



YEARBOOK
ON
HUMAN RIGHTS
FOR 1968

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YEARBOOK ON HUMAN RIGHTS
FOR 1968

INTRODUCTION

In commemoration of the twentieth anniversary of its adoption of the Universal Declaration of Human Rights, the General Assembly of the United Nations, by resolution 1961 (XVIII) of 12 December 1963, designated the year 1968 as International Year for Human Rights. In order "to promote further the principles contained in the Universal Declaration of Human Rights", the General Assembly, by resolution 2081 (XX) of 20 December 1965, decided, *inter alia*, to convene an International Conference on Human Rights. The International Conference was held in Teheran, Iran, from 22 April to 13 May 1968. A proclamation, known as the Proclamation of Teheran, was adopted by that Conference on 13 May 1968, and is reproduced in part III of the present *Yearbook on Human Rights for 1968*.

This twenty-third volume of the *Yearbook* is composed of three parts. Part I surveys constitutional, legislative and judicial developments in the field of human rights in ninety States. Part II describes such developments in certain Trust and Non-Self-Governing Territories. Part III contains the texts of, or extracts from, international agreements bearing on human rights.

In 1968, new constitutions were adopted in Dahomey, Equatorial Guinea, Greece, Mauritius, Nauru, Swaziland and Thailand. Extracts from these constitutions appear in the present volume. The Constitution of Dahomey, adopted in a referendum on 31 March 1968, proclaims, in its Preamble, the adherence of the people of Dahomey to the principles of democracy and human rights as set out, *inter alia*, in "the Universal Declaration of 1948 and the Charter of the United Nations". Published herein also are extracts from the Interim Constitution of Iraq.

Other constitutional developments during 1968 include the promulgation in the Congo (Brazzaville) of the Fundamental Act of 14 August 1968, article 1 of which, *inter alia*, establishes the organization of and the basis for the duly constituted authorities of the State until such time as a new Constitution is proclaimed; in Czechoslovakia, of the Constitutional Act of 24 June 1968 concerning the preparation of a federative system of the Czechoslovak Socialist Republic; of the Constitutional Act of 27 October 1968, establishing the Czechoslovak Federation; and of the Constitutional Act of 27 October 1968, concerning the Statute of Nationalities in the Czechoslovak Socialist Republic; in Israel, of Basic Law: Government, which is to form part of the future Constitution and which consolidates and enlarges older provisions on the subject; and in Mali, of Ordinance No. 1 of 28 November 1968, on Provisional Organization of the Public Authorities in the Republic of Mali, declaring the Constitution of Mali of 22 September 1960 to be suspended and, in its Preamble, stating also that "the Republic of Mali solemnly reaffirms the rights and freedoms of man and of the citizen, enshrined in the Universal Declaration of Human Rights of 10 December 1948".

The present *Yearbook* also makes reference to amendments adopted during 1968 to the Federal Constitutional Law of 1929 of Austria, and to the constitutions of Costa Rica, Gambia, Kenya, Mauritania, Mexico, and Trinidad and Tobago.

The legislative developments presented in this volume relate, *inter alia*, to the protection against discrimination, the right to freedom of movement and residence, the right to a nationality, the right to take part in the government of one's country, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and association, the right to social security and the right to education.

With regard to the right to protection against discrimination, the following legislation was adopted in Canada: The Prince Edward Island Human Rights Code of 25 April 1968, prohibiting discrimination on the grounds of race, religion, religious creed, colour or ethnic or national origin in public accommodation, housing, employment, trade union membership and published notices or signs; the United Kingdom: The Race Relations Act 1968, extending the scope of the discriminatory provisions of the Race Relations Act 1965 and making it unlawful to discriminate on the ground of race, colour or ethnic or national origins in housing, employment or the provision to the public of goods; and the United States of America: The Civil Rights Act of 1968, strengthening the capability of the Federal Government to meet the problem of violent interference, for racial or other discriminatory reasons, with a person's free exercise of civil rights; and the Jury Selection and Service Act of 1968, insuring in jury selection procedures in the Federal Courts against discrimination on the grounds of race, religion, national origin, sex or economic status. The amendment

to the Costa Rican Constitution, referred to above, may also be mentioned in this connexion. Article 33 of that Constitution, as amended, provides that all persons are equal before the law and that there shall be no discrimination whatsoever which is contrary to human dignity.

The right to freedom of movement and residence was dealt with in the Austrian Federal Law of 7 March 1968 on the right of residence of refugees, in keeping with the Convention on the Status of Refugees which came into force in Austria on 30 June 1955; the Immigration (Consolidation) (Further Amendment) Act, 1968, of Botswana; the Central African Republic Decree No. 68/279 of 9 October 1968, establishing the conditions for the issue of identity cards and travel documents to refugees; Decree No. 120 of 18 April 1968 of Dahomey, relating, *inter alia*, to the crossing of frontiers in the period before, during and after the Presidential election; the Extradition (Commonwealth Countries) Act, 1968, of Kenya; the Decree of 1 April 1968 of Liechtenstein, concerning the granting of permits for the families of foreign employed persons; the Passports Act, 1968, of Mauritius; the Extradition Act, 1968, of Singapore; the Swedish amendments to the Alien's Act of 1968, strengthening the legal security in matters of residence permits; and the Extradition Act, 1968, of Zambia.

Laws relating to the right to a nationality were promulgated in Cameroon: Law No. 68-LF-3 of 11 June 1968 to set up the Cameroon Nationality Code; Czechoslovakia: Act of 19 December 1968, governing the principles of acquisition and loss of citizenship; Finland: Act No. 401 of 28 June 1968 on Nationality; Israel: The Nationality (Amendment No. 2) Law 1968; Luxembourg: Act of 22 February 1968 on Luxembourg Nationality; Mauritius: The Mauritius Citizenship Act, 1968; and Spain: Decree No. 3144, published on 13 January 1968, the purpose of which is to deprive of nationality those Spaniards serving voluntarily in armed forces abroad. The Trinidad and Tobago Constitution (Amendment) Act No. 25 of 1968, referred to above in relation to constitutional amendments, revised that country's Constitution in order to permit dual citizenship in the case of persons who are citizens of Trinidad and Tobago by birth or descent and who are also citizens of a Caribbean commonwealth country.

The right to take part in the government of one's country was the subject of legislation adopted in Austria: Federal Constitutional Law-Novell 1968, reducing the voting age in National Council elections from 20 to 19 years and the age of eligibility from 26 to 25; Botswana: The Electoral Act, 1968; Dahomey: Ordinance No. 17 P.R./M.A.I.S./D.A.I./A. of 14 March 1968, establishing regulations for the conduct of the constitutional referendum, and Ordinance No. 27 P.R./M.A.I.S./D.A.I./A. of 16 April 1968, establishing general electoral rules for elections of the President of the Republic and the members of the National Assembly; Ecuador: Electoral Act of 2 January 1968; El Salvador: Decree No. 556 of 12 January 1968, amending the Electoral Act; Ghana: The Representation of the People Decree, 1968; Israel: The Knesset Election (Amendment No. 8) Law, 1968; Netherlands: Act of 25 April 1968, enabling voters in elections for the Second Chamber of the States-General and for the Provincial States to vote in the commune of their choice on presentation of their voter's card; and Sudan: The Constituent Assembly Elections Act, 1968.

Provisions on freedom of peaceful assembly and association were contained in laws promulgated in Austria: Federal Law of 23 October 1968, amending the Law on Public Meetings of 1953; Brazil: Institutional Act No. 5 of 13 December 1968, by virtue of section 4 of which the Republic may, after consulting the National Security Council and without the limitations provided for in the Constitution, suspend, *inter alia*, the political rights of any citizen for a period of ten years; Jamaica: The Public Order (Prohibition of Public Meetings and Public Marches) (No. 3) Order, 1968; and South Africa: The Prohibition of Political Interference Act, 1968, under section 2 of which no person, who belongs to one population group, may be a member of any political party of which any person, who belongs to any other population group, is a member.

Legislation bearing on freedom of opinion and expression was adopted in Algeria: Order No. 68-525 of 9 September 1968, Regulating the Status of Journalists; Botswana: The Printed Publications Act, 1968; Brazil: Act No. 5,536 of 21 November 1968, on the Censoring of Works of the Theatre and the Cinema, the Establishment of the Higher Censorship Board and Other Provisions; Czechoslovakia: Act of 13 September 1968, concerning some temporary measures in the field of the Press and the other mass information media; Haiti: Decree of 9 January 1968, bringing the Haitian Act of 6 October 1885 into line with the new Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works of 22 June 1946; Ireland: The Performers' Protection Act, 1968; Israel: The Copyright Ordinance (Amendment No. 2) Law, 1968; Liechtenstein: Decree of 29 July 1968 concerning the admittance of minors to public film performances; Sierra Leone: The Newspaper (Repeal) Decree, 1968; the United Kingdom: The Theatre Act, 1968; and the United Republic of Tanzania: The Newspaper Ordinance (Amendment) Act, 1968.

Hungary, in its contribution, makes reference to the adoption of a new penal code in 1968, which it considers to be an important step towards the defence of human rights through penal law. Other developments concerning the defence of human rights include the promulgation in Canada of the Amendment to the *Ombudsman* Act of Alberta, bringing the Workmen's Compensation Board within the jurisdiction of the *Ombudsman*; in China, of the revised portions of the Code of Civil Procedure which concern the protection of human rights; in New Zealand, of the Parliamentary Commissioner (*Ombudsman*) Amendment Act; and in Norway, of the Act of

22 March 1968, amending the Act of 22 June 1962 relating to the *Storting Ombudsman* for the administration.

Amendments to existing codes were adopted in Botswana: The Penal Code (Amendment) Act, 1968 (No. 26 of 1968); Central African Republic: Ordinance No. 68/26 of 7 June 1968, amending and supplementing articles 231 and 232*bis* of the Penal Code; Mauritania: Act No. 68-208 of 6 July 1968, amending certain articles of the Code of Criminal Procedure; South Africa: The Criminal Procedure (Amendment) Act, 1968; the Sudan: The Code of Criminal Procedure (Amendment) Act, 1968; and Tunisia: Act No. 68-1 of 8 March 1968 amending the Penal Code.

