriages between persons solely on the basis of racial classifications violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

Freedom of association (article 20)

The First Amendment of the United States Constitution provides, *inter alia*, that "Congress shall make no law respecting . . . the right of the people peaceably to assemble . . .".

Section 5(*a*)(1)(D) of the Subversive Activities Control Act authorized the Secretary of Defense to designate certain installations as "defense facilities" and prohibited the employment at such facilities of persons belonging to subversive organizations. In *United States* v. *Robel*, 389 U.S. 258, the appellee, a member of the Communist Party, had remained an employee of a shipyard after the Secretary of Defense's action operated to bar his employment. The Nation's Highest Court found Section 5 (*a*) (1) (D) invalid on the grounds that its expansiveness unconstitutionally abridged the right of association protected by the First Amendment. The inherently indiscriminate application of the statute to all types of association with Communist-action groups, regardless of the quality and degree of membership rendered it unconstitutionally vague.

Also in 1967, the Supreme Court declared a State law which required employees to take an oath that they were not "in one way or another" engaged in subversive activities constitutionally defective on grounds of vagueness (*Whitehill* v. Elkins, 389 U.S. 54).

[2] *Hamilton* v. *Alabama*, 368 U.S. 52; *White* v. *Maryland* 373 U.S. 59; *Massiah* v. *United States*, 377 U.S. 201; *Escobedo* v. *Illinois*, 378 U.S. 478.

[3] *Ibid.*

UPPER VOLTA

ORDINANCE No. 67-24 PRES. OF 6 MAY 1967 ESTABLISHING A SPECIAL COURT [1]

Art. 1. A special court shall be established, with jurisdiction over the entire territory of the Republic of the Upper Volta, to which the following may be referred:

(*a*) Crimes and offences against the internal and external security of the State;

(*b*) Political crimes and offences and crimes and offences under the ordinary law which are connected therewith;

(*c*) Crimes and offences under the ordinary law the motive for which is entirely or in part political;

(*d*) Misappropriation of public funds, breach of trust, corruption, swindling, extortion, forgery of a public or private document.

Art. 2. Article 36 of Act No. 15 AL of 31 August 1959 is hereby amended to read:

"Any person who misappropriates or abstracts public or private funds, active securities representing such funds, documents, deeds, instruments, or personal effects or property entrusted to him in connexion with a public office, shall be sentenced to hard labour for a specified term, if the value of the items misappropriated or abstracted is over 500,000 francs."

Article 38 of the same Act shall be expanded to include the following text:

"In all cases, confiscation of the property of the accused, to an amount not exceeding the total amounts which he has been ordered to repay, shall be mandatory."

. . .

Art. 9. The procedure and regulations in respect of the preliminary investigation shall be governed by the provisions of the Code of Criminal Procedure, with the following exceptions:

(*a*) Detention pending trial shall be automatic;

(*b*) No accused person placed in detention pending trial by the examining judge may be granted a provisional release;

(*c*) Jurisdictional pleas may not be submitted by the accused to the examining judge;

(*d*) At the end of the preliminary investigation, the examining judge shall decide either to dismiss the case or to refer it to the special court. Such decisions shall be accompanied by a statement of reasons.

No appeal shall lie against decisions rendered by the examining judge, with the exception of a decision to dismiss the case, which may be referred to the *Chambre de mises en accusation* of the Court of Appeals within forty-eight hours by the *Commissaire du Gouvernement.*

Art. 10. At the request of the *ministère public,* the accused shall be served by a court bailiff with a summons to appear before the special court.

The summons shall cite the decision of the examining judge, the offence charged and the text of the relevant law.

At least ten clear days shall elapse between the date on which the summons is served and the date set for the accused to appear before the special court.

If, by the date on which the case is referred to the special court, the accused has not appointed a counsel, one shall be appointed for him *ex officio* by the President of the special court from the roll of defence counsels registered in the Upper Volta or from a list of officials of Upper Volta nationality drawn up by the Keeper of the Seals, Minister of Justice.

The special court shall sit at least quarterly and if necessary at more frequent intervals.

The opening date of each sitting shall be fixed by decision of the President of the special court, after consultation with the *Commissaire du Gouvernement.*

Irrespective of the offence charged, the procedure for investigation and trial shall conform to the procedure laid down by the Code of Criminal Procedure for the Assize Court, with the exception of the provisions of article 315 of that Code.

[1] *Journal officiel de la République de Haute-Volta,* No. 23 of 25 May 1967.

Art. 11. Decisions of the special court shall be rendered in first and last resort and shall not be subject to appeal for cassation.

Art. 12. Sentences shall be immediately enforceable, with the exception of death sentences.

Art. 13. The courts of ordinary law shall continue to be competent to try cases to which this ordinance is applicable when the *Commissaire du Gouvernement* has not taken cognizance of them.

The *Commissaire du Gouvernement* may request a court of ordinary law not to proceed with a case to which he considers that this ordinance is applicable, provided that the discussion of the main issue has not commenced in such court. For this purpose, he shall address his request to the competent *parquet*, which shall transmit it without delay to the judge who is seized of the case. The latter shall be obliged to comply with it and to transmit the papers in the case to the *Commissaire du Gouvernement.* No appeal shall lie against the removal of the case from the jurisdiction of the judge of the court of ordinary law.

Art. 14. The application of the jurisdictional and procedural rules established in this ordinance shall not affect the determination of the penalty, which shall be that provided in the codes and laws for the offence in question.

However, the provisions of article 2 of this ordinance shall apply to all offences subject to the jurisdiction of the special court, even if they were committed prior to its promulgation, and detention shall in all cases be ordered, irrespective of the offence charged.

Art. 15. Civil actions may be instituted before the special court. The judges and assessors shall consider them together.

Art. 16. Offences falling within the jurisdiction of the special court which were committed after 1 January 1959 shall not be extinguished by time limitation.

. . .

DECREE No. 67-309 CONCERNING THE SEQUESTRATION OF THE PROPERTY OF CERTAIN PERSONS [2]

Art. 1. All movable and immovable property belonging to the following persons, which is in the national territory, is hereby sequestered to the State:

. . .

Art. 2. The following movable and immovable property, belonging to the persons named below, is hereby sequestered to the State:

. . .

Art. 3. The sequestered property shall be seized immediately by the police and security force.

Art. 4. The Minister of Finance and Commerce shall draw up the definitive list of this sequestered property for the purpose of assuming ownership of and managing it.

Art. 5. The provisions of articles 1 and 2 shall be without prejudice to administrative measures and legal proceedings which may be taken at a later stage.

Art. 6. Movable and immovable property which is not in the national territory shall be disposed of in accordance with decisions to be taken at a later stage.

. . .

[2] *Ibid.*, No. 54, 21 December 1967.

VENEZUELA

DECREE No. 771 OF 4 MARCH 1967 [1]

Article 1. The guarantees established in sections 1, 6 and 10 of article 60 and in articles 62 and 115 of the Constitution are hereby suspended throughout the national territory.[2]

Article 2. This Decree shall be submitted for consideration by the Legislative Power within ten days after its publication, in accordance with article 242 of the Constitution.

DECREE No. 982 OF 16 NOVEMBER 1967 [3]

Article 1. The full exercise of the guarantees established in sections 1, 6 and 10 of article 60 and in article 62 of the Constitution is hereby restored throughout the territory of the Republic;

[1] *Gaceta Oficial de la República de Venezuela,* No. 28,275 of 4 March 1967.

[2] For extracts from the Constitution of Venezuela, see *Yearbook on Human Rights for 1961,* pp. 390-398.

[3] *Gaceta Oficial de la República de Venezuela* No. 28,483 of 16 November 1967.

YUGOSLAVIA

DEVELOPMENT IN THE FIELD OF HUMAN RIGHTS IN THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA IN 1967 [1]

I. LEGISLATION

In 1967, legislation in the field of human rights was further developed and improved. A considerable number of laws have been amended and some new laws have been adopted, providing for more complete protection of these rights.

CODE OF CRIMINAL PROCEDURE OF YUGOSLAVIA
(*Official Gazette of the SFRY,* No. 23/67)

The Code of Criminal Procedure in Yugoslavia was modified on 11 May 1967, and came into force on 1 January 1968. The starting point of its modification was to extend the rights of parties in the course of the criminal procedure and to set up the organization of a procedure, in particular relating to preliminary proceeding, which would facilitate the implementation of the principle of establishing truth and a more efficacious procedural conduct.

Preliminary proceeding

In the course of the preliminary proceeding, there do not exist any longer two types of proceedings, namely inquiry and investigation. Investigation is now the exclusive competence of the court.

1. The initiative for instituting criminal proceedings and for conducting them is that of the public prosecutor who proposes an investigation to be conducted, or an indictment to be filed without conducting the investigation, in a circuit court. Such a proposal is subject to the judgement of the court and the court may, if it is of the opinion that the proposal by the public prosecutor is unlawful, request the council to give the final ruling.

2. With regard to the filing of criminal information, it is worth noting that the working organizations and any other organizations enjoy equal status as the State organs in respect of the duty to report criminal offences which are subject to official prosecution, regardless of who is the injured party due to such a criminal offence.

3. During the phase of establishing the existence of a criminal offence, the public prosecutor is obliged and authorized *ex officio* to cause the criminal offences to be discovered and the perpetrators thereof to be identified, if they fall within the scope of his work. At this stage, the public prosecutor is bound by the principle of legality and shall take whatever steps may be necessary to enlighten the criminal offence, so as to enable the taking of the final decision and the instituting of criminal proceedings, if there exists a definite degree of probability that a certain person has committed a certain criminal offence.

4. The collecting of information by the organs of internal affairs is undertaken at the request of the public prosecutor, or at their own initiative; however, such actions do not assume the character of instituting criminal proceedings, but are directed towards obtaining information which might be of use for a successful conduct of the criminal proceedings.

5. Persons caught in the very act may be detained pending the arrival of the investigating magistrate or may be sent to the court of investigation. The assumption for such a detention is the suspicion that a criminal offence, which is subject to official prosecution, has been committed; that a person has been caught in the very act and on the spot; that it is probable that a later hearing would be rendered more difficult; and that there is a probability that a hearing may provide essential information for instituting criminal proceedings.

6. Through the latest modifications also has been solved the question of taking photographs of suspects and of taking their fingerprints. In the course of the procedure for the identification and collecting of evidence, the organs of internal affairs may take pictures and fingerprints of the suspects if there are grounds to suspect that they have committed a criminal offence.

[1] Note prepared by Dr. Boško Jakovljević, government-appointed correspondent of the *Yearbook on Human Rights.*

7. In addition to these actions, the organs of internal affairs may make inquiries about the place of residence or abode of a person, send round circulars, give warrant of caption or announcement, temporarily take objects, search lodgings or persons under certain conditions, and, in urgent cases, make inquiry and carry out expertise pending the arrival of the investigating magistrate. It is necessary to point out, however, that the search of lodgings is only exceptionally permitted when there exist grounds to suspect that a criminal offence has been committed which is subject to official prosecution, when there is a probability that, by searching lodgings, the perpetrator may be captured or that traces of the criminal offence or objects important for instituting criminal proceedings may be found, or in some other cases where there is a danger of deferment. The search of lodgings is carried out obligatorily in the presence of two witnesses and minutes are drawn up on the search, bearing in mind that the search be carried out with care, avoiding unnecessary damage and disturbance of the peace and order in the house.

8. The procedure of identification and collecting information may be closed by rejecting the criminal report, by instituting investigation or filing indictment without conducting investigation.

9. The purpose of investigation is to clarify to such an extent the suspicion for which there exist grounds and which has been acquired against a determined person and state of the criminal matter, so that on the basis of the produced evidence and information an order may be given ruling the filing of an indictment or suspension of the proceedings, investigation is conducted at the instance of the public prosecutor, and an order is given about the conduct of the investigation if the court should find that there exist grounds for such a move. The accused has the right to appeal against such an order and the court council is obliged to give a ruling within 48 hours from the moment the documents have been referred to it. The investigating magistrate may likewise, before deciding on the move for conducting investigation, call the public prosecutor and the person against whom the investigation is to be conducted and give them a chance to make an oral statement on the whole matter.

10. The ruling on the filing of an indictment without the conduct of investigation may be given by the investigating magistrate at the move of the public prosecutor, provided that the accused, too, has consented to it.

11. During the conduct of investigation, the parties and the injured person have the right to be present during the carrying out of certain investigating actions. The public prosecutor and the counsel for the defence may be present during each investigating action, including the interrogation of the accused.

12. The extension of the rights of the accused and the counsel for the defence during the court proceedings, pursuant to the modifications made, is reflected undoubtedly in the right of the accused to be interrogated always in the presence of the counsel for the defence, regardless of whether he himself has chosen the counsel for the defence or the latter has been designated by the court. The accused may be interrogated without the presence of the counsel for the defence only if he expressly renounces this right. The Code provides, if the need be, that the investigating magistrate shall be obliged to assist the person deprived of his liberty to find a counsel for the defence and that, on the other hand, it is the duty of the investigating magistrates to inform the family of the accused that the latter has been deprived of liberty. The other rights of the accused at this stage of the proceedings are that he is not obliged to answer particular questions and that he is entitled to an uninterrupted eight-hour rest every 24 hours; similarly, no interventions may be exercised on the accused in any way for the purpose of extorting statements from him against his will. In the case of protraction of the court proceedings and of other irregularities in the course of the investigation, the parties and the injured person may file a complaint with the president of the circuit court.

13. The Code provides that the investigating magistrate may, *ex officio* or at the instance of the parties, decide on the taking from the documents of the minutes on the statements by the accused, the witness or the expert, on the basis of which the decision of the court may not be founded, according to the provisions of the Code.

14. Upon the completion of the investigation, a decision may be taken on the filing of an indictment, if there exist specified reasons therefor. Under the amended Law, the period set for the bringing of an action is specified as follows: eight days for filing the indictment without previously conducting investigation; fifteen days for action on the basis of the completed investigation, whereas for the bringing of an action on the part of the injured person, in the capacity of the plaintiff, and for a civil action, eight days are prescribed.

Detention

Detention is compulsory only if there exist grounds for suspicion that a person has committed a criminal offence for which capital punishment is prescribed by the law. As to the facultative detention in case of criminal offences under the jurisdiction of the circuit court, the condition has been kept providing for detention in case of the hiding of the person, who is suspected on legal grounds, to have committed a criminal offence; or, if it is not possible to establish the identity of a certain person, as well as when there are other circumstances indicating that there is the danger of escape, or in the case where there is the danger of the investigation being impeded by the perpetrator of a criminal offence. It is necessary to point out that the Code discriminates between deprival of liberty and detention.

Principal hearing

What is particularly to be emphasized in conjunction with the changes in the Code, is the provision whereby it is forbidden to take pictures in the courtroom for later showing in movies, or for broadcast by television, save in the case of a special permission for this purpose granted by the President of the republican Supreme Court.

Regular legal remedies

The most essential changes of the legal provisions governing the procedure concerning the regular legal remedies are relevant to the participation of the parties in the procedure in the second and in the third instance. In case of a complaint against the sentence passed by a circuit court or against the sentence of a municipal court relating to a criminal offence for which a penalty of severe imprisonment is prescribed, the procedure has remained the same, with the proviso that the court of first instance is obliged to inform the accused and the counsel for the defence, as well as the injured person as the plaintiff and the private plaintiff respectively, about the session of the council in the following two cases: (*a*) if so requested by them in the petition and (*b*) in case the council itself deems the presence of the parties to be useful, for the purpose of clarification of the matter.

Extraordinary legal remedies

The extraordinary commutation of punishment may be obtained by means of a request which may be submitted by all persons who are in all other respects authorized to present petitions against the sentence, in favour of the accused. This also includes the counsel for the defence.

By presenting the motion for the protection of legality, it is not possible to change the legally valid decision to the detriment of the accused, but it may only be established that the law has been violated, without touching the legally valid decision if it would be to the detriment of the accused.

International legal assistance

With regard to the international legal assistance through respective national police organs, when the taking of certain investigating actions is involved, in particular the hearing of a certain individual, requests in this respect are submitted to the Federal Secretariat for Internal Affairs. The actions on the basis of these requests are taken by the investigating magistrate. When referring such a request to the court, a certificate will also be enclosed confirming that with the country concerned there exists an agreement on the providing of legal assistance through police organs.

New provisions of the Code concerning the issuance of an international warrant of caption are also of interest. On the basis of the court decision on the issuance of the warrant of caption, the competent organ of internal affairs has so far issued the warrant of caption valid only in the territory of Yugoslavia. Under the new provisions, the Federal Secretariat for Internal Affairs is authorized, through the competent organs abroad, to issue the international warrant of caption on the basis of the court decision. As to extradition, the competence of the Federal Public Prosecutor has been transferred to the President of the Federal Council for Justice, who makes final decision on the extradition of an individual in all the cases where the circuit or republican Supreme Court respectively have found that there exist grounds for such extradition.

LAW ON THE HEALTH PROTECTION OF FOREIGN CITIZENS IN YUGOSLAVIA
(*Official Gazette of the SFRY*, No. 23/67)

The right to the protection of health and to social security for each individual, laid down in the Constitution, is in the case of foreign citizens regulated by the Law on Health Protection of Foreign Citizens in Yugoslavia, by republican and other regulations. Thereby, all foreign citizens enjoy the full health protection regardless of their citizenship, nationality or category, or of their being stateless persons. This provision applies equally to all foreign citizens residing permanently or staying temporarily in Yugoslavia, or are in transit in the territory of Yugoslavia, or who happen to be at some of the ex-territorial traffic establishments of Yugoslavia in another State.

The right to the protection of health of foreign citizens is regulated also by the agreements in the field of health insurance and social security which the Socialist Federal Republic of Yugoslavia has concluded with 18 countries.

The law prescribes that it shall be the duty of each health institution and health worker to render medical service in case of emergency to a foreign citizen under the same conditions and in the same way as provided for in the case of Yugoslav citizens.

On the basis of the principle of solidarity and reciprocity, within the uniform system of social security, the compulsory health protection and other rights in case of illness are secured, under republican regulations, to foreign citizens studying or specializing in Yugoslavia.

The right conferred upon all working and other organizations to make contracts with foreign agencies, organizations or individuals, concerning the obligations to secure medical services to be rendered to foreign citizens by the health institutions, when staying in Yugoslav territories, represents an important novelty in the Law on Health Protection of Foreign Citizens in Yugoslavia.

In actual fact, some regulations in the field of health protection adopted previously have now been codified in the Law and a new step has been made in the direction of a complete legal regulation of the right of foreign citizens to the protection of health, at the same time, medical services are now secured to foreign citizens without any restrictions whatsoever. In this way, the Charter of the World Health Organization and the other international obligations assumed by Yugoslavia in the field of health protection and insurance, have been complied with.

II. INTERNATIONAL CONVENTIONS

Yugoslavia has ratified without any reservations the International Convention on the Elimination of All Forms of Racial Discrimination (*Official Gazette of the SFRY*, No. 31/67).

ZAMBIA

THE LAW REFORM (MISCELLANEOUS PROVISIONS) ACT, 1967

Act No. 26 of 1967, assented to on 6 April 1967 [1]

. . .

Part II

EFFECT OF DEATH ON CERTAIN CAUSES OF ACTION

2. (1) Subject to the provisions of this section, on the death of any person after the commencement, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:

Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person:

(*a*) shall not include any exemplary damages;

(*b*) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to mary;

(*c*) where the death of that person has been caused by the act or omission which gave rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

. . .

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless either:

(*a*) proceedings against him in respect of that cause of action were pending at the date of his death; or

(*b*) proceedings are taken in respect thereof not later than six months after his personal representative took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Act, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this Act for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Fatal Accidents Acts, 1846 to 1908, or any law for the time being in force relating to carriage by air, and so much of this Act as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Acts as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

3. (1) For the purposes of the Acts a person shall be deemed to be a parent or child of the deceased person notwithstanding that he was only related to him illegitimately or in consequence of adoption, and accordingly in deducing any relationship which under the provisions of the Acts is included within the meaning of the

[1] *Supplement to the Republic of Zambia Government Gazette* of 14 April 1967, published by the Government Printer, Lusaka.

expressions "parent" and "child", any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate offspring of his mother and reputed father or, as the case may be, of his adopter.

(2) In an action brought under the Acts damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.

(3) This section shall not apply in relation to any action in respect of the death of any person before the commencement.

(4) In this section, unless the context otherwise requires:

"the Acts" means the Fatal Accidents Acts, 1846 to 1908;

"adopted person" means a person who has been adopted, whether before or after the commencement, in pursuance of an adoption order made under the Adoption Ordinance.

. . .

Part IV

Capacity, property and liabilities of married women; and liabilities of husbands

5. Subject to the provisions of this Part, and subject, as respects actions in tort between husband and wife, to the provisions of section *twelve* of the Married Women's Property Act, 1882, a married woman shall:

(*a*) be capable of acquiring, holding, and disposing of, any property; and

(*b*) be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt, or obligation; and

(*c*) be capable of suing and being sued, either in tort or in contract or otherwise; and

(*d*) be subject to the law relating to bankruptcy and to the enforcement of judgments and orders;

in all respects as if she were a *feme sole*.

6. (1) Subject to the provisions of this Part, all property which:

(*a*) immediately before the commencement was the separate property of a married woman or held for her separate use in equity; or

(*b*) belongs at the time of her marriage to a woman married after the commencement; or

(*c*) after the commencement is acquired by or devolves upon a married woman;

shall belong to her in all respects as if she were a *feme sole* and may be disposed of accordingly.

(2) No restriction upon anticipation or alienation attached, or purported to be atached, to the enjoyment of any property by a woman which could not have been attached to the enjoyment of that property by a man shall be of any effect after the commencement.

7. Subject to the provisions of this Part, the husband of a married woman shall not, by reason only of his being her husband, be liable:

(*a*) in respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage; or

(*b*) to be sued, or made a party to any legal proceeding brought, in respect of any such tort, contract, debt, or obligation.