In Sweden, by a Law of 13 December 1968, eighteen years was made the marrying age both for men and for women. Provisions on the rights relating to marriage also appeared in laws promulgated in Australia: The Marriage (Liability in Tort) Act, 1968 (No. 7668), of Victoria, under which husband and wife may sue each other for tort; and The Married Persons (Torts) Ordinance, 1968 (No. 15 of 1968), of the Australian Capital Territory; Canada: The Divorce Act, providing additional grounds for divorce in Canada; New Zealand: The Domestic Proceedings Act, dealing, *inter alia*, with the separation of married persons, and The Matrimonial Proceedings Amendment Act; and South Africa: The Marriage Amendment Act, 1968, and The Prohibition of Mixed Marriages Amendment Act, 1968.

The Domestic Proceedings Act of New Zealand, referred to above, also deals with the establishment of paternity of illegitimate children. Other laws aimed at the protection of young persons include those adopted in Bulgaria: Decree of 1968 Establishing a Committee for Youth and Sport; Congo (Democratic Republic of): Order No. 68/13 of 17 May 1968 to lay down conditions of work for women and children; Iran: Regulations concerning the establishment of Juvenile Courts of 1 October 1968; Niger: Act No. 68-012 of 20 February 1968, amending Act No. 67-15 of 18 March 1967 on the protection of civil interests of minors; Spain: Decree No. 2421/68 of 20 September 1968, establishing the Social Welfare Service for Subnormal Children; the Sudan: The Sudan Youth-Care Corporation Act, 1968; and the Union of Soviet Socialist Republics: Resolution of the Council of the Union setting up a Standing Commission on Youth Affairs.

The right to social security was dealt with in legislation adopted during 1968 in Canada, China, Hungary, Iran, Iraq, Ireland, Italy, Libya, Madagascar, the Netherlands, Poland, Singapore, Togo, Turkey and the Ukrainian Soviet Socialist Republic.

Labour legislation was a matter of concern to a number of Governments in 1968. Laws on this subject were promulgated in Canada, Congo (Democratic Republic of), Cyprus, Czechoslovakia, Hungary, Iraq, Italy, Kuwait, Mauritania, Monaco, Norway, Pakistan, Poland, Singapore, Spain, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics.

The United States Housing and Urban Development Act of 1968 was designed to add substantially to the production of housing for low and moderate income families. Other 1968 legislation on housing includes that promulgated in Spain: Decree No. 2114/68 of 21 July 1968, approving regulations concerning State-protected housing, and Uruguay: Act No. 13728 of 13 December 1968 on the National Housing Plan.

On the subject of education, laws were adopted in 1968 in Botswana, Czechoslovakia, Finland, Ireland, Italy, Kenya, Libya, Luxembourg and the Netherlands.

Judicial decisions bearing on human rights were rendered by various courts in Australia, Canada, Chile, the Federal Republic of Germany, Italy, Japan, the Netherlands, New Zealand, Norway, the Philippines, Trinidad and Tobago, the Ukrainian Soviet Socialist Republic and the United States of America, and are summarized in the present volume.

The information presented in part II of the present *Yearbook* relates to Trust Territories under the administration of Australia (Trust Territory of Nauru and Trust Territory of New Guinea), and to Non-Self-Governing Territories under the administration of Australia (Territory of Papua and the Northern Territory) and New Zealand (Niue).

Part III reproduces the texts of, or extracts from, the following international instruments: the Proclamation of Teheran, adopted by the International Conference on Human Rights held in Teheran from 22 April to 13 May 1968; the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted by the General Assembly of the United Nations on 26 November 1968; the Recommendation concerning the Improvement of Conditions of Life and Work of Tenants, Share-Croppers and Similar Categories of Agricultural Workers, adopted on 25 June 1968 by the International Labour Conference; the Recommendation concerning the Preservation of Cultural Property endangered by Public and Private Works, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 19 November 1968; Council of Europe Resolution (68)30 on measures to be taken against incitement to racial, national and religious hatred, adopted by the Ministers' Deputies on 31 October 1968; and the Charter of the Southeast Asian Ministers of Education Organization, done at Singapore on 7 February 1968. Part III also contains a survey of the status of certain multilateral agreements in the field of human rights adopted since 1946.

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

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

PART I

STATES

AFGHANISTAN

NOTE ¹

1. After the adoption of the new Constitution of Afghanistan in 1964, constant efforts have been made to bring the laws in Afghanistan in conformity with the values embodied in the new Constitution, which was inspired by the Universal Declaration of Human Rights. In relation to article 23 of the Universal Declaration and in line with article 37 of the Afghan Constitution, for instance, a labour law is to be enacted shortly. The law concerned will have these among its main purposes:

(a) To provide for the protection of the rights and interests of workers in accordance with the principles enunciated in the Universal Declaration and in conformity with all international conventions to which Afghanistan is a party.

(b) To provide suitable conditions of work and to organize relations between workers and employers on a just and progressive basis.

2. Legislation concerning freedom of peaceful assembly and association is also to be enacted in the near future. In preparing this legislation, due account has been taken of article 20 of the Universal Declaration and of article 32 of the Afghan Constitution.

3. With regard to a Bill dealing with the recovery of debt, mention should be made of article 26 of the Afghan Constitution, which, *inter alia*, provides that indebtedness of one to another cannot cause deprivation or curtailment of the liberty of the debtor. The ways and means of regaining debt are to be specified in the law.

4. Laws relating to smuggling, a criminal law and a law on the Office of the Attorney-General are in their final process of enactment. In addition, laws concerning administrative crimes and crimes against public interest and order are currently under consideration. In the aforementioned legislation, special attention has been given to the values embodied in the Universal Declaration and the stipulations contained in the Afghan Constitution so that the principle of individual liberty and human dignity may be strictly observed. Accordingly, no one may be pursued or arrested except by order of a competent court.

5. With regard to international treaties and conventions, mention should be made of the following:

(a) Convention No. 100 on equal remuneration and also Convention No. 111 concerning discrimination in respect of employment and occupation came into force recently.

(b) A number of other conventions, including the ILO Convention on the Freedom of Association and the Protection of the Right to Organise, the UNESCO Convention against Discrimination in Education and the United Nations International Convention on the Elimination of All Racial Discrimination are currently under consideration of the Afghan Shura (Parliament), which is the sole authority for the ratification of international treaties and conventions.

6. In conformity with the spirit of the principles of the Universal Declaration and in line with the values embodied in the Afghan Constitution, considerable progress has been made so far in the way of preparing a criminal law in Afghanistan.

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

ALGERIA

ORDER No. 68-525 OF 9 SEPTEMBER 1968 REGULATING THE STATUS OF PROFESSIONAL JOURNALISTS ¹

Chapter I

GENERAL PROVISIONS

Art. 1. This order establishes the regulations governing the status of persons exercising the profession of journalism.

Art. 2. The term professional journalist shall mean a person employed on a daily or periodical press publication responsible to the Party or the Government, in a national agency or national organ of written, spoken or filmed information, who is permanently engaged in the research, selection, development, presentation and use of information, and for whom this activity represents his sole regular remunerated occupation. Photographer reporters, cameramen reporters and cartoonist reporters shall also be regarded as professional journalists. The permanent editorial staff working with the journalist and including revisers, translators, press stenographers, announcers and press document researchers are in the same category.

Correspondents, whether working at home or abroad, shall be regarded as professional journalists if they meet the requirements stated in the preceding paragraph.

Art. 3. Advertising agents and all other agents who work only occasionally or temporarily for the organ of information shall not be considered professional journalists.

Art. 4. The persons listed in article 2 above cannot claim to be professional journalists or enjoy the privileges, rights and advantages of the profession unless they are also holders of the national professional identity card issued in accordance with the conditions set forth in articles 31 and following.

Art. 5. The professional journalist, within the meaning of this statute:

- shall carry out his functions in a spirit of militancy;
- shall refrain from introducing, disseminating or permitting the dissemination of false or unsubstantiated information;
- shall be bound by professional secrecy except with respect to military secrets concerning the internal and external security of the State as defined by law;
- shall refrain from using his professional privileges in his personal interest;
- shall refrain from advertising any product or company by speaking highly of its merits in the sale or success of which he has a direct or indirect material interest;
- shall constantly endeavour to improve his political education and perfect his cultural, technical and professional knowledge.

Art. 6. The professional journalist is authorized to publish scientific, literary or artistic works.

No journalist shall perform occasional or regular work for an enterprise other than the one in which he is employed without authorization from the director of the latter.

No journalist shall work for a foreign information enterprise without an authorization issued by the Minister of Information.

Art. 7. So far as possible, the public authorities shall provide the journalist in the exercise of his profession with the support and facilities required to expedite his work.

Art. 8. Journalists shall enjoy trade union rights under the conditions prescribed by the regulations in force.

Chapter II

GENERAL WORKING CONDITIONS

Art. 9. No journalist shall be authorized to exercise his profession unless he is in possession of a valid national professional identity card.

¹ *Journal officiel de la République algérienne*, No. 75, of 17 September 1968.

Art. 10. The duration of the work week shall be determined by the labour legislation, with the following reservations:

Normal working or office hours, whether during the day, at night, on Sundays or holidays, do not justify higher rates of pay;

Journalists can be summoned at any time by the employing organization, if circumstances require;

If the journalist is prevented from enjoying the normal weekly time off owing to the exigencies of the service, equivalent compensatory leave shall be granted.

Art. 11. Work performed during legal holidays shall be compensated.

This compensation will consist of fifteen days of leave to be taken at one time and preferably between 1 January and 31 May, provided they can be taken without prejudice to the normal operations of the organization.

Art. 12. For purposes of acquiring seniority in the profession, the period of contributory service shall be the period during which the journalist actually exercised his profession, it being understood that the training period can be validated once he has received his appointment.

The following shall also be included in the period of contributory service:

- military service,
- interruption due to acts of war,
- interruption due to annual or special leave,
- interruption due to sickness, accident or maternity,
- time spent in the exercise of political duties with a national organization or assembly, or journalistic or administrative duties with an information organ or administration by decision of the supervisory authority.

The legislation in force relating to *moudjahidine* (war veterans) also applies.