8. (1) Nothing in this Part shall enable any judgment or order against a married woman in respect of a contract entered into, or debt or obligation incurred, before the commencement, to be enforced in bankruptcy or to be enforced otherwise than against her property.

(2) For the avoidance of doubt it is hereby declared that nothing in this Part:

(*a*) renders the husband of a married woman liable in respect of any contract entered into, or debt or obligation incurred, by her after the marriage in respect of which he would not have been liable if this Act had not been passed;

(*b*) exempts the husband of a married woman from liability in respect of any contract entered into, or debt or obligation (not being a debt or obligation arising out of the commission of a tort) incurred, by her after the marriage in respect of which he would have been liable if this Act had not been passed;

(*c*) prevents a husband and wife from acquiring, holding, and disposing of, any property jointly or as tenants in common, or from rendering themselves, or being rendered, jointly liable in respect of any tort, contract, debt or obligation, and of suing and being sued, either in tort or in contract or otherwise, in like manner as if they were not married;

(*d*) prevents the exercise of any joint power given to a husband and wife.

(3) Where a husband and wife are married according to customary law and not otherwise, the provisions of this Part shall not apply to the husband or to the wife.

. . .

THE LEGAL AID ACT, 1967

Act No. 30 of 1967, assented to on 6 April 1967 [2]

...

Part II

APPOINTMENT AND POWERS

4. (1) There shall be appointed as public officers a Director of Legal Aid and such legal aid counsel and legal aid assistants as shall be necessary for the proper administration of this Act.

...

(4) Subject to the provisions of section *thirteen*, whenever the Director grants legal aid to a person under this Act he shall, unless he allocates the matter in question to a practitioner under section *six*, provide that person with such of the services included in legal aid as may be required.

5. (1) Notwithstanding that he is not a practitioner every legal aid assistant shall, in any matter in which any services included in legal aid are provided by the Director, be entitled to appear for and represent a legally-aided person.

(*a*) in any criminal proceedings before a subordinate court;

(*b*) in any civil proceedings before a subordinate court, by leave of the court;

(*c*) in any proceedings in Chambers; and

(*d*) for the purpose of making any application in procedings before a subordinate court, where the Director is representing a legally-aided person and is unable to attend.

(2) The right of audience conferred on legal aid assistants by this section is in addition to and not in derogation of any other written law relating to the right of audience of a person who is not a practitioner.

6. (1) The Director may by agreement with any practitioner retain the services of that practitioner for the purpose of providing legal aid under this Act and every such agreement shall be upon and shall set out such conditions, including the remuneration of the practitioner, as the Minister may in each case approve.

(2) The Director may allocate to any practitioner, whether or not the practitioner has been retained under subsection (1) any matter in respect of which he has granted legal aid under this Act and the practitioner shall, save as otherwise provided by agreement between the practitioner and the Director, be entitled to the appropriate prescribed fees for his services.

(3) The Director may at any time in his discretion dispense with the services of any practitioner to whom any matter in respect of which legal aid has been granted has been allocated except where legal aid has been granted under section *thirteen*.

7. (1) There is hereby established for each District a legal aid committee which shall perform such functions and exercise such powers in relation to legal aid in civil matters and causes as are imposed or conferred on the committee by or under this Act.

...

Part III

LEGAL AID IN CRIMINAL CASES

8. (1) Whenever any court commits a person for trial before the High Court and the court considers that the accused has insufficient means to enable him to engage a practitioner to represent him the committing court shall issue a legal aid certificate.

(2) If an accused person before the High Court is unrepresented by a practitioner and the Court considers that there is insufficient reason why the accused should not be granted legal aid, the Court may issue a legal aid certificate.

9. (1) Whenever:

(*a*) a person is:

(i) charged with a specified offence; or

(ii) charged with an offence other than a specified offence and any court before which he appears considers that, having regard to all the circumstances of the case, it is desirable in the interests of justice that the accused should have legal aid;

(*b*) the case is not to be the subject of a preliminary inquiry; and

(*c*) any court before which the accused appears considers, after inquiry, that the accused has insufficient means to enable him to engage a practitioner to represent him;

the court shall issue a legal aid certificate.

(2) If during a preliminary inquiry held under the Criminal Procedure Code the court considers that:

(*a*) having regard to all the circumstances of the case, it is desirable in the interests of justice that the accused should be represented by a practitioner at that inquiry; and

(*b*) the accused has insufficient means to enable him to engage a practitioner to represent him;

the court shall recommend to the Director that the accused be granted legal aid.

(3) Whenever a subordinate court refuses to grant a legal aid certificate to a person charged with an offence who applies to the court for legal aid, the court shall advise the accused of his right to apply to the Director and, where the offence charged is a specified offence, shall also advise the Director of the reasons for such refusal.

[2] *Ibid.*

10. (1) The Director shall grant legal aid to any person in respect of whom a legal aid certificate has been issued under this Part.

(2) The Director may grant legal aid to any person with respect to whom a recommendation has been made by a court under section *nine.*

(3) Any person charged with an offence may apply to the Director for legal aid whether or not an application for legal aid has been made to or refused by any court and if the Director considers that:

(*a*) having regard to all the circumstances of the case, it is desirable in the interests of justice that the accused person should be represented by a practitioner; and

(*b*) the accused has insufficient means to enable him to engage a practitioner to represent him;

the Director may grant legal aid to that person.

Part IV

LEGAL AID IN CIVIL CASES

11. Application for legal aid to be granted under this Part may be made either to the Director or to a legal aid committee and in the case where a legal aid committee considers an applicant to be eligible for legal aid under section *twelve* it shall recommend to the Director that legal aid be granted accordingly.

12. (1) Subject to subsection (2) the Director may grant legal aid to any applicant who in his opinion:

(*a*) is in need of or would benefit from the services of a practitioner in any civil case or matter affecting him; and

(*b*) has insufficient means to obtain such services.

(2) Notwithstanding the provisions of subsection (1) the Director shall not grant legal aid for the purpose of proceedings in any court unless he is satisfied that:

(*a*) an applicant has reasonable grounds for taking, defending or being a party to these proceedings; and

(*b*) it is in the interests of justice that the applicant should be represented in these proceedings.

(3) The Director may of his own motion invite any person to apply for legal aid if it appears to the Director that such person may:

(*a*) be eligible for legal aid under this section; and

(*b*) be ignorant of his right to apply for legal aid.

13. (1) A court may at any time issue a special aid certificate to any person who is a party in any civil proceedings, whether at first instance or at appeal, in which the State is also a party if the court considers that:

(*a*) the person satisfies the conditions under which legal aid may be granted to him under this Act; and

(*b*) it is in the interests of justice that the person should be represented by a practitioner other than the Director.

(2) The powers of a court under subsection (1) shall be exercisable whether or not legal aid has been applied for or granted under any other provision of this Act.

(3) In granting a special aid certificate under this section the court may specify one or more practitioners and the Director shall thereupon allocate the representation of the person concerned to the practitioner or practitioners so specified who shall represent that person to the exclusion of any other practitioner.

Part V

LEGAL AID IN APPEALS

14. Application for legal aid may be made either to the Director or to a legal aid committee by any person who:

(*a*) intends to appeal against his conviction or sentence or against any judgment or order affecting him which was made in any criminal cause or matter;

(*b*) becomes a respondent in any appeal in a criminal cause or matter;

(*c*) intends to appeal against any final judgment, or order of a court in any civil cause or matter; or

(*d*) becomes a respondent in an appeal in a civil cause or matter;

and in the case where application is made to a legal aid committee, the committee shall, if it considers the applicant eligible to be granted legal aid under this section, recommend to the Director that legal aid be granted accordingly.

15. The Director may grant legal aid to an applicant under section *fourteen* if he is satisfied that:

(*a*) the applicant has insufficient means to enable him to obtain the services of a practitioner to represent him in the appeal to which the application relates;

(*b*) the applicant has reasonable grounds for instituting, defending or being a party to the appeal; and

(*c*) it is in the interests of justice that the applicant should be represented in the appeal.

16. Where, in any appeal before the High Court or the Court of Appeal, any party to the appeal is unrepresented and the court considers that a point of law of public importance is likely to arise in the appeal, the court may issue a legal aid certificate and the Director shall thereupon grant legal aid to that party for the purposes of the appeal.

. . .

PART II

TRUST AND NON-SELF-GOVERNING TERRITORIES

A. Trust Territories

AUSTRALIA

NOTE [1]

TRUST TERRITORY OF NAURU

LEGISLATION

A. Constitutional

The Island of Nauru, which had been a Trust Territory, administered by Australia, Britain and New Zealand, attained its independence on 31 January 1968. Australia had formerly, by agreement between the three administering Governments, exercised powers of legislation and administration over Nauru.

On 10 November 1967, sections 1, 2 and 3 of the Nauru Independence Act 1967 (No. 103 of 1967), passed by the Parliament of the Commonwealth of Australia, came into operation. Section 3 extended the power of the Legislative Council of Nauru that was conferred by the Nauru Act 1965 (as to which Act see the *Yearbook on Human Rights for 1965*) to make Ordinances for Nauru to the making of an Ordinance establishing a convention for the purpose of establishing a constitution for Nauru.

Section 4 of the Act provided that on the expiration of the day preceding Nauru Independence Day (subsequently fixed by Proclamation as 31 January 1968) the Nauru Act 1965 was repealed and all Acts of the Commonwealth that had extended to Nauru were to cease to so extend.

Section 4 provided also that on and after Nauru Independence Day, Australia should not exercise any powers of legislation, administration or jurisdiction in and over Nauru.

B. The principle of equal treatment

(Universal Declaration, articles 2, 6 and 7)

The Liquor Ordinance 1967 (No. 3 of 1967) removes the prohibition on drinking by Nauruans and other Pacific Islanders and introduces a liquor control system. It repeals the general prohibition on drinking imposed by the Arms, Liquor and Opium Prohibition Ordinance 1936, and regulates the sale, supply and consumption of liquor by establishing a Liquor Licensing Board to issue licences, hear objections, etc. It provides for the appointment of licensing inspectors and prescribes classes of licences (retailers, taverns, restaurants and clubs) and trading hours. The Ordinance prohibits credit sales and prohibits also the supply of liquor to persons under 21 years of age.

C. The right to take part in government

(Universal Declaration, article 21)

The Constitutional Convention Ordinance 1967 (No. 23 of 1967) constitued a Constitutional Convention for the purpose of establishing a Constitution for Nauru. The power to make the Ordinance was conferred by the Nauru Independence Act 1967 (see above).

The Ordinance provided for the establishment of a Convention, composed of the elected members of the Legistlative Council and twenty-seven other Nauruans elected from the various electoral districts, having authority to adopt a constitution for Nauru, and authorized and made the necessary provision for the election of the twenty-seven representatives.