Art. 13. The regular journalist who is required for a period exceeding one month to fill a post having a base salary higher than his own post shall receive post allowance.

This period may not exceed six months, except where he is replacing a regular journalist on sick leave or another journalist cannot be appointed for a year.

Chapter III

RECRUITMENT — PROMOTION — SEPARATION FROM SERVICE

Art. 14. The posts of editor, associate editor and managing editor shall be filled by the most competent and most experienced members of the profession.

Art. 15. In the organizations under the authority of the Ministry of Information, appointments to editor, associate editor and managing editor shall be made by orders issued by the Minister of Information.

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Chapter IV

REMUNERATION AND SPECIAL BENEFITS

Art. 21. The journalist shall be entitled to remuneration of his services, including salary and, if necessary, allowances.

Salaries shall be determined according to category and level of post.

Allowances and bonuses will be determined subsequently by decree.

Art. 22. The social security system shall be that provided in the laws and regulations in force for industrial and commercial public establishments and national enterprises, subject to the special provisions made in this order.

In connexion with information missions entailing real dangers, it shall be mandatory for the employing organization to take out a special supplementary insurance policy to cover those exceptional risks. The amount of this insurance should be no less than the guaranteed sum of ten times the annual salary of the person concerned, in case of death or 100 per cent disability.

Art. 23. The retirement system shall be that provided in the laws and regulations in force for industrial and commercial public establishments and national companies, subject to the special provisions contained in this order.

Journalists may become participants in a supplementary retirement system.

Art. 24. Journalists in active employment shall be entitled to thirty consecutive days of regular leave per year of completed service. By way of exception, the management may authorize them to split up their leave, depending on the exigencies of the service.

Journalist-trainees shall be entitled to one and a half working days of leave per month of service.

Special leave may be granted for unusual and serious reasons.

...

Chapter V

PROFESSIONAL DISCIPLINE

Art. 27. Journalists may be liable to the following disciplinary measures:

- first-degree measures: reprimand, censure, suspension not exceeding eight days without pay;
- second-degree measures: demotion, suspension with temporary withdrawal of professional identity card, dismissal and permanent withdrawal of professional identity card.

Art. 28. First-degree disciplinary measures shall be imposed by ruling of the director of the employing organization.

Second-degree disciplinary measures shall be imposed by ruling of the director of the employing organization, subject to the approval of the central

arbitration and disciplinary commission established by this order.

Art. 29. The journalist against whom disciplinary action is taken shall be entitled to access to his personal file and all related documents.

He may be assisted by counsel of his choice. He may submit written or oral explanations to the commission and present witnesses.

Art. 30. A central arbitration and disciplinary commission shall be established; it shall be presided over by the representative of the Minister of Information, and it shall deal with disciplinary matters as described above, and in general with any dispute that may arise between the management of an employing organization and a journalist.

The composition of the commission shall be determined by an order issued by the Minister of Information.

Disputes shall be brought to the attention of the commission either by the director of the employing organization or by the journalist.

Chapter VI

NATIONAL PROFESSIONAL IDENTITY CARD

Art. 31. The professional identity card provided under article 4 of this order shall be issued by the professional identity card commission and shall be valid for two years.

AUSTRALIA

NOTE 1

HUMAN RIGHTS IN AUSTRALIA IN 1968

I. Legislation

A. THE PRINCIPLE OF EQUAL TREATMENT

(*Universal Declaration of Human Rights, articles 2, 6 and 7*)

The Juries Ordinance 1967 (No. 47 of 1967) of the Australian Capital Territory, which came into force on 1 February 1968, by section 9 provides that each man and each woman whose name is on the roll of electors for the Territory is, unless he or she is a disqualified person (as to which, see section 10) or is exempt from serving as a juror (as to which, see section 11), liable to serve as a juror. Thus the Ordinance imposes equal duties on men and women so far as jury service is concerned. Under section 12 of the Ordinance, however, if a woman claims exemption from jury service she will automatically be exempted.

The Marriage (Liability in Tort) Act 1968 (No. 7668) of Victoria, an amending Act, provides that after the date of its commencement (1 June 1968), husband and wife may sue each other for tort.

The Law Reform (Husband and Wife) Act of 1968 (No. 15 of 1968) makes similar provision for Queensland, and the Married Persons (Torts) Ordinance 1968 (No. 15 of 1968) for the Australian Capital Territory.

B. CONDITIONS OF WORK

(*Universal Declaration, articles 23 and 25*)

The Workers Compensation (Dust Diseases) Amendment Act 1967 (No. 98 of 1967) of New South Wales amends the law to widen its scope,

to improve the prevention of dust diseases and to improve the methods of compensating workers who are partially disabled by dust diseases.

The Commonwealth Employees' Compensation Act 1968 (No. 123 of 1968) and the Seamen's Compensation Act 1968 (No. 124 of 1968) of the Commonwealth increase the amounts of weekly compensation payable to injured Commonwealth employees and seamen respectively.

C. SOCIAL SERVICES AND PROTECTION OF CHILDREN

(*Universal Declaration, article 25*)

The States Grants (Deserted Wives) Act 1968 (No. 48 of 1968) of the Commonwealth grants financial assistance to certain States to pay benefits to deserted wives, and certain other women, who have the custody, care and control of children and are not eligible for benefits under the *Social Services Act* of the Commonwealth.

The Adoption of Children Act 1968 (No. 33 of 1968) of Tasmania consolidates and amends the law relating to the adoption of children to bring it into line with the Acts of other States. The system of uniform adoption laws in Australia is referred to in the *Yearbooks* for 1964, 1965 and 1967.

II. Court decisions

A. THE PRINCIPLE OF EQUAL TREATMENT

(*Universal Declaration, articles 2, 6 and 7*)

Liability of Crown in tort-acts of agents. Per Windeyer, J.—In New South Wales, the Crown has in effect been made liable in tort by statute. I can see no ground for saying that, this being so, it is not liable for harm done to a lawful user of the highway by negligence of a policeman when driving a vehicle in the course of his duty. *Ramsay v. Pigram* (1968) 42A.L.J.R.89.

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

B. FREEDOM FROM ARBITRARY ARREST

(Universal Declaration, articles 8 and 9)

Action for malicious prosecution and wrongful arrest—Whether unsuccessful defendants should be ordered to pay successful defendant's costs. The plaintiff sued a city council, a council employee and a constable of police for assault, wrongful arrest and imprisonment and malicious prosecution. He was successful against the council and its employee but unsuccessful against the constable.

The council had requested the constable to accompany its employee and throughout the whole of the events, the council and the constable acted in apparent concert. The plaintiff was successful in establishing a *prima facie* case against the constable, who was able to justify his conduct under S. 352(a) of the Crimes Act, 1900 (N.S.W.) as amended.

Held that, in the exercise of the discretion conferred by S. 11A of the Supreme Court Procedure Act, 1900, as amended, the court would apply the proviso to S. 265 of the Common Law Procedure Act, 1899-1962, and would order that the plaintiff recover from the council and its employee the costs that he had been ordered to pay to the constable and the costs of the present application as well. *Hazell v. Parramatta City Council and Others* (No. 2) (1968) 87 W.N. (Pt. 1) (N.S.W.) 590.

C. PROTECTION OF THE FAMILY

(Universal Declaration, article 16 (3))

Custody of child—Rights of parents against third parties. Where a parent of a child seeks custody as against persons who are more distantly, or not at all, related to the child, the parents claim must prevail *prima facie* unless there is very good reason to the contrary. *The Queen v. L. and Another; Ex parte P.* (1967) 11 F.L.R. 25.

D. SOCIAL SERVICES AND PROTECTION OF CHILDREN

(Universal Declaration, article 25)

Adoption—Paramount consideration—Welfare and interests of child—Effect of statute. Section 17 of the Adoption of Children Act, 1965 (N.S.W.) provides that for all purposes of Part IV of the Act, headed "Adoptions under this Act", the welfare and interests of the child concerned "shall be regarded as the paramount consideration". Per Myers, J.—The phrase used in earlier statutes, here and in other States and in England has always been "the first and paramount consideration" and it has long been established that it did not make the welfare of the child prevail over all other considerations. The deliberate change in section 17 was intended to make the welfare and interests of the child in fact paramount, that is, the welfare of the child will overcome all considerations

opposed to it. *Re. T.L.R., An Infant* (1967) 87 W.N. (Pt. 1) (N.S.W.) 40.

Adoption—Religious upbringing of child—Whether mother's wishes may be ignored. A mother executed a consent to the adoption of her child by any person or persons approved and selected in accordance with the law of New South Wales, pursuant to s. 27 of the Adoption of Children Act 1965-1966, and expressed her desire that the child be brought up in a religion which she named, which was not that of the Church of England. At the same time the mother signed a document requesting the Church of England Adoption Agency to arrange for the adoption of the child. The agency allotted the child to persons who intended to bring the child up as a member of the Church of England. The prospective adopting parents were foreign nationals who had expressed their intention, if an order were made in their favour, of taking the child out of Australia. On the hearing of an application by the principal officer of the agency under s. 18(2) of the Act for an adoption order in favour of the prospective adopting parents,

Held: (1) That the making of an adoption order is a discretionary matter, and that, quite apart from the provisions of the Act, the court would not make an order thus disregarding the mother's wishes.

(2) That the applicants were not each suitable persons to adopt the child as required by s. 21 (1) (c) (i) (b) of the Act.

(3) That the application would be dismissed. *Re an Infant M.* (1967) 78 W.N. (Pt. 1) (N.S.W.) 48.

Adoption—Religious upbringing of child—Whether mother's wishes may be ignored. A mother consented to the adoption of her child by any person or persons approved and selected to adopt the child in accordance with the law of New South Wales, pursuant to s. 27 of the Adoption of Children Act 1965-1966, and stated that she desired the child to be brought up in the Methodist or Church of England religion. The proposed adopting parents were a husband and wife of whom the latter was a member of the Church of England, while the former was a Roman Catholic who did not practise his faith. Both husband and wife stated that they would bring the child up in the Church of England if an order were made in their favour.

On the hearing of an application by the Director of Child Welfare under s. 18 (2) of the Act for an adoption order in favour of the prospective adopting parents,

Held: (1) That the husband was not a suitable person to adopt the child as required by s. 21 (1) (c) (i) (b) of the Act.