D. The right to just and favourable conditions of work

(Universal Declaration, article 23)

The Workers (Contracts of Service) Ordinance 1967 (No. 7 of 1967) protects the employee against summary dismissal and termination of contract by giving him the right to appeal. It amends the Chinese and Native Labour Ordinance 1922-1966 in the following ways:

(*a*) By changing the name of the Ordinance to

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

the Workers (Contracts of Service) Ordinance 1922-1967;

(*b*) By providing for summary termination of contract by written notice of dismissal on certain specified grounds and giving a right of appeal by the worker through the Central Court within seven days of dismissal or such further time as the Court allows;

(*c*) By providing for termination of contract on a minimum of one month's notice by either party and inserting a provision to ensure that an employee who has at least 10 years qualifying service towards a long service bonus, receives a pro rata bonus payment;

(*d*) By inserting provisions permitting apprentices to enter into training contracts for five years;

(*e*) By inserting provisions which would allow a contract to be varied at any time during its currency by mutual consent of the parties; and

(*f*) By removing all references that might be considered to discriminate on racial grounds, for example, by replacing references to Chinese and Natives by such general terms as "persons, labourers, workers, etc."

E. Social services (health)

(Universal Declaration, article 25(1))

The Public Health Ordinance 1967 (No. 21 of 1967) amends the Public Health Ordinance 1925-1966 and gives power to make regulations to control hygiene generally. In addition, it gives power to make regulations providing for the control and inspection of the preparation, sale and distribution of food and the slaughtering of animals, as well as the control and inspection of eating houses, food shops and barber shops. Penalties may be imposed for breaches of the regulations and, where the offence is a continuing one, for each day during which the offence continues.

The Tuberculosis Ordinance 1967 (No. 4 of 1967) repeals and replaces the Tuberculosis Ordinance 1957. The compulsory powers of the 1967 Ordinance are unusually wide and are regarded as justified by the high incidence of tuberculosis in Nauru. The Ordinance provides for:

(*a*) Compulsory radiological examination of all persons in Nauru, with the exception of children under the age of twelve;

(*b*) Compulsory skin tests of all persons in Nauru at the request of the Administrator with subsequent radiological examination, vaccination or other prophylactic treatment as the Government Medical Officer determines. The compulsory X-ray examination of children will be applied to children only if a tuberculosis test has positive reaction and tuberculosis symptoms are present;

(*c*) Further medical radiological, or bacteriological examination or testing, or vaccination or other prophylactic treatment of a person if the Government Medical Officer requests it;

(*d*) The power of the District Court upon application of the Government Medical Officer to order, under certain circumstances, the removal and detention of a person suffering from tuberculosis to an institution in the Territory. A patient may be removed to, and detained in, an institution outside the Territory only if he consents;

(*e*) Appeal to the Central Court by any person aggrieved by an order or decision of the District Court.

TRUST TERRITORY OF NEW GUINEA

A. The principle of equal treatment

(Universal Declaration, articles 2, 6 and 7)

The Discriminatory Practices Ordinance 1967 (No. 24 of 1967) extends the provisions of the Discriminatory Practices Ordinance 1963 (as to which, see the *Yearbook on Human Rights for 1963*) to holders of barbers' shops licences.

B. The right to take part in government

(Universal Declaration, article 21)

The Electoral (Regional Electorates) Ordinance 1967 (No. 51 of 1967) was introduced following recommendations of the House of Assembly Select Committee on Constitutional Development that changes be made in the electoral arrangements for the next general elections for the House of Assembly so that members to be elected in 1968 should represent open electorates and regional electorates instead of open electorates and special electorates.

Provision is made for fifteen regional electorates, each returning one member and embracing the area of a number of open electorates.

The Electoral Ordinance (No. 2) 1967 (No. 50 of 1967) extends a requirement of the Electoral Ordinance 1963-1966 to members of the police force and Administration servants. The latter required public servants, but not members of the police force or Administration servants, to resign from their employment to qualify for nomination for election to the House of Assembly. The

Administration Servants (House of Assembly Elections) Ordinance 1967 (No. 71 of 1967) enables Administration servants who resign and contest an election, but are not elected, to be reinstated in their employment on the same conditions as are already provided for public servants and police.

C. Conditions of work

(Universal Declaration, article 23)

The Native Employment (Amendment) Ordinance 1967 (No. 43 of 1967) implements a number of the recommendations of the Board of Inquiry, established under the Industrial Relations Ordinance to enquire into rural wages and related matters, which have been accepted by the Administration either in their original form or with wider effect, and changes a provision relating to termination of employment.

The amendments provide that an agreement worker accompanied by dependants, or whose dependants later join him, may extend his initial contract annually to a total of five years service, and may after two years service elect to have his deferred wages paid in one sum or as current wages. The Ordinance introduces an entitlement for all employees to recreation leave and long service leave at the rate of six days per annum and eighteen days per five years of continuous service respectively, or, if a contract is terminated after six months, at the respective rates of one day for each two months and three and one-half days for each year of continuous service. A private member's amendment incorporated in the Ordinance has the effect of allowing an employee and a casual worker to agree that notice is to be given of termination of employment and provides that in the absence of evidence to the contrary it will be deemed to be a condition of a contract between such persons that it may be terminated at any time by either party without notice. Previously the Ordinance specifically provided that any agreement between a casual worker and an employer calling for notice to be given had no legal effect.

The Native Employment Ordinance 1967 (No. 73 of 1967) qualifies a provision allowing the services of a casual worker to be terminated without notice by the worker or the employer so as to require that, in the case of a casual worker with six month's continuous service, one week's notice, or one week's pay in lieu of notice, is to be given by the party terminating the employment. This new provision does not affect either the employer's right to dismiss an employee without notice on the grounds and in the circumstances for which an agreement worker could have his services terminated, or the employee's entitlement to recreation and long service leave.

The Employment Placement Service Ordinance 1966 (No. 18 of 1967). The Department of Labour and National Service already operates an employment placement service in the main centres of the Territory which brings workers and employees together and thereby assists the entry into employment of Papua and New Guinea workers. The Employment Placement Service Ordinance 1966 makes legislative provision for these services as follows:

(*a*) It provides for the establishment of an employment placement service, to provide employment services and facilities for the benefit of persons seeking employment or seeking employees, to aid trained persons to find suitable employment, to afford advice and guidance to this end, and to provide such other advice, services and facilities in relation to employment as the Administrator determines;

(*b*) It makes the professional recruitment of agreement workers illegal in declared areas where the Administrator is satisfied that adequate arrangements have been made under the employment placement service for the entry of persons into employment as agreement workers;

(*c*) It provides a penalty of $500 for the illegal recruitment of agreement workers.

The Retirement Benefits (Contract Officers) Ordinance 1966 (No. 8 of 1967) is designed to give contract workers of statutory authorities, e.g., the Papua and New Guinea Electricity Commission and the Housing Commission, the right to retirement benefits by opening the Public Service of Papua and New Guinea Retirement Benefits Scheme to officers employed by these authorities.

UNITED STATES OF AMERICA

TRUST TERRITORY OF THE PACIFIC ISLANDS[1]

During 1967, the following legislation was adopted:

1. *Amendment No. 3 of 29 June 1967 to Order No. 2882*

As amended, Section 9 of Order No. 2882 reads as follows:

"Section 9. *General elections.* General elections shall be held biennially in each even-numbered year on the first Tuesday following the first Monday in November: *Provided.* That in the event of a natural disaster or other Act of God, the effect of which precludes holding the election on the foregoing date, the High Commissioner, with the approval of the Secretary of the Interior, may proclaim a later election date in the affected election district or districts. All elections shall be held in accordance with such procedures as this order and the laws of the Trust Territory may prescribe. Legislators shall be chosen by secret ballot of the qualified electors of their respective district."

2. An Act amending Section 1039 of the Code of the Trust Territory to provide for further appeal to the Appelate Division of the High Court from decisions of the Trial Division of the High Court. (Approved on 1 September 1967 as Public Law No. 3-8.)

3. An Act to amend Section 138 (*a*) of the Code of the Trust Territory to enlarge the jurisdiction of district courts in divorce, support and separate maintenance cases. (Approved on 1 September 1967 as Public Law No. 3-9.)

4. An Act to amend Section 673 of the Trust Territory Code relating to entry into the Trust Territory. (Approved on 29 September 1967 as Public Law 3-30.)

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[1] Information taken from *Trust Territory of the Pacific Islands, 21st Annual Report*, transmitted by the United States of America to the United Nations pursuant to article 8 of the Charter of the United Nations. Department of State Publication 8464, International Organization and Conference Series 85, Superintendent of Documents, Government Printing Office, Washington, D.C.

B. Non-Self-Governing Territories

AUSTRALIA

NOTE [1]

TERRITORY OF PAPUA [2]

The Ordinances described above in the notes relating to the Territory of New Guinea apply equally in the Territory of Papua, which is governed under an administrative union with the Territory of New Guinea, under the name of the Territory of Papua and New Guinea.

[1] Note furnished by Mr. J.O. Clark, 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.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

ANTIGUA, DOMINICA, GRENADA, ST. KITTS-NEVIS-ANGUILLA, ST. LUCIA AND ST. VINCENT[1]

In December 1965, the United Kingdom issued a White Paper in which it proposed a new constitutional status for six Territories, namely Antigua, Dominica, Grenada, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent. Under the proposals, each Territory would become a State in association with the United Kingdom, with control of its internal affairs and with the right to amend its own constitution, including the power to end this association and to declare itself independent; the Government of the United Kingdom would retain powers relating to external affairs and defence of the Territories.

The proposals were considered by the legislatures in each of the Territories early in 1966 and draft constitutions were prepared. A series of constitutional conferences then took place in London between 28 February 1966 and 26 May 1966, at which agreement was reached on the new status of association with the United Kingdom and on the general outlines of new constitutions for each Territory. During the latter half of 1966, the agreements reached at the London Conferences were ratified by the local legislatures. On 2 February 1967, the legislation paving the way for the necessary orders-in-council to be issued was passed by the United Kingdom House of Commons.

On 16 January 1967, the dates on which the new Constitutions and associated status would come into force were announced as follows: Antigua and St. Kitts-Nevis-Anguilla, 27 February 1967; Dominica and St. Lucia, 1 March 1967; Grenada, 3 March 1967.[2] On 2 February 1967, it was announced that St. Vincent would become an associated Territory by 1 June 1967;[3] however, the granting of associated status was subsequently postponed in view of the political developments in the Territory (see A/AC.109/L.569/Add.6).

On 15 December 1967, at the 1752nd meeting of the Fourth Committee of the General Assembly, the representative of the United Kingdom stated that the status of an Associated State incorporated as one of its major features what was called in the Charter "a full measure of self-government". It followed that the responsibilities of his Government under Chapter XI of the Charter were fully and finally discharged and information concerning the Associated States would not be transmitted in future.[4]

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[1] Information on these territories taken from *Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Territories and Peoples* (A/7623/Add. 7, pp. 12-13).

[2] For the texts of the Constitutions of Antigua, St. Kitts-Nevis-Anguilla, Dominica, St. Lucia and Grenada, see *Statutory Instruments*, 1967, Nos. 225, 228, 226, 229 and 227, respectively, published by Her Majesty's Stationery Office, London.