(2) That the Director had not complied with the requirements of reg. 31 made under the Act.

(3) That for both these reasons, but subject to the right of the Director to have the matter adjourned into court for the purposes of argument, the application would be dismissed. *Re an Infant J.A.D.* (1967) 87 W.N. (Pt. 1) (N.S.W.) 51.

AUSTRIA

NOTE ¹

1. As in earlier contributions, it must be indicated again that Austria has possessed for over a century a very substantial collection of fundamental rights and freedoms. The basic legislation relating thereto has been thoroughly elaborated upon by the plentiful jurisprudence of the Constitutional Tribunal, as well as that of the Tribunal of the Reich during the time of its existence so that there is scarcely any room for further developments in that area. Constitutional jurisdiction is highly developed in Austria and this ensures a broad judicial control not only in respect of the Administration's individual acts but also in respect of its general acts (decrees) and legislation.

The Federal Government in Austria continues to concentrate its action in the field of human rights on a new codification of fundamental rights and freedoms: The Austrian contributions to the United Nations *Yearbook on Human Rights* for the years 1964 through 1967 have already reflected the activities of the Committee of Experts which was set up in 1964 for that purpose. In 1968, the Committee has thoroughly discussed in ten full day sessions the following subjects:

(a) Protection against arbitrary detention, especially against arbitrary arrest.

(b) Guarantee of the right to property and inheritance; protection against arbitrary expropriation; freedom of acquisition of land; freedom of property transfer.

(c) Prohibition of retroactive application of penal laws.

(d) Freedom of belief and conscience, in particular the right to exercise in private and in public a religious cult; the right to a free choice of religion; the right to object conscientiously to military service; the right to freely institute religious communities; the right of legally recognized churches and religious associations to deal autonomously with their internal affairs; the right of legally recognized churches and religious associations to provide religious instruction in all public schools and schools enjoying public status; the

right of legally recognized churches and religious associations to provide unhindered ministry in the Federal Army, in public hospitals and hospitals enjoying public status, as well as in penal institutions; guarantees to theological faculties; guarantee of Sunday and certain religious holidays; the right of churches and religious associations to freely communicate with religious institutions abroad.

(e) Freedom of science and its teaching.

2. In 1968 too, court action in the area of fundamental rights and freedoms was based on principles developed in previous decades. No new trends in the jurisprudence have become apparent.

3. In the field of legislation, the following measures taken in 1968 deserve particular notice:

(a) *Federal Constitutional Law of 7 February 1968, BGBl (Bundesgesetzblatt) No. 73/1968, amending the provisions of the Federal Constitutional Law of 1929 on exceptional tribunals and death penalty*

Simultaneously with the constitutional abolition of the death penalty in exceptional, that is, emergency procedures (in ordinary proceedings, the death penalty was completely abolished as early as 1950), a provision of the Constitution which formerly authorized the possibility of setting up exceptional tribunals in cases contemplated in the Law on penal proceedings, was likewise lifted.

(b) *Federal Law of 7 March 1968, BGBl No. 126/1968 on the right of residence of refugees in keeping with the Convention on the Status of Refugees*

The Convention on the Status of Refugees came into force for Austria on 30 January 1955. Since the Convention itself contains no provision on bodies which may be called upon to determine whether the attributes defining a refugee are present, such determination until now has been considered only as a preliminary enquiry by Security Authorities in connexion with a decision under the Law on Passports and Police Supervision of Aliens. Even though the procedure followed so far has proved to be satisfactory in many ways and repeatedly has earned tribute, in particular from the United Nations High Commissioner for

¹ Note furnished by the Government of Austria.

Refugees, a person applying for asylum so far has no recourse open to him to demand a legal determination of his entitlement to the status of a refugee under Article 1 of the Convention. This deficiency has been corrected by the new Federal Law.

Any petition for asylum by an alien on the grounds set forth in the Convention is now subject to a regular set of determination procedures in accordance with the General Administrative Procedural Law of 1950. This makes possible judicial control through the Administrative Tribunal. If the determination procedure leads to the conclusion that the person asking for asylum is to be regarded as a refugee under the Convention, then, on the basis of this law, that person is entitled to residence right on the territory of the Federation.

Furthermore, provision is made for regular proceedings with possibilities of appeal and of subsequent judiciary controls also for the determination whether the refugee has established prerequisites which, under the Convention, would lead to the loss of the refugee status or which, under the Convention, justify the return of the refugee to a country where he may expect to be persecuted on grounds described in the Convention.

Moreover, an alien who asks for asylum shall within an appropriate period of time be granted a temporary residence permit allowing him to await the decision on his request on the territory of the Federation. The new law will therefore greatly improve the legal status of the overwhelming majority of aliens who have requested political

asylum in Austria, pending the awaited constitutional settlement.

(c) *Federal Law of 23 October 1968, BGBl No. 392/1968, amending the Law on Public Meetings of 1953.*

The new law reduces the period of prior notification to the authorities for holding of a public meeting from three days to twenty-four hours. On the other hand, the prohibited zone is reduced from 38 kilometers to 300 meters in which no meeting may be held in the open during the sessions of the National Council, the Federal Council, the Federal Assembly and a Provincial Council.

(d) *Federal Constitutional Law—Novel 1968, BGBl No. 412/1968.*

In the interests of broadening the democratic basis and of meeting the just aspirations of the youth, this Novel reduces the voting age in National Council elections from 20 to 19 years and the age of eligibility from 26 to 25.

The Federal States have approved similar provisions for elections to the Provincial Assemblies.

4. In conclusion, it should further be pointed out that all legislation passed to ensure progress in the fields of education, training, social security, health protection, housing and safeguards of rights is also aimed eventually at achieving the objectives set forth in the Universal Declaration of Human Rights. In 1968 too, there were many instances of such legislative action.

BELGIUM

NOTE ¹

I. LEGISLATION

1. ACT OF 5 DECEMBER 1968 ON COLLECTIVE LABOUR AGREEMENTS AND JOINT COMMITTEES

(a) *Collective labour relations* in Belgium are based primarily on agreements between partners. There was previously very little legislation concerning collective bargaining, strikes, the settlement of labour disputes, etc.

The Act of 5 December 1968 has introduced profound changes in this area. It lays down precisely the forms and conditions of collective agreements.

One of the main innovations introduced by this Act is that workers' organizations may now appear as parties to civil proceedings in connexion with any disputes arising out of collective labour agreements and with the rights pertaining to their members under such agreements. As *de facto* associations, trade union organizations were previously unable to take legal action. From the opposite standpoint, the situation remains as it was prior to the Act of 5 December 1968: the commitments assumed by workers' organizations in a collective agreement cannot be made mandatory by legal action. The Act stipulates that no legal proceedings may be instituted against trade union organizations on the ground of failure to carry out the obligations arising out of an agreement, unless the agreement expressly provides otherwise.

(b) *The parties to the bargaining* are organizations representing workers and employers.

Workers' organizations:

In order to be recognized as a representative organization, a trade union must satisfy the following conditions:

It must be a national organization representing more than one trade, or a trade union organization affiliated thereto;

The inter-trade organization must be represented on the National Labour Council and on the Central Economic Council;

It must have at least 50,000 members.

Employers' organizations:

The national inter-trade organizations represented on the National Labour Council and on the Central Economic Council and their affiliated trade associations are considered to be representative. In addition, the Crown may, on the advice of the National Labour Council, declare certain employers' trade associations to be representative of a given industry.

(c) *The bargaining institutions*

(1) At the undertaking level, three different organs may act:

Trade union delegations, which are governed by rules based mainly on an inter-trade agreement concluded in June 1947. This agreement lays down general principles, while leaving it to the joint committees to draw up, in the form of an agreement, precise rules for each industry. An employer is not, as such, required by law to recognize a trade union delegation in his undertaking.

Works councils: Employers are required by law to establish a works council if the undertaking normally employs an average of 150 workers. The council is composed of representatives of the workers and representatives of the employer, in equal numbers; the former are elected every four years by the non-managerial staff, while the latter are appointed by the employer from among the managerial staff. Representation of the workers is divided between manual and non-manual workers according to the size of each category. All workers (with the exception of the managerial staff), whether or not they are members of a trade union organization, take part in the elections.

Committees for safety, hygiene and improvement of workplaces: All employers (with the exception of those who employ members of their

¹ Note based upon report on economic, social and cultural rights received from the Government of Belgium under Economic and Social Council resolution 1074C (XXXIX) and published in the Secretary-General's *Periodic Reports on Human Rights, 1966-1969* (E/CN.4/1011/Add. 6).

family or domestic servants) must establish a department for safety, hygiene and improvement of workplaces. This is not a joint committee, but a department responsible to the management of the undertaking.

In addition, any undertaking which normally employs an average of fifty workers is required to establish a committee for safety, hygiene and improvement of workplaces. The committee is a joint body composed of a delegation representing the employer and a delegation elected by the workers.

(2) At the industry level, the bargaining organs are the joint committees. They are established by the Crown, on its own initiative or at the request of one or more representative organizations. The Crown specifies which persons, which industry or undertakings and which geographical area fall within the jurisdiction of each committee. Whenever it is proposed to establish a joint committee or to change the jurisdiction of a committee, the Minister of Employment and Labour informs the organizations concerned through a notice published in the *Moniteur belge*.

The joint committees are composed of:

A president and a vice-president appointed by the Crown, being persons who are competent in social matters and are not interested parties in any questions with which their committee might have to deal;

Delegates from organizations representing employers and workers, in equal numbers. Only these delegates have the right to vote. The Crown appoints these members for a term of four years, from among the candidates nominated by the organizations concerned;

Two or more secretaries appointed by the Minister of Employment and Labour.

The function of the joint committee is:

To assist in drawing up collective labour agreements;

To prevent, or to reconcile, any dispute between employers and workers; ,

To advise the Government, the National Labour Council, the Central Economic Council or trade councils, at their request or on the initiative of the committees, on matters falling within their competence;

To perform any other function devolving upon them by law or pursuant to the law.

(3) At the national level, the bargaining organ is the National Labour Council, established in 1952. It is composed of twenty-two members and the same number of alternates, all appointed by the Crown and chosen from the lists of candidates submitted by trade associations representing employers and workers. The president is appointed by the Crown from among disinterested persons who have special competence in social and economic matters. The National Labour Council is first and foremost an advisory body, whose functions include advising the legislature and the executive on general social problems. In addition, collective labour agreements are concluded within the Council. The Act of 5 December 1968 extended the Council's competence by providing that agreements may be concluded within the Council for any

industry which does not fall within the jurisdiction of an established joint committee, or where a joint committee has been established but is not functioning.

(d) *Collective labour agreements*

The Act of 5 December 1968 established a complete legal structure with regard to collective labour agreements.

A collective agreement is an agreement concluded between one or more workers' organizations and either one or more employers' organizations or one or more employers, which determines the individual and collective relations between employers and workers within undertakings or within an industry and which establishes the rights and obligations of the contracting parties.

As Belgium has very extensive and very detailed laws and regulations for the protection of labour and the protection of workers, the scope of collective agreements is somewhat restricted. Yet it is still very extensive, since in most cases the laws and regulations only lay down minimum standards, which can be raised, and general principles, which can be further elaborated. Thus, the following matters are generally settled by collective bargaining: job classification, hours of work, remuneration, bonuses and wage-pegging clauses, overtime, absenteeism, holidays, supplementary sickness pensions, job security, the assignment of benefits, work regulations, etc.

The clauses of a collective agreement are invalid:

If they are contrary to the mandatory provisions of laws, of orders, or of international treaties and rules which are binding in Belgium;

If they entrust the settlement of individual disputes to arbitrators;

If they are contrary to a collective labour agreement concluded at a higher level.

A collective agreement may be concluded within the National Labour Council, or within or outside a joint body. This covers all levels of collective bargaining—nation-wide, the industry level or the undertaking level (see sub-section (c) above).

The scope of application of an agreement concluded within the National Labour Council normally extends to different industries and to the whole country. An agreement concluded at a lower level binds:

The organizations which concluded it and the employers who are members of such organizations or who concluded the agreement, as from the date of its entry into effect;

Organizations and employers who accede to the agreement and employers who are members of such organizations, as from the date of accession ;

Employers who join an organization bound by the agreement, as from the date on which they join ;

All the employees of an employer who is bound by the agreement (including, therefore, an employee who is not a member of a trade union but who works for an employer bound by an agreement).

The Act contains a number of provisions designed to ensure that the agreement will continue to be mandatory:

In the event of the total or partial transfer of an undertaking, the new owner-employer is bound to comply with the agreement;

When an employer ceases to be a member of a contracting organization, he continues to be bound by the agreement until such time as any significant change is made in the obligations arising out of it;

In the event of the dissolution of a contracting organization, the rules governing the individual relations between employer and worker established under the agreement continue to apply until such time as any significant change is made in those relations.

The Act of 5 December 1968 lays down special provisions with regard to collective labour agreements concluded within joint organs. Such agreements must be concluded by all the organizations represented in the organ. The clauses relating to individual relations between employer and worker are binding not only on the parties but also on all workers and employers who fall within the jurisdiction of the joint organ and who are included in the scope of application defined in the agreement. The agreement may be made mandatory by the Crown, at the request of the organ itself or of an organization represented in it. In that case, the agreement is binding in its entirety on all employers and workers (including non-members of organizations) in the sector covered by the contract.

The royal order making the agreement mandatory is operative as from the date of the entry into effect of the agreement, and is therefore retroactive. However, it may in no case apply to any period more than one year prior to the date of its publication.

2. ROYAL ORDER OF 16 DECEMBER 1968

This Royal Order provides that mentally handicapped persons, their widows, and the dependants and orphans of mentally handicapped persons shall enjoy full health care coverage, including both the minor and major risks.

In respect of family allowances, the following measures have been taken:

A supplementary allowance has been granted for eligible handicapped children under the age of 25;

The regular allowance for handicapped persons has been granted for handicapped children at least 25 years of age who are incapacitated to the extent of at least 66 per cent and employed in a protected workshop;

Entitlement to family allowances at the higher rate, already enjoyed by employees incapacitated for work, has been extended to the children of handicapped persons who are not engaged in a gainful occupation and are receiving a handicapped-disabled person's allowance based on permanent physical disability to the extent of at least 65 per cent.

The regular family allowances and the supplementary allowance have been granted for handicapped children between the ages of fourteen and twenty-five who are incapacitated for work to the extent of at least 66 per cent and are therefore receiving handicapped-disabled persons' allowances. School attendance or employment in a protected workshop shall no longer be eligibility requirements for those allowances.

Although they do not belong to the category of the socially disadvantaged, there are persons who deserve special attention on account of the special position they are in or its effects on their families. They are, first, students and, secondly, prisoners.

The following measures have been taken in behalf of students with respect to family allowances:

Family allowances have been granted for the children of students under the age of twenty-five, with the option of extending them to students up to the age of twenty-seven in specific cases;

Family allowances shall continue to be paid to the parents of students under the age of twenty-five who are not gainfully employed for more than eighty hours per month during vacation periods;

Family allowances shall continue to be paid to the parents of students who are no longer enrolled in compulsory education, provided they are preparing a thesis leading to a degree;

Family allowances shall continue to be paid to the parents of students even after they have completed their studies, provided they have registered for employment but have not found acceptable employment and are not yet receiving unemployment benefits.

Health insurance shall be extended to students in higher educational establishments beginning 1 July 1969.

That extension is part of a series of measures intended to provide health coverage for the entire population. Various categories of persons, who would otherwise not have received those benefits, have thus become eligible for health insurance. They include, in addition to the students mentioned above, domestic workers, members of the clergy and of religious communities and persons who do not come under any of the categories already covered.

Prisoners shall continue to receive family allowances for the duration of their prison term, provided they were in receipt of such allowances on the date on which they were deprived of their liberty or provided a certain period of time has not elapsed since they ceased to receive those allowances; the second proviso may be dispensed with in cases which warrant special attention.

3. ACT OF 20 JULY 1968

This Act amends certain provisions of the Act of 28 June 1966, extending the entitlement to

compensation for dismissal to workers having at least one year's (instead of five years') service with the undertaking; in addition, this Act provides for the payment of a temporary allowance, which may be collected simultaneously with the other compensation, in the case of workers losing their employment on the closure of an undertaking which has employed at least twenty-five persons.

4. ROYAL ORDER OF 22 MARCH 1968

This Royal Order and those of 16 June 1967 and 12 August 1967 laid down certain standards to be complied with by the rest-homes dealt with in the Act of 12 July 1966, as amended by the Act of 10 May 1967.

These standards are concerned with:

1. The freedom of the inmates and respect for their beliefs;
2. Food, hygiene and health services;
3. Safety;
4. The number, competence and morality of persons employed in a rest-home;
5. The building and furnishings;
6. The keeping of accounts.

5. ROYAL ORDER OF 8 SEPTEMBER 1968

By this Royal Order, a Central Council on Old Age has recently been established under the Minister whose portfolio includes family welfare. The Council's function is to offer advice and suggestions concerning the problems of old age to the competent ministers, either at their request or on its own initiative.

6. ROYAL ORDER OF 26 MARCH 1968

Social security regulations provide coverage for the cost of medical examinations of the new-born; since 90 per cent of births in Belgium take place in a maternity hospital and 99 per cent are attended by doctors, practically every new-born child is examined by a doctor. The new registration method will bring about an improvement in this respect.

Every new-born child is given a urine examination by means of a paper test (Phenistix) for the detection of phenylketonuria. The Royal Order of 26 March 1968 laid down that laboratories testing for phenylalaline in the blood must be approved. The cost of dietetic treatment is covered by social security.

7. ROYAL ORDER OF 25 SEPTEMBER 1968

Belgium has adopted the regulations for the inspection of Rhine shipping and barges. The

amendments to the section relating to crew members introduced by resolution No. 26 of the Central Commission for Rhine Navigation, dated 26 April 1968, were imposed by Royal Order of 25 September 1968.

The purpose of these measures is to protect working women by prohibiting work which is too arduous, prohibiting work after the third month of pregnancy and before the fourth month following confinement, and prescribing regulations concerning the proper fitting-out of vessels, hours of work and clothing.

II. COURT DECISIONS

The scope of social security differs, according as it is viewed from the standpoint of the enjoyment of rights or from the standpoint of compulsory coverage.

Since compulsory coverage imposes obligations on both the employer and the worker, this is the area in which action by the courts is most frequently necessary in order to ensure compliance with the law. The categories of workers affected by decisions declaring them subject to compulsory coverage include temporary employees who remain partly under the authority of the person placing them with the clients (Court of Cassation, 6 June 1968).

The following persons, on the other hand, have been held not subject to compulsory coverage:

A conducted-tour guide who was not under the authority, direction or supervision of the company organizing the tour (Court of Cassation, 13 June 1968).

Persons kept as an act of charity who perform petty services (Cantonal Court, Andenne, 17 May 1968).

With regard to court decisions based on the provisions of the laws relating to individual sectors, it may be noted that the law concerning family allowances for self-employed persons applies to managers of dry-cleaning depots (Cantonal Court, Mons, 24 April 1968) and to members of the clergy performing paid or unpaid pastoral duties and teaching religion in State institutions or equivalent institutions (Civil Court, Tournai, 16 January 1968).

With regard to pensions: a court expert is not to be regarded as an employee, but as a self-employed person (Civil Court, Brussels, 14 May 1968); a survivor's pension is to be granted, irrespective of whether damages and interest have been obtained under the ordinary law relating to civil liability (Court of Cassation, 4 November 1968).

BOTSWANA

THE EDUCATION (CORPORAL PUNISHMENT) REGULATIONS, 1968

Statutory Instrument No. 1 of 1968 ¹

...

CONDITIONS FOR THE ADMINISTRATION OF CORPORAL PUNISHMENT

2. No corporal punishment shall be administered to any pupil—

(a) At any school; or

(b) By any school teacher for anything done by the pupil at school or in respect of his schooling;

unless the following conditions are complied with—

- (i) the punishment shall be administered either by the headmaster or by some other teacher in the presence of the headmaster;
- (ii) no instrument of punishment other than a light cane shall be used and no punishment shall exceed ten strokes with the cane;
- (iii) no male teacher may inflict corporal punishment upon any girl whom he has grounds for believing is over the age of ten years;
- (iv) no punishment shall be administered except for offences of a serious or repeated nature.