[3] For the text of the Constitution of St. Vincent, see *Statutory Instruments*, 1959, No. 2201, published by Her Majesty's Stationery Office, London.

[4] See *Official Records of the General Assembly, Twenty-second Session*, Fourth Committee, 1752nd meeting.

PART III

INTERNATIONAL AGREEMENTS

UNITED NATIONS

DECLARATION ON TERRITORIAL ASYLUM

Adopted by General Assembly resolution 2312 (XXII) of 14 December 1967

The General Assembly,

Recalling its resolutions 1839 (XVII) of 19 December 1962, 2100 (XX) of 20 December 1965 and 2203 (XXI) of 16 December 1966 concerning a declaration on the right of asylum,

Considering the work of codification to be undertaken by the International Law Commission in accordance with General Asembly resolution 1400 (XIV) of 21 November 1959,

Adopts the following Declaration:

Declaration on Territorial Asylum

The General Assembly,

Noting that the purposes proclaimed in the Charter of the United Nations are to maintain international peace and security, to develop friendly relations among all nations and to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Mindful of the Universal Declaration of Human Rights, which declares in article 14 that:

"1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

"2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations",

Recalling also article 13, paragraph 2, of the Universal Declaration of Human Rights, which states:

"Everyone has the right to leave any country, including his own, and to return to his country",

Recognizing that the grant of asylum by a State to persons entitled to invoke article 14 of the Universal Declaration of Human Rights is a peaceful and humanitarian act and that, as such, it cannot be regarded as unfriendly by any other State.

Recommends that, without prejudice to existing instruments dealing with asylum and the status of refugees and stateless persons. States should base themselves in their practices relating to territorial asylum on the following principles:

Article 1

1. Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States.

2. The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.

3. It shall rest with the State granting asylum to evaluate the grounds for the grant of asylum.

Article 2

1. The situation of persons referred to in article 1, paragraph 1, is, without prejudice to the sovereignty of States and the purposes and principles of the United Nations, of concern to the international community.

2. Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State.

Article 3

1. No person referred to in article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution.

2. Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

3. Should a State decide in any case that exception to the principle stated in paragraph 1 of this article would be justified, it shall consider the possibility of granting to the person concerned, under such conditions as it may deem appropriate, an opportunity, whether by way of provisional asylum or otherwise, of going to another State.

Article 4

States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.

DECLARATION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

Adopted by General Assembly resolution 2263 (XXII) of 7 November 1967

The General Assembly,

Considering that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Considering that the Universal Declaration on Human Rights asserts the principle of non-discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including any distinction as to sex,

Taking into account the resolutions, declarations, conventions and recommendations of the United Nations and the specialized agencies designed to eliminate all forms of discrimination and to promote equal rights for men and women,

Concerned that, despite the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other instruments of the United Nations and the specialized agencies and despite the progress made in the matter of equality of rights, there continues to exist considerable discrimination against women,

Considering that discrimination against women is incompatible with human dignity and with the welfare of the family and of society, prevents their participation, on equal terms with men, in the political, social, economic and cultural life of their countries and is an obstacle to the full development of the potentialities of women in the service of their countries and of humanity,

Bearing in mind the great contribution made by women to social, political, economic and cultural life and the part they play in the family and particularly in the rearing of children.

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women as well as men in all fields,

Considering that it is necessary to ensure the universal recognition in law and in fact of the principle of equality of men and women,

Solemnly proclaims this Declaration:

Article 1

Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity.

Article 2

All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular:

(*a*) The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law;

(*b*) The international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.

Article 3

All appropriate measures shall be taken to educate public opinion and to direct national aspirations towards the eradication of prejudice and the abolition of customary and all other practices which are based on the idea of the inferiority of women.

Article 4

All appropriate measures shall be taken to ensure to women on equal terms with men, without any discrimination:

(*a*) The right to vote in all elections and be eligible for election to all publicly elected bodies;

(*b*) The right to vote in all public referenda;

(*c*) The right to hold public office and to exercise all public fonctions.

Such rights shall be guaranteed by legislation.

Article 5

Women shall have the same rights as men to acquire, change or retain their nationality. Marriage to an alien shall not automatically affect the nationality of the wife either by rendering her stateless or by forcing upon her the nationality of her husband.

Article 6

1. Without prejudice to the safeguarding of the unity and the harmony of the family, which remains the basic unit of any society, all appropriate measures, particularly legislative measures, shall be taken to ensure to women, married or unmarried, equal rights with men in the field of civil law, and in particular:

(*a*) The right to acquire, administer, enjoy, dispose of and inherit property, including property acquired during marriage;

(*b*) The right to equality in legal capacity and the exercise thereof;

(*c*) The same rights as men with regard to the law on the movement of persons.

2. All appropriate measures shall be taken to ensure the principle of equality of status of the husband and wife, and in particular:

(*a*) Women shall have the same right as men to free choice of a spouse and to enter into marriage only with their free and full consent;

(*b*) Women shall have equal rights with men during marriage and at its dissolution. In all cases the interest of the children shall be paramount;

(*c*) Parents shall have equal rights and duties in matters relating to their children. In all cases the interest of the children shall be paramount.

3. Child marriage and the betrothal of young girls before puberty shall be prohibited, and effective action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Article 7

All provisions of penal codes which constitute discrimination against women shall be repealed.

Article 8

All appropriate measures, including legislation, shall be taken to combat all forms of traffic in women and exploitation of prostitution of women.

Article 9

All appropriate measures shall be taken to ensure to girls and women, married or unmarried, equal rights with men in education at all levels, and in particular:

(*a*) Equal conditions of access to, and study in educational institutions of all types, including universities and vocational, technical and professional schools;

(*b*) The same choice of curricula, the same examinations, teaching staff with qualifications of the same standard, and school premises and equipment of the same quality, whether the institutions are co-educational or not;

(*c*) Equal opportunities to benefit from scholarships and other study grants;

(*d*) Equal opportunities for access to programmes of continuing education, including adult literacy programmes;

(*e*) Access to educational information to help in ensuring the health and well-being of families.

Article 10

1. All appropriate measures shall be taken to ensure to women, married or unmarried, equal rights with men in the field of economic and social life, and in particular:

(*a*) The right, without discrimination on grounds of marital status or any other grounds, to receive vocational training, to work, to free choice of profession and employment, and to professional and vocational advancement;

(*b*) The right to equal remuneration with men and to equality of treatment in respect of work of equal value;

(*c*) The right to leave with pay, retirement privileges and provision for security in respect of unemployment, sickness, old age or other incapacity to work;

(*d*) The right to receive family allowances on equal terms with men.

2. In order to prevent discrimination against women on account of marriage or maternity and to ensure their effective right to work, measures shall be taken to prevent their dismissal in the event of marriage or maternity and to provide paid maternity leave, with the guarantee of returning to former employment, and to provide the necessary social services, including childcare facilities.

3. Measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory.

Article 11

1. The principle of equality of rights of men and women demands implementation in all States in accordance with the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights.

2. Governments, non-governmental organizations and individuals are urged, therefore, to do all in their power to promote the implementation of the principles contained in this Declaration.

COUNCIL OF EUROPE

EUROPEAN CONVENTION ON THE ADOPTION OF CHILDREN

Done at Strasbourg on 24 April 1967 [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, although the institution of the adoption of children exists in all member countries of the Council of Europe, there are in those countries differing views as to the principles which should govern adoption and differences in the procedure for effecting, and the legal consequences of, adoption; and

Considering that the acceptance of common principles and practices with respect to the adoption of children would help to reduce the difficulties caused by those differences and at the same time promote the welfare of children who are adopted,

Have agreed as follows:

PART I

UNDERTAKINGS AND FIELD OF APPLICATION

Article 1

Each Contracting Party undertakes to ensure the conformity of its law with the provisions of Part II of this Convention and to notify the Secretary General of the Council of Europe of the measures taken for that purpose.

Article 2

Each Contracting Party undertakes to give consideration to the provisions set out in Part III of this Convention, and if it gives effect, or if, having given effect, it ceases to give effect to any of these provisions, it shall notify the Secretary General of the Council of Europe.

Article 3

This Convention applies only to legal adoption of a child who, at the time when the adopter applies to adopt him, has not attained the age of 18, is not and has not been married, and is not deemed in law to have come of age.

PART II

ESSENTIAL PROVISIONS

Article 4

An adoption shall be valid only if it is granted by a judicial or administrative authority (hereinafter referred to as "the competent authority").

Article 5

1. Subject to paragraphs 2 to 4 of this Article, an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:

(*a*) the consent of the mother and, where the child is legitimate, the father; or if there is neither father nor mother to consent, the consent of any person or body who may be entitled in their place to exercise their parental rights in that respect;

(*b*) the consent of the spouse of the adopter.

2. The competent authority shall not:

(*a*) dispense with the consent of any person mentioned in paragraph 1 of this Article, or

(*b*) overrule the refusal to consent of any person or body mentioned in the said paragraph 1,

save on exceptional grounds determined by law.

3. If the father or mother is deprived of his or her parental rights in respect of the child, or at least of the right to consent to an adoption, the law may provide that it shall not be necessary to obtain his or her consent.

4. A mother's consent to the adoption of her child shall not be accepted unless it is given at such time after the birth of the child, not being less than six weeks, as may be prescribed by law, or, if no such time has been prescribed, at such time as, in the opinion of the competent authority, will have enabled her to recover sufficiently from the effects of giving birth of the child.

5. For the purposes of this Article "father" and "mother" mean the persons who are according to law the parents of the child.

[1] *European Treaty Series*, No. 58.

Article 6

1. The law shall not permit a child to be adopted except by either two persons married to each other, whether they adopt simultaneously or successively, or by one person.

2. The law shall not permit a child to be again adopted save in one or more of the following circumstances:

(*a*) where the child is adopted by the spouse of the adopter;
(*b*) where the former adopter has died;
(*c*) where the former adoption has been annulled;
(*d*) where the former adoption has come to an end.

Article 7

1. A child may be adopted only if the adopter has attained the minimum age prescribed for the purpose, this age being neither less than 21 nor more than 35 years.

2. The law may, however, permit the requirement as to the minimum age to be waived:

(*a*) when the adopter is the child's father or mother, or
(*b*) by reason of exceptional circumstances.

Article 8

1. The competent authority shall not grant an adoption unless it is satisfied that the adoption will be in the interest of the child.

2. In each case the competent authority shall pay particular attention to the importance of the adoption providing the child with a stable and harmonious home.

3. As a general rule, the competent authority shall not be satisfied as aforesaid if the difference in age between the adopter and the child is less than the normal difference in age between parents and their children.

Article 9

1. The competent authority shall not grant an adoption until appropriate enquiries have been made concerning the adopter, the child and his family.

2. The enquiries, to the extent appropriate in each case, shall concern, *inter alia*, the following matters:

(*a*) the personality, health and means of the adopter, particulars of his home and household and his ability to bring up the child;
(*b*) why the adopter wishes to adopt the child;
(*c*) where only one of two spouses of the same marriage applies to adopt a child, why the other spouse does not join in the application;
(*d*) the mutual suitability of the child and the adopter, and the length of time that the child has been in his care and possession;
(*e*) the personality and health of the child, and subject to any limitations imposed by law, his antecedents;
(*f*) the views of the child with respect to the proposed adoption;
(*g*) the religious persuasion, if any, of the adopter and of the child.