RECORDS TO BE KEPT

3. In the event of corporal punishment being administered, the headmaster of the school shall make and retain a record of the nature of the offence committed by the pupil, the number of strokes administered, the date of the punishment and the name of the person administering the punishment.

...

¹ *Botswana Government Gazette*, Supplement D, of 5 January 1968.

THE CITIZENSHIP OF BOTSWANA (SUPPLEMENTARY PROVISIONS)
(AMENDMENT) ACT, 1968 ²

...
ADDITION OF SECTION 19 OF LAW 39 OF 1966

3. The principal law is amended by the insertion after section 18 of the following section—
“*Extension of period in which a person may make renunciation of citizenship*
“19. The Minister may by order in the *Gazette* extend beyond the specified date as defined in section 29 (6) of the Constitution, the period in which any person may make a renunciation of citizenship, take an oath or make a declaration for the purposes of section 29 of the Constitution.” ³

² *Botswana Government Gazette*, Supplement B, of 23 February 1968.

³ For extracts from the Constitution of Botswana, see *Yearbook on Human Rights for 1966*, pp. 38.

THE PRINTED PUBLICATIONS ACT, 1968

Act No. 15 of 1968, assented to on 6 March 1968 and entered into force on 8 March 1968 ⁴

...
APPOINTMENT OF REGISTRAR

3. The Minister shall by notice in the *Gazette*, appoint a public officer to be Registrar of Newspapers for the purposes of this Act.

REGISTER

4. The Registrar shall cause to be established and maintained a Register of Newspapers wherein shall be entered every return made under the provisions of this Act.
...

POWER TO SEIZE CERTAIN PUBLICATIONS AND TO SEARCH PREMISES

11. (1) Any police officer of the rank of Inspector or above may seize any publication or newspaper, wherever found, which has been printed or published, or which he reasonably suspects has been printed or published, in contravention of the provisions of this Act.

(2) Any magistrate may by warrant authorise any police officer of the rank of Inspector or above, with or without assistance, to enter and search any place where it is reasonably suspected that—

(a) Any publication or newspaper printed or published in contravention of the provisions of this Act is being kept; or

(b) Any other offence under this Act has been, is being or is about to be committed; and to seize any publication or newspaper found therein which he reasonably suspects has been so printed or published, together with any other evidence of the commission of an offence under the provisions of this Act which may be there found.

(3) Any publication, newspaper or other thing seized under the provisions of this section shall be brought as soon as practicable before a magistrate who may give such directions for the custody thereof pending the determination of the proceedings as he may think fit, so however

⁴ *Botswana Government Gazette*, Supplement B, of 8 March 1968.

that if such publication, newspaper or other thing is not exhibited in any proceedings before a court within three months of the date of seizure it shall be returned to the person from whom it was seized.

(4) Any person who wilfully obstructs any person in the exercise of any of the powers conferred by this section shall be guilty of an offence and shall be liable on conviction to the penalties prescribed in section 13.

...

PENALTIES

13. A person who contravenes the provisions of this Act shall be liable to a fine not exceeding R500 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

THE EMPLOYMENT OF VISITORS ACT, 1968

Act No. 19 of 1968, assented to on 6 March 1968 and entered into force on 10 March 1968⁵

...

NO VISITOR TO BE EMPLOYED EXCEPT UNDER PERMIT

3. (1) Subject to the provisions of subsection (2), no person shall employ a visitor and no visitor shall be employed unless the visitor is in possession of a visitors' work permit applicable to the employment.

(2) Where a visitor enters Botswana while in employment entered into and intended mainly to be performed outside Botswana he may, while permitted to remain in Botswana in terms of section 19 (1) of the Immigration (Consolidation) Law, 1966, without special authorisation in terms of paragraph (a) thereof, continue to discharge the functions of that employment without being in possession of a visitors' work permit.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R500, or, in default of payment thereof, to imprisonment not exceeding 6 months, or to imprisonment without the option of a fine, or to both such fine and imprisonment.

ISSUE OF VISITORS' WORK PERMITS

4. (1) Any person who wishes to obtain a visitors' work permit shall make application therefor in the prescribed form to a labour officer, who may issue such permit to the applicant upon the payment of such fees as may be prescribed.

(2) A visitors' work permit shall be in the prescribed form and shall specify the name of the employer, the name of the employee and the type of employment to which it relates. Every such permit shall, subject to the provisions of subsection (3), be valid for the period specified therein by the labour officer issuing the same, being a period not exceeding 6 months from the date of issue.

(3) A visitors' work permit may be renewed for further periods not exceeding 6 months at any one time upon the payment of such fees as may be prescribed so however that it does not remain valid for more than 12 months in all, by the endorsement of such renewal by a labour officer on the original permit.

(4) In the exercise of their functions under this section, labour officers shall act in accordance with such instructions as may be given by the Minister.

⁵ *Ibid.*

CANCELLATION OF VISITORS' WORK PERMIT

5. The Minister may cancel a visitors' work permit at any time, by notice served on the holder thereof, without assigning any reason therefor.

PRESUMPTION

6. In any prosecution under the provisions of section 3 a person alleged to be a visitor shall be deemed to be a visitor unless and until the contrary is proved.

...

THE CITIZENSHIP OF BOTSWANA (SUPPLEMENTARY PROVISIONS)
(FURTHER AMENDMENT) ACT, 1968

Act No. 30 of 1968, assented to on 1 May 1968 and entered into force on 3 May 1968 ⁶

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INSERTION OF SECTION 5A INTO LAW NO. 39 OF 1966

2. The Citizenship of Botswana (Supplementary Provisions) Law, 1966 (hereinafter referred to as the principal law) is amended by the insertion of the following section after Section 5—

“Registration of persons of a designated group

“5A (1) Where the Minister is satisfied that any group of persons (being either persons to whom the provisions of section 25 of the Constitution apply or persons who would not, but for the provisions of this section, be entitled to registration as citizens) has by long residence in Botswana permanently associated itself with Botswana, he may by notice in the *Gazette* designate such group as a group to whom the provisions of that section shall apply.

“(2) Any person who is a member of a group of persons designated under subsection (1) may, within such time as may be prescribed, make a declaration in such form and manner as may be prescribed that he wishes to be regarded as a citizen of Botswana.

“(3) Upon receipt of a declaration made under subsection (2), the Minister shall, if he is satisfied that the declarant is a person of the group designated under subsection (1), cause such person to be registered as a citizen.”

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⁶ *Botswana Government Gazette*, Supplement B, of 3 May 1968.

THE IMMIGRATION (CONSOLIDATION)
(FURTHER AMENDMENT) ACT, 1968

Act No. 37 of 1968, assented to on 1 May 1968 and entered into force on 3 May 1968 ⁷

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AMENDMENT OF SECTION 8 OF LAW NO. 19 OF 1966

2. The Immigration Consolidation Law, 1966 (hereinafter referred to as the principal law) is amended in section 8 by the addition of the following paragraph—

“(h) Any person named in a notice made under the provisions of section 25A (1), or of a class or description specified in such notice.”

INSERTION OF SECTION 25A INTO LAW NO. 19 OF 1966

3. The principal law is amended by the insertion of the following section after section 25—

“*Prohibition of entry of persons endangering the peace and security of Botswana*

“25A. (1) The President may, by notice in the *Gazette*, prohibit the entry into Botswana of any person (not being a citizen of Botswana) who—

(a) Is named in such notice; or

(b) Is of a class or description specified in such notice; if in his opinion the presence within Botswana of such person, or a person of such class or description, as the case may be, would endanger the peace or security of Botswana.

“(2) Any person named in a notice made under subsection (1), or of a class or description specified in such notice, who enters Botswana, save in accordance with an exemption given under section 13, may be arrested without a warrant and shall be guilty of an offence and liable on conviction to the penalties prescribed in subsection (4) of section 29.

“(3) Where any person who is named in a notice made under subsection (1), or who belongs to a class or who conforms to a description specified in such notice is found in Botswana, he shall be deemed to have entered Botswana in contravention of the provisions of subsection (2) until and unless the contrary is proved.”

AMENDMENT OF SECTION 29 OF LAW NO. 19 OF 1966

4. The principal law is amended by the addition to section 29 of the following subsection—

“(4) Any person who is convicted of an offence under any section or subsection of this Law which provides that the offender shall be liable on conviction to the penalties prescribed in this subsection, shall be liable on conviction to a fine not exceeding four thousand rand, or, in default of payment thereof, to imprisonment not exceeding four years, or to such imprisonment without the option of a fine, or to both such fine and imprisonment.”

⁷ *Ibid.*

THE ELECTORAL ACT, 1968

Act No. 38 of 1968, assented to on 13 May 1968 and entered into force on 17 May 1968 ⁸

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DUTIES OF SUPERVISOR OF ELECTIONS

3. The Supervisor of Elections shall—

(a) Exercise general direction and supervision over the registration of voters.

⁸ *Botswana Government Gazette*, Supplement B, of 17 May 1968.

(b) Exercise general direction and supervision over the administrative conduct of elections and enforce on the part of all election officers fairness, impartiality and compliance with the provisions of this Act;

(c) Issue to election officers and registration officers such instructions as he may deem necessary to ensure effective execution of the provisions of this Act; and

(d) Exercise and perform all other powers and duties conferred and imposed upon him by this Act.

APPOINTMENT OF OFFICERS

4. (1) The Supervisor of Elections shall appoint a principal registration officer for each constituency, and such other registration officers for each constituency as he may deem necessary, who shall execute and perform the powers and duties conferred upon them by this Act in accordance with such instructions as may be given by the Supervisor of Elections.

(2) The Supervisor of Elections shall appoint a returning officer and such number of assistant returning officers for each constituency as he may deem necessary and shall appoint a presiding officer and such number of polling officers as he may deem necessary for each polling station.

(3) Registration and election officers shall execute and perform the powers and duties conferred upon them by this Act in accordance with such instructions as they may be given by the Supervisor of Elections.

(4) Appointments made under this section shall be notified in the *Gazette*.

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PART II

DISQUALIFICATION OF VOTERS

DISQUALIFICATION OF VOTERS

6. (1) No person shall be qualified to be registered as a voter who—

(a) Is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power of state; or

(b) Is, for an offence which is a criminal offence under the law of Botswana under sentence of death imposed on him by a court in any part of the Commonwealth, or, subject to the provisions of subsection (2), under sentence of imprisonment (by whatever name called and whether or not it is a suspended sentence) of or exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or

(c) Is a person certified to be insane or otherwise adjudged or declared to be of unsound mind under any law for the time being in force in Botswana; or

(d) Is disqualified from voting at any election under law for the time being in force in Botswana relating to offences connected with elections.

(2) For the purposes of paragraph (b) of subsection (1)—

(a) Two or more sentences of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and

(b) No account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

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PART VI

ELECTIONS

WRIT OF ELECTION

31. (1) For the purpose of a general election to the National Assembly or of a by-election to fill a vacancy therein caused by death, resignation or otherwise, the President shall issue a writ under the public seal of Botswana, addressed to the returning officer of each constituency for which a Member is to be returned, fixing—

(a) The place and day at and on which, and the hours between which, the returning officer will receive nominations of candidates for election;

(b) The day for the taking of any poll which may become necessary.

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(5) As soon as practicable after a writ has been issued, the Supervisor of Elections shall give notice thereof in the *Gazette*, specifying in such notice the various matters fixed in pursuance of paragraphs (a) and (b) of subsection (1).

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PART VII

POLLING

POLL TO BE TAKEN BY BALLOT

41. A poll for the purposes of this Act shall be taken by ballot and the results shall be ascertained by counting the votes given to each candidate, the candidate to whom the majority of votes has been given being deemed to have been elected.

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POWER TO ADJOURN POLLING DAY IN PUBLIC INTEREST

44. (1) If at any time between the issue of a writ and polling day the President is satisfied that it is expedient in the public interest so to do, he may by proclamation published in the *Gazette* adjourn the taking of the poll to some other day specified by him and endorsed on the writ.

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ASSISTANCE TO VOTERS BY ELECTION OFFICERS

53. Except as provided in this Act, the presiding officer or polling officers shall not give any assistance or explanation to a voter beyond—

- (a) Directing him to a polling booth where he may vote;
- (b) Informing him of the nature of the notice posted inside the polling booth; and
- (c) Informing him of the procedure he should follow after entering the polling booth.

INTERFERENCE WITH VOTERS

54. Except as provided in this Act, no person shall approach, interfere with, speak to or assist a voter from the time he has received his ballot envelope and counters to the time he has completed voting.

PERSONAL ATTENDANCE

58. A vote may not be recorded by a voter except by his attending in person at the polling station and recording his vote in accordance with this Act.

REMOVAL OF PERSONS MISCONDUCTING THEMSELVES

63. If any person misconducts himself at a polling station or fails to obey any lawful order of the presiding officer he may, by order of the presiding officer (but not of any other polling officer), be removed from the polling station by a police officer or any other person authorised by the presiding officer, and a person so removed shall not without the permission of the presiding officer again enter the polling station during the day of the election:

Provided that the powers conferred by this section shall not be exercised so as to prevent any person who is otherwise entitled to vote at a polling station from voting.

ADJOURNMENT OF POLL IN CASE OF RIOT

64. (1) If the proceedings at any polling station are interrupted or obstructed by riot or open violence, the presiding officer shall adjourn the proceedings until later in the day or until the following day after taking such precautions as are necessary to safeguard the ballot boxes and envelopes and other election requisites, and shall forthwith notify the returning officer, who shall in turn notify the Supervisor of Elections.

(2) If the poll is adjourned at any polling station the hours of polling on the day to which it is adjourned shall be the same as for the original day, and references in this Act to the closing of the poll shall be construed accordingly.

PART VIII

ELECTION EXPENSES AND ELECTION AGENTS

ELECTION EXPENSES

79. (1) "Election expenses" means, in relation to a candidate at an election, all moneys expended or expenses incurred on account of or in respect of the conduct or management of that election by the candidate or on his behalf or in his interests and for the purposes of this subsection, money shall be deemed to have been expended or expenses incurred in respect of the conduct or management of an election if expended or incurred, after the issue of a writ in relation to that election.

MAXIMUM OF ELECTION EXPENSES

80. The election expenses of any candidate shall not exceed one thousand rand.

APPOINTMENT OF ELECTION AGENT

81. (1) Not later than ten days after nomination day a candidate may appoint one and only one person to be his election agent and shall forthwith notify in writing the full name and address of his election agent to the returning officer who shall forthwith publish a statement setting out the information so given by displaying it at the place appointed for the receipt nominations.

PART IX

CORRUPT AND ILLEGAL PRACTICES

CORRUPT PRACTICES

89. The expression "corrupt practice" as used in this Act means any of the following offences—

- (a) Personation;
- (b) Treating;
- (c) Undue influence;
- (d) Bribery;
- (e) Aiding, abetting, counselling or procuring any such offence.

OFFENCES ON DAY OF ELECTION

112. (1) No person shall on the date on which an election is held commit any of the following acts within a polling station or within a distance of two hundred yards from a polling station, namely—

- (a) Canvassing for votes;
- (b) Soliciting the vote of any voter;

(c) Persuading any voter not to vote for any particular candidate;

(d) Persuading any voter not to vote at the election;

(e) Shouting slogans concerning the election;

(f) Being in possession of any offensive weapon or wearing any dress or having any facial or other decoration calculated to intimidate voters;

(g) Exhibiting, wearing or tendering any notice, symbol, badge, photograph or party card referring to the election:

Provided that this paragraph shall not prohibit the retention of any such notice, symbol, badge, photograph or card on any vehicle brought within such distance of a polling station purely for some temporary purpose.

(2) No person shall on the date on which a poll is held in a constituency—

(a) Convene, hold or attend any public meeting;

(b) Operate any megaphone, amplifier or public address apparatus for the purpose of making announcements concerning the election (unless he is an election officer making an official announcement).

(3) Any person who contravenes any of the provisions of this section shall be guilty of an offence and liable upon conviction to a fine not exceeding two hundred rand or to imprisonment not exceeding one year or to both such fine and imprisonment.

DISORDERLINESS AT POLITICAL MEETINGS

113. Any person who at a political meeting held in any constituency after the publication of a notice in terms of section 31 (5) in respect of that constituency—

(a) Acts or incites another to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was convened; or

(b) Has in his possession an offensive weapon or missile; shall be guilty of an offence and liable upon conviction to a fine not exceeding two hundred rand or to imprisonment not exceeding twelve months or to both such fine and imprisonment.

BILLS, PLACARDS, ETC., TO HAVE NAME OF PRINTER AND PUBLISHER

114. (1) Every bill, placard, poster, pamphlet, circular or other printed matter having reference to an election shall bear upon the face thereof the name and address of the printer and publisher thereof.

(2) No person shall print, publish or post or cause to be printed, published or posted any such printed matter which fails to bear upon the face thereof the name and address of the printer and publisher.

(3) The proprietor and publisher of every newspaper shall cause the word "advertisement" to be printed as a headline to each article or paragraph

in his newspaper containing electoral matter, the insertion of which is or is to be paid for or for which any reward or compensation or promise of reward or compensation is or is to be made.

(4) In subsection (3) "electoral matter" includes all matters which, on the face of them, are intended or calculated to affect the result of an election, and any report of the speech of a candidate if the insertion of the report is or is to be paid for.

(5) No candidate shall issue or distribute any document (which term includes any bill, placard, poster, pamphlet, circular or card) which contains any facsimile or imitation of a ballot envelope and advises or purports to advise any persons as to the manner in which such person should record his vote, unless such candidate has first obtained from the Supervisor of Elections a certificate, in duplicate, stating that, in his opinion, such document contains no representation likely to mislead a voter as to his rights.

(6) No person shall print any document referred to in subsection (5) unless he has been furnished with the original or duplicate of the certificate referred to in that subsection.

(7) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand.

(8) For the purposes of this section an election shall be deemed to commence upon the publication of a notice in terms of section 31 (5) in relation to that election.

PART X

ELECTION PETITIONS

WHO MAY PRESENT AN ELECTION PETITION

115. A petition complaining of an undue return or an undue election of a member for any constituency by reason of want of qualification or by reason of disqualification, corrupt or illegal practice, irregularity, or by reason of any other cause whatsoever, may be presented to the High Court by—

(a) A voter in that constituency; or

(b) Any person who was a candidate at such election:

Provided that a petitioner shall, before lodging his petition with the Registrar of the High Court, afford every person, other than the Member whose election or qualification is complained of (hereinafter referred to as "the respondent"), who was a candidate at the election to which the petition relates an opportunity of becoming a party to the petition as a co-petitioner.

TRIAL OF ELECTION PETITIONS

120. The following provisions shall apply with respect to the trial of elections—

(a) Every election petition shall be tried in open court;

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WITNESSES

125. (1) A witness shall be summoned and sworn in the same manner as a witness may be summoned and sworn in civil proceedings before the High Court.

(2) Any such witness who, in the course of the trial of an election petition, wilfully makes a statement of fact material in the proceedings which he knows to be false or does not believe to be true shall be guilty of an offence and liable on conviction to a fine not exceeding four hundred rand or to imprisonment not exceeding two years, or both such fine and imprisonment.

EXAMINATION OF WITNESSES

126. On the trial of an election petition, the Court may examine any witness or any person in court, although such witness or person is not called or examined by any party to the petition, and after the examination of a witness as aforesaid by the Court, such witness may be cross-examined by or on behalf of the petitioner and respondent or either of them.

WITNESSES NOT EXCUSED FROM ANSWERING INCRIMINATING QUESTIONS

127. (1) No person who is called as a witness at the trial of any election petition shall be excused from answering any question relating to any corrupt practice or illegal practice at or connected with any election then forming the subject of inquiry on the ground of privilege or on the ground that the answer thereto may criminate or tend to criminate himself.