3. These enquiries shall be entrusted to a person or body recognised for that purpose by law or by a judicial or administrative body. They shall, as far as practicable, be made by social workers who are qualified in this field as a result of either their training of their experience.

4. The provisions of this Article shall not affect the power or duty of the competent authority to obtain any information or evidence, whether or not within the scope of these enquiries, which it considers likely to be of assistance.

Article 10

1. Adoption confers on the adopter in respect of the adopted person the rights and obligations of every kind that a father or mother has in respect of a child born in lawful wedlock.

Adoption confers on the adopted person in respect of the adopter the rights and obligations of every kind that a child born in lawful wedlock has in respect of his father or mother.

2. When the rights and obligations referred to in paragraph 1 of this Article are created, any rights and obligation of the same kind existing between the adopted person and his father or mother or any other person or body shall cease to exist. Nevertheless, the law may provide that the spouse of the adopter retains his rights and obligations in respect of the adopted person if the latter is his legitimate, illegitimate or adopted child.

In addition the law may preserve the obligation of the parents to maintain (in the sense of *l'obligation d'entretenir* and *l'obligation alimentaire*) or set up in life or provide a dowry for the adopted person if the adopter does not discharge any such obligation.

3. As a general rule, means shall be provided to enable the adopted person to acquire the surname of the adopter either in substitution for, or in addition to, his own.

4. If the parent of a child born in lawful wedlock has a right to the enjoyment of that child's property, the adopter's right to the enjoyment of the adopted person's property may, notwithstanding paragraph 1 of this Article, be restricted by law.

5. In matters of succession, in so far as the law of succession gives a child born in lawful wedlock a right to share in the estate of his father or mother, an adopted child shall, for the like purposes, be treated as if he were a child of the adopter born in lawful wedlock.

Article 11

1. Where the adopted child does not have, in the case of an adoption by one person, the same nationality as the adopter, or in the case of an adoption by a married couple, their common nationality, the Contracting Party of which the adopter or adopters are nationals shall facilitate acquisition of its nationality by the child.

2. A loss of nationality which could result from an adoption shall be conditional upon possession or acquisition of another nationality.

Article 12

1. The number of children who may be adopted by an adopter shall not be restricted by law.

2. A person who has, or is able to have, a child born in lawful wedlock, shall not on that account be prohibited by law from adopting a child.

3. If adoption improves the legal position of a child, a person shall not be prohibited by law from adopting his own child not born in lawful wedlock.

Article 13

1. Before an adopted person comes of age the adoption may be revoked only by a decision of a judicial or administrative authority on serious grounds, and only if revocation on that ground is permitted by law.

2. The preceding paragraph shall not affect the case of:

(*a*) an adoption which is null and void;
(*b*) an adoption coming to an end where the adopted person becomes the legitimated child of the adopter.

Article 14

When the enquiries made pursuant to Articles 8 and 9 of this Convention relate to a person who lives or has lived in the territory of another Contracting Party, that Contracting Party shall, if a request for information is made, promptly endeavour to secure that the information requested is provided. The authorities may communicate directly with each other for this purpose.

Article 15

Provision shall be made to prohibit any improper financial advantage arising from a child being given up for adoption.

Article 16

Each Contracting Party shall retain the option of adopting provisions more favourable to the adopted child.

PART III

SUPPLEMENTARY PROVISIONS

Article 17

An adoption shall not be granted until the child has been in the care of the adopters for a period long enough to enable a reasonable estimate to be made by the competent authority as to their future relations if the adoption were granted.

Article 18

The public authorities shall ensure the promotion and proper functioning of public or private agencies to which those who wish to adopt a child or to cause a child to be adopted may go for help and advice.

Article 19

The social and legal aspects of adoption shall be included in the curriculum for the training of social workers.

Article 20

1. Provision shall be made to enable an adoption to be completed without disclosing to the child's family the identity of the adopter.

2. Provision shall be made to require or permit adoption procedings to take place *in camera.*

3. The adopter and the adopted person shall be able to obtain a document which contains extracts from the public records attesting the fact, date and place of birth of the adopted person, but not expressly revealing the fact of adoption or the identity of his former parents.

4. Public records shall be kept and, in any event, their contents reproduced in such a way as to prevent persons who do not have a legitimate interest from learning the fact that a person has been adopted or, if that is disclosed, the identity of his former parents.

PART IV

FINAL CLAUSES

Article 21

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.

2. This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.

3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into three months after the date of the deposit of its instrument of ratification or acceptance.

Article 22

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto.

2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 23

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or teritories to which this Convention shall apply.

2. Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn

according to the procedure laid down in Article 27 of this Convention.

Article 24

1. Any Contracting Party whose law provides more than one form of adoption shall have the right to apply the provisions of Article 10, paragraphs 1, 2, 3 and 4, and Article 12, paragraphs 2 and 3, of this Convention to one only of such forms.

2. The Contracting Party exercising this right, shall, at the time of signature or when depositing its instrument of ratification, acceptance or accession, or when making a declaration in accordance with paragraph 2 of Article 23 of this Convention, notify the Secretary General of the Council of Europe thereof and indicate the way in which it has been exercised.

5. Such Contracting Party may terminate the exercise of this right and shall give notice thereof to the Secretary General of the Council of Europe.

Article 25

1. Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, or when making a declaration in accordance with paragraph 2 of Article 23 of this Convention, make not more than two reservations in respect of the provisions of Part II of the Convention.

Reservations of a general nature shall not be permitted; each reservation may not affect more than one provision.

A reservation shall be valid for five years from the entry into force of this Convention for the Contracting Party concerned. It may be renewed for successive periods of five years by means of a declaration addressed to the Secretary General of the Council of Europe before the expiration of each period.

2. Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.

Article 26

Each Contracting Party shall notify the Secretary General of the Council of Europe of the names and addresses of the authorities to which requests under Article 14 may be addressed.

Article 27

1. This Convention shall remain in force indefinitely.

2. Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 28

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

(*a*) any signature;
(*b*) any deposit of an instrument of ratification, acceptance or accession;
(*c*) any date of entry into force of this Convention in accordance with Article 21 thereof;
(*d*) any notification received in pursuance of the provisions of Article 1;
(*e*) any notification received in pursuance of the provisions of Article 2;
(*f*) any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 23;
(*g*) any information received in pursuance of the provisions of paragraphs 2 and 3 of Article 24;
(*h*) any reservation made in pursuance of the provisions of paragraph 1 of Article 25.

PROTOCOL TO THE EUROPEAN CONVENTION ON CONSULAR FUNCTIONS CONCERNING THE PROTECTION OF REFUGEES

Done at Paris on 11 December 1967 [1]

PREAMBLE

The member States of the Council of Europe, signatory hereto,

Having regard to the provisions of the European Convention on Consular Functions (hereinafter referred to as "the Convention"),

Desiring to ensure for refugees effective consular protection,

Have agreed as follows:

Article 1

The present Protocol shall apply to refugees in the sense of Article 48 of the Convention.

Article 2

1. The States signatory to the present Protocol recognise the right of a Contracting Party to decline to admit a consular officer as being entitled to act on behalf of, or otherwise concern himself with, a national of his State who is a refugee.

[1] *European Treaty Series*, No. 61.

2. The consular officer of the State where the refugee has his habitual residence shall be entitled to protect such a refugee and to defend his rights and interests in conformity with the Convention, in consultation, whenever possible, with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it.

Article 3

1. The present Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.

2. The present Protocol shall enter into force three months after the date of the deposit of the fifth instrument of ratification or acceptance.

3. In respect of a signatory State ratifying or accepting subsequently, the present Protocol shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

4. No member State of the Council of Europe may ratify or accept the present Protocol unless it has, simultaneously or previously, ratified or accepted the Convention.

Article 4

1. Any State which has acceded to the Convention may accede to the present Protocol after the latter's entry into force.

2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 5

1. Any Contracting Party may at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which the present Protocol shall apply.

2. Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date. by declaration addressed to the Secretary General of the Council of Europe, extend the present Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory specified in such declaration, be withdrawn according to the procedure laid down in Article 7 of the present Protocol.

Article 6

No reservation may be made in respect of the present Protocol. However, reservations made to the Convention in pursuance of Article 53 thereof shall also apply to the Protocol.

Article 7

1. The present Protocol shall have the same duration as the Convention.

2. Any Contracting Party may, in so far as it is concerned, denounce the present Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

4. Denunciation of the Convention entails automatically denunciation of the present Protocol.

Article 8

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the present Protocol of:

(*a*) any signature;
(*b*) any deposit of an instrument of ratification, acceptance or accession;
(*c*) any date of entry into force of the present Protocol in accordance with Articles 3 and 4;
(*d*) any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 5;
(*e*) any notification received in pursuance of the provisions of Article 7 and the date on which denunciation takes effect.

ORGANIZATION OF AMERICAN STATES

PROTOCOL OF AMENDMENT TO THE CHARTER OF THE ORGANIZATION OF AMERICAN STATES

PROTOCOL OF BUENOS AIRES

Signed at the Third Special Inter-American Conference in Buenos Aires, Argentina, on 27 February 1967 [1]

...

ARTICLE VIII

Chapter VI entitled "Economic Standards" shall be replaced by a Chapter VII having the same title and consisting of Articles 29 to 42, inclusive, which shall read as follows:

Article 29

The Member States, inspired by the principles of inter-American solidarity and cooperation, pledge themselves to a united effort to ensure social justice in the Hemisphere and dynamic and balanced economic development for their peoples, as conditions essential to peace and security.

...

Article 31

To accelerate their economic and social development, in accordance with their own methods and procedures and within the framework of the democratic principles and the institutions of the inter-American system, the Member States agree to dedicate every effort to achieve the following basic goals:

...

(*g*) Fair wages, employment opportunities, and acceptable working conditions for all;
(*h*) Rapid eradication of illiteracy and expansion of educational opportunities for all;
(*i*) Protection of man's potential through the extension and application of modern medical science;
(*j*) Proper nutrition, especially through the acceleration of national efforts to increase the production and availability of food;
(*k*) Adequate housing for all sectors of the population;
(*l*) Urban conditions that offer the opportunity for a healthful, productive, and full life;

ARTICLE IX

Chapter VII entitled "Social Standards" shall be replaced by a Chapter VIII having the same title and consisting of Articles 43 and 44, which shall read as follows:

Article 43

The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms:

(*a*) All human beings, without distinction as to race, sex, nationality, creed, or social condition, have a right to material well-being and to their spiritual development, under circumstances of liberty, dignity, equality of opportunity, and ecomonic security;
(*b*) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working;
(*c*) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of

[1] Text taken from *Treaty Series No. 1-B, OAS Official Records OEA/Ser. A, Add. 2* (English), Pan American Union, General Secretariat, Organization of American States, Washington, D.C., 1967. For extracts from the Charter, see *Yearbook on Human Rights for 1948*, pp. 437-438.

their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws;

(*d*) Fair and efficient systems and procedures for consultation and collaboration among the sectors of production, with due regard for safeguarding the interests of the entire society;

(*e*) The operation of systems of public administration, banking and credit, enterprise, and distribution and sales, in such a way, in harmony with the private sector, as to meet the requirements and interests of the community;

(*f*) The incorporation and increasing participation of the marginal sectors of the population, in both rural and urban areas, in the economic, social, civic, cultural, and political life of the nation, in order to achieve the full integration of the national community, acceleration of the process of social mobility, and the consolidation of the democratic system. The encouragement of all efforts of popular promotion and cooperation that have as their purpose the development and progress of the community;

(*g*) Recognition of the importance of the contribution of organizations such as labor unions, cooperatives, and cultural, professional, business, neighborhood, and community associations to the life of the society and to the development process;

(*h*) Development of an efficient social security policy; and

(*i*) Adequate provision for all persons to have due legal aid in order to secure their rights.

Article 44

The Member States recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries, especially in the labor and social security fields, so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal.

ARTICLE X

Chapter VIII entitled "Cultural Standards" shall be replaced by a Chapter IX entitled "Educational, Scientific, and Cultural Standards" and consisting of Articles 45 to 50, inclusive, which shall read as follows:

Article 45

The Member States will give primary importance within their development plans to the encouragement of education, science, and culture, oriented toward the over-all improvement of the individual, and as a foundation for democracy, social justice, and progress.

Article 46

The Member States will cooperate with one another to meet their educational needs, to promote scientific research, and to encourage technological progress. They consider themselves individually and jointly bound to preserve and enrich the cultural heritage of the American peoples.

Article 47

The Member States will exert the greatest efforts, in accordance with their constitutional processes, to ensure the effective exercise of the right to education, on the following bases:

(*a*) Elementary education, compulsory for children of school age, shall also be offered to all others who can benefit from it. When provided by the State it shall be without charge;

(*b*) Middle-level education shall be extended progressively to as much of the population as possible, with a view to social improvement. It shall be diversified in such a way that it meets the development needs of each country without prejudice to providing a general education; and

(*c*) Higher education shall be available to all, provided that, in order to maintain its high level, the corresponding regulatory or academic standards are met.

Article 48

The Member States will give special attention to the eradication of illiteracy, will strengthen adult and vocational education systems, and will ensure that the benefits of culture will be available to the entire population. They will promote the use of all information media to fulfill these aims.

Article 49

The Member States will develop science and technology through educational and research institutions and through expanded information programs. They will organize their cooperation in these fields efficiently and will substantially increase exchange of knowledge, in accordance with national objectives and laws and with treaties in force.

Article 50

The Member States, with due respect for the individuality of each of them, agree to promote cultural exchange as an effective means of consolidating inter-American understanding; and they recognize that regional integration programs should be strengthened by close ties in the fields of education, science, and culture.

. . .

ARTICLE XII

Chapter IX entitled "The Organs" shall become Chapter X having the same title and consisting of Article 51, which shall read as follows:

Article 51

The Organization of American States accomplishes its purposes by means of:

(*a*) The General Assembly;

. . .

(*c*) The Councils;

. . .

(e) The Inter-American Commission on Human Rights;

. . .

There may be established, in addition to those provided for in the Charter and in accordance with the provisions thereof, such subsidiary organs, agencies, and other entities as are considered necessary.

ARTICLE XIII

Chapter X entitled "The Inter-American Conference" shall be replaced by a Chapter XI entitled "The General Assembly" and consisting of Articles 52 to 58, inclusive, which shall read as follows:

Article 52

The General Assembly is the supreme organ of the Organization of American States. It has as its principal powers, in addition to such others as are assigned to it by the Charter, the following:

. . .

(c) To strengthen and coordinate cooperation with the United Nations and its specialized agencies;

. . .

ARTICLE XV

Chapter XII entitled "The Council" shall be replaced by Chapters XIII to XVIII, inclusive, as follows: a Chapter XIII entitled "The Councils of the Organization; Common Provisions" and consisting of Articles 68 to 77, inclusive; a Chapter XIV consisting of Articles 78 to 92, inclusive (the present Article 52 shall become Article 81, and the reference therein to "Article 43") shall be amended to read "Article 63"); a Chapter XV entitled "The Inter-American Economic and Social Council" and consisting of Articles 93 to 98, inclusive; a Chapter XVI entitled "The Inter-American Council for Education, Science, and Culture" and consisting of Articles 99 to 104, inclusive; a Chapter XVII entitled "The Inter-American Juridical Committee" and consisting of Articles 105 to 111, inclusive; and a Chapter XVIII entitled "The Inter-American Commission on Human Rights" and consisting of Article 112.

Articles 68 to 80, inclusive, and Articles 82 to 112, inclusive, shall read as follows:

Article 68

The Permanent Council of the Organization, the Inter-American Economic and Social Council, and the Inter-American Council for Education, Science, and Culture are directly responsible to the General Assembly and each has the authority granted to it in the Charter and other inter-American instruments, as well as the functions assigned to it by the General Assembly and the Meeting of Consultation of Ministers of Foreign Affairs.

. . .

Article 82

The Permanent Council shall keep vigilance over the maintenance of friendly relations among the Member States, and for that purpose shall effectively assist them in the peaceful settlement of their disputes, in accordance with the following provisions.

. . .

Article 94

The purpose of the Inter-American Economic and Social Council is to promote cooperation among the American countries in order to attain accelerated economic and social development, in accordance with the standards set forth in Chapters VII and VIII.

Article 95

To achieve its purpose the Inter-American Economic and Social Council shall:

. . .

(d) Establish cooperative relations with the corresponding organs of the United Nations and with other national and international agencies, especially with regard to coordination of inter-American technical assistance programs;

. . .

Article 100

The purpose of the Inter-American Council for Education, Science, and Culture is to promote friendly relations and mutual understanding between the peoples of the Americas through educational scientific and cultural cooperation and exchange between Member States, in order to raise the cultural level of the peoples, reaffirm their dignity as individuals, prepare them fully for the tasks of progress, and strengthen the devotion to peace, democracy, and social justice that has characterized their evolution.

Article 101

To accomplish its purpose the Inter-American Council for Education, Science, and Culture shall:

(a) Promote and coordinate the educational, scientific, and cultural activities of the Organization;

(b) Adopt or recommend pertinent measures to give effect to the standards contained in Chapter IX of the Charter;

(c) Support individual or collective efforts of the Member States to improve and extend education at all levels, giving special attention to efforts directed toward community development;

(d) Recommend and encourage the adoption of special educational programs directed toward integrating all sectors of the population into their respective national cultures;

(e) Stimulate and support scientific and technological education and research, especially when these relate to national development plans;

(f) Foster the exchange of professors, research workers, technicians, and students, as well as of study materials; and encourage the conclusion of bilateral or multilateral agreements on the progressive coordination of curricula at all educational levels and on the validity and equivalence of certificates and degrees;

(*g*) Promote the education of the American peoples with a view to harmonious international relations and a better understanding of the historical and cultural origins of the Americas, in order to stress and preserve their common values and destiny;
(*h*) Systematically encourage intellectual and artistic creativity, the exchange of cultural works and folklore, as well as the interrelationships of the different cultural regions of the Americas;
(*i*) Foster cooperation and technical assistance for protecting, preserving, and increasing the cultural heritage of the Hemisphere;
(*j*) Coordinate its activities with those of the other Councils. In harmony with the Inter-American Economic and Social Council, encourage the interrelationship of programs for promoting education, science, and culture with national development and regional integration programs;
(*k*) Establish cooperative relations with the corresponding organs of the United Nations and with other national and international bodies;
(*l*) Strengthen the civic conscience of the American peoples, as one of the bases for the effective exercise of democracy and for the observance of the rights and duties of man;
(*m*) Recommend appropriate procedures for intensifying integration of the developing countries of the Hemisphere by means of efforts and programs in the fields of education, science, and cultures; and
(*n*) Study and evaluate periodically the efforts made by the Member States in the fields of education, science, and culture.

. . .

Article 112

There shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.

An inter-American convention on human rights shall determine the structure, competence, and procedure of this Commission, as well as those of other organs responsible for these matters.

. . .

ARTICLE XXIV

The terms "General Assembly", "Permanent Council of the Organization" or "Permanent Council", and "General Secretariat", shall be substituted, as the case may be, for the terms "Inter-American Conference", "Council of the Organization" or "Council", and "Pan American Union", wherever the latter terms appear in those Articles of the Charter that have not been eliminated or specifically amended by the present Protocol. In the English text of such articles the terms "Hemisphere" and "hemispheric" shall be substituted for "continent" and "continental".

ARTICLE XXV

The present Protocol shall remain open for signature by the American States and shall be ratified in accordance with their respective constitutional procedures. The original instrument, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat, which shall transmit certified copies thereof to the Governments for purposes of ratification. The instruments of ratification shall be deposited with the General Secretariat, which shall notify the signatory States of each such deposit.

ARTICLE XXVI

The present Protocol shall enter into force among the ratifying States when two thirds of the States signatory to the Charter have deposited their instruments of ratification. It shall enter into force with respect to the remaining States in the order in which they deposit their instruments of ratification.

ARTICLE XXVII

The present Protocol shall be registered with the Secretariat of the United Nations through the General Secretariat of the Organization.

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 1967, Mongolia became a party to the Convention, by instrument of accession deposited on 5 January.

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 1967, Madagascar and Nigeria became parties to the Convention, by instruments of accession deposited on 18 December and 23 December respectively.

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 1967, the following States became parties to the Convention by the instruments and on the dates indicated: Chile (ratification, 18 October), Costa Rica (ratification, 31 March). Gabon (ratification, 19 April) and the United Kingdom of Great Britain and Northern Ireland (accession, 24 February).

4. *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 1967, no States became parties to the Convention.

5. *Convention relating to the Status of Statelees Persons* (New York, 1954; entered into force on 6 June 1960) (see *Yearbook on Human Rights for 1954*, pp. 369-375)

During 1967, no States became parties to the Convention.

6. *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 1967, the following States became parties to the Convention by the instruments and on the dates indicated: Luxembourg (ratification, 1 May), San Marino (ratification. 29 August) and Spain (accession, 21 November).

7. *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 1967, Malta became a party to the Convention, by notification of succession deposited on 7 June.

8. *Convention on the Reduction of Statelessness* (New York, 1961, not yet in force) (see *Yearbook on Human Rights for 1961*, pp. 427-430)

During 1967, no States became parties to the Convention.

9. *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 1967, no States became parties to the Convention.

10. *International Convention on the Elimination of All Forms of Racial Discrimination* (New York, 1965; not yet in force) (see *Yearbook on Human Rights for 1965*, pp. 389-394).

During 1967, the following States became parties to the Convention by the instruments and

[1] Concerning the status of these agreements at the end of 1966, see *Yearbook on Human Rights for 1966*, p. 471. The information contained in the present statement concerning International Labour Conventions and agreements adopted under the auspices of the Organization of America 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 1967*, of the International Committee of the Red Cross. With the exception of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character and the Agreement on the Importation of Educational, Scientific and Cultural Materials and Protocol thereto (for which the Secretary-General of the United Nations acts as depository), the information concerning agreements under the auspices of UNESCO was furnished by the Secretariat of UNESCO.

on the dates indicated: Costa Rica (ratification, 16 January), Cyprus (ratification, 21 April), Hungary (ratification, 4 May), Iceland (ratification, 13 March), Niger (ratification, 27 April), Nigeria (accession, 16 October), Paraguay (ratification, 16 August), Philippines (ratification, 15 September), Sierra Leone (ratification, 2 August), Tunisia (ratification, 13 January), United Arab Republic (ratification, 1 May), Venezuela (ratification, 10 October) and Yugoslavia (ratification, 2 October).

11. *International Covenant on Economic, Social and Cultural Rights* (New York, 1966; not yet in force) (see *Yearbook on Human Rights for 1966*, pp. 437-441).

During 1967, the following States signed the Covenant on the dates indicated: China (5 October), Cyprus (9 January), Ecuador (29 September), El Salvador (21 September), Finland (11 October), Guinea (28 February), Italy (18 January), Liberia (18 April), Poland (2 March), Sweden (29 September), United Arab Republic (4 August), Uruguay (21 February) and Yugoslavia (8 August).

12. *International Covenant on Civil and Political Rights* (New York, 1966; not yet in force) (see *Yearbook on Human Rights for 1966*, pp. 442-450).

During 1967, the following States signed the Covenant on the dates indicated: China (5 October), El Salvador (21 September), Finland (11 October), Guinea (28 February), Italy (18 January), Liberia (18 April), Poland (2 March), Sweden (29 September), United Arab Republic (4 August), Uruguay (21 February) and Yugoslavia (8 August).

13. *Optional Protocal to the International Covenant on Civil and Political Rights* (New York, 1966; not yet in force) (see *Yearbook on Human Rights for 1966*, pp. 450-452).

During 1967, the following States signed the Protocol on the dates indicated: China (5 October), El Salvador (21 September), Finland (11 October), Sweden (29 September) and Uruguay (21 February).

14. Protocol relating to the Status of Refugees (New York, 1966; entered into force on 4 October 1967) (see *Yearbook on Human Rights for 1966*, pp. 452-454).

During 1967, the following States acceded to the Protocol on the dates indicated: Algeria (8 November), Argentina (6 December), Cameroon (19 September), Central African Republic (30 August), Gambia (29 September), Holy See (Vatican City) (8 June), Pakistan (28 November), Senegal (3 October) and Sweden (4 October).

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)

On 6 November 1967, the United Kingdom of Great Britain and Northern Ireland registered a declaration of application to non-metropolitan territories, applicable wouthout modification, in respect of Swaziland.

2. *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 1967, Barbados.[2] Ecuador, Guyana and Nicaragua became parties to the Convention, by instruments of ratification deposited on 8 May, 29 May, 25 September and 31 October respectively.

The United Kingdom of Great Britain and Northern Ireland registered declarations of application to non-metropolitan Territories, applicable without modification, in respect of Gilbert and Ellice Islands, on 15 August 1967, and applicable with modifications, in respect of the Bahamas, Mauritius, on 21 February 1967.

3. *Right to Organise and Collective Bargaining Convention, 1949* (Convention No. 98; entered into force on 18 July 1951) (see *Yearbook on Human Rights for 1949*, pp. 291-292)

During 1967, Barbados[2] and Nicaragua became parties to the Convention, by instruments of ratification deposited on 8 May and 31 October respectively.

On 15 August 1967, the United Kingdom of Great Britain and Northern Ireland registered a declaration of application to Non-Self-Governing Territories, applicable with modifications, in respect of Gilbert and Ellice Islands.

4. *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 1967, the following States became parties to the Convention, by instruments of

[2] Confirming the obligations under the Convention which had been accepted on its behalf by the State previously responsible for the conduct of its foreign relations.

ratification deposited on the dates indicated: Guinea (11 August), Japan (24 August), Luxembourg (23 August), Nicaragua (31 October), Portugal (20 February), Spain (6 November) and Turkay (19 July).

5. *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 1967, no States became parties to the Convention.

6. *Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955* (Convention No. 104; entered into force on 7 June 1958) (see *Yearbook on Human Rights for 1955*, pp. 325-327)

China ratified the Convention on 14 March 1967.

7. *Abolition of Forced Labour Convention, 1957* (Convention No. 105; entered into force on 17 January 1959) (see *Yearbook on Human Rights for 1957*, pp. 303-304)

During 1967, Barbados,[2] Nicaragua and Spain became parties to the Convention, by instruments of ratification deposited on 8 May, 31 October and 6 November, respectively.

8. *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 1967, the following States became parties to the Convention, by instruments of ratification deposited on the dates indicated: Nicaragua (31 October), Paraguay (10 July), Senegal (13 November), Spain (6 November) and Turkey (19 July).

9. *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 1967, Congo (Democratic Republic of) and Senegal became parties to the Convention, by instruments of ratification deposited on 5 September and 13 November respectively.

10. *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 1967, the ratifications of the following States were registered on the dates and in respect or the branches indicated; Congo (Democratic Republic of) (1 November, branches (*d*), (*e*) and (*g*)), Guinea (11 August, branches (*a*), (*b*), (*c*), (*e*), (*f*), (*g*) and (*i*)) and Italy (5 May, branches (*a*) to (*i*)).

11. *Employment Policy Convention, 1964* (Convention No. 122; entered into force on 15 September 1966) (see *Yearbook on Human Rights for 1964*, pp. 329-330)

During 1967, the following States became parties to the Convention, by instruments of ratification deposited on the dates indicated: Ireland (20 June), Netherlands (9 January), Peru (27 July) and Union of Soviet Socialist Republics (22 September).

Declarations of application to non-metropolitan territories, applicable without modifications, were registered by the Netherlands in respect of Netherlands Antilles and Surinam, on 9 January 1967, and by the United Kingdom of Great Britain and Northern Ireland in respect of Guernsey and the Isle of Man, on 2 May 1967.

[2] Confirming the obligations under the Convention which had been accepted on its behalf by the State previously responsible for the conduct of its foreign relations.

III. UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

1. *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)

On 22 March 1967, the Netherlands ratified, for the Kingdom in Europe, the Convention and Protocols 1, 2 and 3.

2. *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 1967, the following States became parties to the Convention and Protocol, by the instruments and on the dates indicated: Federal Republic of Germany (ratification with declaration, 11 August), Indonesia (ratification, 10 January (Convention) and 26 July (Protocol)) and Iraq (ratification, 21 December).

3. *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 1967, the following States became parties to the Convention, by the instruments and on the dates indicated: Finland (ratification, 26 May), Indonesia (acceptance, 10 January),

Luxembourg (ratification, 13 December) and United States of America (ratification, 9 June).

4. *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 1961*, p. 434)

During 1967, the following States became parties to the Convention, by the instruments and on the dates indicated: Finland (ratification, 26 May), Indonesia (acceptance, 10 January), Luxembourg (ratification, 13 December) and United States of America (ratification, 9 June).

5. *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 1967, the following States became parties to the Convention, by the instruments and on the dates indicated: Indonesia (acceptance, 10 January), Panama (acceptance, 10 August), Senegal (ratification, 25 September) and Sierra Leone (ratification, 2 June).

6. *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 1967, Israel and Panama became parties to the Protocol, by instruments of ratification and acceptance submitted on 13 September and 10 August respectively.

IV. ORGANIZATION OF AMERICAN STATES

1. *Convention on Diplomatic Asylum* (Caracas, 1954; entered into force on 29 September 1954) (see *Yearbook on Human Rights for 1955*, pp. 330-332)

Haiti denounced the Convention on 1 August 1967.

Uruguay became a party to the Convention by instrument of ratification deposited on 9 August 1967.

2. *Convention on Territorial Asylum* (Caracas, 1954) (see *Yearbook on Human Rights for 1955*, pp. 329-330)

Haiti denounced the Convention on 1 August 1967.

Uruguay became a party to the Convention by instrument of ratification deposited on 9 August 1967.

3. *Protocol of Amendment to the Charter of the Organization of American States* (Buenos Aires, 1967; not yet in force) (see above, pp. 391-394).

Argentina ratified the Protocol on 21 July 1967.

V. COUNCIL OF EUROPE

1. *Convention for the Protection of Human Rights and Fundamental Freedoms* (Rome, 1950; entered into force on 3 September 1953) (see *Yearbook on Human Rights for 1950*, pp. 418-426)

During 1967, the following States, on the dates and for the periods indicated, registered declarations recognizing the competence of the European Commission of Human Rights to receive individual applications: Austria (3 September, three years), Denmark (7 April, five years), Luxembourg (28 April, five years) and Norway (29 June, five 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)

Malta ratified the Protocol on 23 January 1967.

3. *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. 357-358)

Turkey ratified the Agreement and the Protocol thereto on 14 April 1967.

4. *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. 424)

Cyprus signed the Protocol on 19 September 1967.

During 1967, the following States became parties to the Protocol, by instruments of ratification deposited on the dates indicated: Austria (29 May), Iceland (16 November), Italy (3 April) and Malta (23 January).

5. *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. 425)

Cyprus signed the Protocol on 19 September 1967.

During 1967, Austria, Iceland, Italy and Malta ratified the Protocol on 29 May, 16 November, 3 April and 23 January respectively.

6. *Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms Other Than Those Already Included in the Convention and in the First Protocol thereto* (Strasbourg, 1963; not yet in force) (see *Yearbook on Human Rights for 1963*, pp. 425-426).

Iceland ratified the Protocol on 16 November 1967.

7. *European Code of Social Security* (Strasbourg, 1964; not yet in force) (see *Yearbook on Human Rights for 1964*, pp. 331-334)

The Netherlands ratified the Code on 16 March 1967.

8. *Protocol to the European Code of Social Security (Strasbourg, 1964*; not yet in force) (see *Yearbook on Human Rights for 1964*, p. 335).

The Netherlands ratified the Protocol on 16 March 1967.

9. *Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Amending Articles 22 and 40 of the Convention* (Strasbourg, 1966; not yet in force) (see *Yearbook on Human Rights for 1966*, pp. 462-463).

During 1967, Cyprus signed the Protocol on 19 September and the following States became parties to it, by instruments of ratification deposited on the dates indicated. Iceland (16 November), Malta (23 January) and United Kingdom of Great Britain and Northern Ireland (24 October).

10. *European Convention on the Adoption of Children* (Strasbourg, 1967; not yet in force) (see above, pp. 386-389).

Greece signed the Convention on 19 May 1967.

Malta and the United Kingdom of Great Britain and Northern Ireland ratified the Convention on 22 September 1967 and 21 December 1967 respectively.

11. *Protocol concerning the Protection of Refugees* (Strasbourg, 1967; not yet in force) (see above, pp. 389-390).

During 1967, no ratifications were deposited.

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)

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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)

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