(2) If any witness fully answers to the satisfaction of the Court every question relating to any matter mentioned in subsection (1) which he is required by the Court to answer, and the answer to which may criminate him, such witness shall be absolutely freed and discharged from all liability to prosecution, either at the public instance or at

the instance of any private party, for any offence under this Act committed by him previous to the time of his evidence and at or in relation to the election concerned or in relation to which the witness may have been so examined and the witness shall be entitled to receive under the hand of the Registrar of the High Court a Certificate stating that he is so freed and discharged from all liability to prosecution as aforesaid.

(3) No evidence given by a witness referred to in subsection (1) of section 125 shall except upon a charge of contravening subsection (2) of section 125 admissible in evidence against him in any criminal or civil proceeding.

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PART XI

OFFENCES

...

REQUIREMENT OF SECRECY

148. (1) The officer charged with the conduct of any election and his assistants and every polling agent and counting agent or candidate in attendance at a polling station or at the place determined for the counting of the votes shall maintain and aid in maintaining the secrecy of the voting and shall not, except for some purpose authorised by law, communicate before the polls close to any person any information as to the name or number of the election roll of any voter who has or has not voted.

(2) No person shall—

(a) Obtain or attempt to obtain in a polling station information as to the candidate for whom a voter is about to vote or has voted; or

(b) Communicate at any time to any person any information obtained in a polling station as to the candidate for whom a voter is about to vote or has voted.

(3) Any person who contravenes any of the provisions of this section shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or to imprisonment not exceeding six months or to both such fine and imprisonment.

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THE EXTRADITION ACT, 1968

Act No. 53 of 1968, assented to on 6 September 1968 and entered into force on 13 September 1968⁹

...

PART II

GENERAL PROVISIONS RELATING
TO EXTRADITION

APPLICATION OF PART TO SPECIFIED COUNTRIES

3. This Part shall apply to any country—

(a) In respect of which the Minister, having regard to any reciprocal provisions under the law of that country, by order so directs and subject to such conditions, exceptions and qualifications as may be specified in the order;

(b) To which the provisions of section 28 of the Constitution apply, subject to such conditions, exceptions and qualifications as the Minister may by order direct.

APPLICATION OF PART PURSUANT TO ARRANGEMENTS

4. (1) Where an arrangement has been made with any country with respect to the surrender to that country of any fugitive criminal, the Minister may, by order in the *Gazette*, direct that this Part shall apply in the case of that country subject to such conditions, exceptions and qualifications as may be specified in the order, and this Part shall apply accordingly.

(2) An order made under the preceding subsection shall recite or embody the terms of the arrangement and shall not remain in force for any longer period than the arrangement.

(3) An order under subsection (1) may prescribe what crimes shall be deemed to be extradition crimes for the purposes of the order and this Act.

LIABILITY OF CRIMINAL TO SURRENDER

5. Where this Part of this Act applies in the case of any country, every fugitive criminal of that country who is in or suspected of being in Botswana shall be liable to be apprehended and surrendered in the manner provided by this Part—

(a) Whether the crime in respect of which the surrender is sought was committed before or after the commencement of this Act or the application of this Part to that country; and

(b) Whether there is or is not any concurrent jurisdiction in a court of Botswana over that crime.

LIABILITY OF ACCESSORIES TO BE SURRENDERED

6. Every person who is accused or convicted of having counselled, procured, commanded, aided or abetted the commission of an extradition crime or of being accessory before or after the fact to any extradition crime, shall be deemed, for the purposes of this Part, to be accused or convicted of having committed that crime, and shall be liable to be apprehended and surrendered accordingly.

RESTRICTIONS ON SURRENDER OF CRIMINALS

7. The following provisions shall be observed with respect to the surrender of fugitive criminals, that is to say—

(a) A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if it appears to a court or the Minister that the requisition for his surrender has in fact been made with a view to try punish him for an offence of a political character;

(b) A fugitive criminal shall not be surrendered to any country unless provision is made by the law of that country, or by an arrangement made with that country, for securing that he will not, unless he has first been restored or had an opportunity of returning to Botswana, be dealt with in that country for or in respect of any offence committed before his surrender under this Act, other than—

(i) the offence in respect of which the surrender is grounded;

(ii) any lesser offence proved by the facts before the court which committed the criminal under the provisions of section 11;

(iii) any other offence in respect of which the President may consent to his being so dealt with;

(c) A fugitive criminal shall not be surrendered to any country if the offence in respect of which his surrender is demanded is punishable by death in that country and if under the laws of Botswana the death penalty is not imposable for such an offence committed in Botswana unless provision is made by an arrangement with that country for securing that he will not be punished by death in respect of that offence;

(d) A fugitive criminal who has been accused of some offence within the jurisdiction of Botswana, not being the offence for which his surrender is asked, or who is undergoing sentence under any conviction in Botswana, shall not, unless the President otherwise directs, be surrendered until after he has been discharged, whether by acquittal or on the expiration of his sentence or otherwise;

(e) A fugitive criminal shall not be surrendered until the expiration of fifteen days from the date

⁹ *Ibid.*, of 13 September 1968.

of his being committed to prison to await his surrender;

(f) A fugitive criminal shall not be surrendered if such surrender would be contrary to the terms of any arrangement as recited or embodied in any order made under the provisions of section 4;

(g) A fugitive criminal shall not be surrendered if final judgment has been passed by any court in Botswana upon him in respect of the offence for which his surrender is sought.

MINISTER'S ORDER FOR SURRENDER

8. (1) A requisition for the surrender of a fugitive criminal of any country who is in or suspected of being in Botswana shall be made to the Minister by a diplomatic representative or consular officer of that country.

(2) The Minister may, upon a requisition being made under the provisions of the preceding subsection, signify in writing to a magistrate that a requisition has been made and require the magistrate to issue his warrant for the apprehension of the fugitive criminal.

(3) Where the Minister is of the opinion that the offence is one of a political character, he may refuse to make an order and may also at any time order a fugitive criminal accused or convicted of the offence to be discharged from custody.

ISSUE OF WARRANT

9. (1) The warrant for the apprehension of a fugitive criminal whether accused or convicted of a crime, who is in or suspected of being in Botswana may be issued by a magistrate—

(a) On the receipt of the order by the Minister and on such evidence as would in his opinion justify the issue of the warrant if the crime had been committed or the criminal convicted in Botswana; or

(b) On such information or complaint and such evidence or after such proceedings as would, in the opinion of the magistrate issuing the warrant, justify the issue of a warrant if the crime had been committed or the criminal convicted in the district or area in which he exercises his jurisdiction.

(2) Where a warrant for arrest has been issued in terms of subsection (1), any magistrate may issue a warrant, empowering a police officer to search for and seize property—

(a) Which may be required as evidence at the trial of the fugitive criminal; or

(b) Which has been acquired as a result of the extradition crime.

(3) A magistrate issuing a warrant under this section without an order from the Minister shall forthwith send a report of the fact of the issue, together with the evidence and information or complaint or certified copies thereof, to the Minister who may order the warrant to be cancelled and the person who has been apprehended on the warrant to be discharged.

(4) A fugitive criminal when apprehended on a warrant under this section shall be brought before

a magistrate within the next twenty-four hours, who may issue a warrant for his further detention.

(5) A fugitive criminal apprehended on a warrant issued without the order of the Minister shall be released by the magistrate unless the magistrate, within such reasonable time as, with reference to the circumstances of the case, he may fix, receives from the Minister notice that a requisition has been made for the surrender of the criminal.

HEARING OF CASE AND EVIDENCE

10. (1) When a fugitive criminal is brought before a magistrate, the magistrate shall hold an inquiry with a view to the surrender of such person to the foreign country.

(2) Subject to the provisions of this Act, the magistrate shall proceed in the manner in which a preparatory examination is held in the case of a person charged with having committed an offence in Botswana and shall, for the purpose of holding such inquiry, have the same powers, including the power of committing any person for further examination and admitting any person detained to bail, as he has at a preparatory examination so held.

(3) Any deposition, statement on oath or affirmation taken, whether or not taken in the presence of the fugitive criminal, or any record of any conviction or any warrant issued in a foreign State, or any copy or sworn translation thereof, may be received in evidence at any such inquiry if authenticated to enable them to be produced in any court in Botswana or in the manner provided for in the extradition agreement concerned.

(4) The magistrate shall receive any evidence which may be tendered to show that the crime of which the prisoner is accused or alleged to have been convicted is not an extradition crime or is an offence for which the prisoner may not be surrendered.

COMMITTAL OR DISCHARGE OF PRISONER

11. (1) Subject to the provisions of section 7, in the case of a fugitive criminal accused of an extradition crime, if the foreign warrant authorizing the arrest of the criminal is duly authenticated, and such evidence is produced as, subject to the provisions of this Act, would according to the law of Botswana justify the committal for trial of the prisoner if the crime of which he is accused was committed in Botswana, the magistrate shall commit him to prison.

(2) Subject to the provisions of Section 7, in the case of a fugitive criminal alleged to have been convicted of an extradition crime, if such evidence is produced as, subject to the provisions of this Act, would according to the law of Botswana prove that the prisoner was convicted of such crime, the magistrate shall commit him to prison.

(3) The order of the magistrate under the preceding subsections of this section shall be to commit the fugitive criminal to prison to await the warrant of the Minister for his surrender; and the magistrate shall forthwith send to the Minister a

certificate of the committal and such report on the case as he may think fit.

(4) When the fugitive criminal is committed to prison to await his surrender, the committing magistrate, if of the opinion that it will be dangerous to the life or prejudicial to the health of the prisoner to remove him to prison, may order him to be held in custody at the place in which he for the time being is or any other place named in the order to which the magistrate thinks he can be moved without danger to his life or prejudice to his health.

(5) A fugitive criminal held in custody under the provisions of the preceding subsection shall be deemed to be in legal custody and this Act shall apply to him as if he were in the prison to which he was committed.

(6) Where the magistrate is not satisfied with the evidence mentioned in subsection (1) or subsection (2) of this section, he shall order the prisoner to be discharged.

SURRENDER OF FUGITIVE BY WARRANT OF MINISTER

12. (1) Whenever a magistrate commits a fugitive criminal to prison, he shall inform the criminal that he may, within fifteen days of such committal, appeal against the committal to the High Court.

(2) Upon the expiration of the period of fifteen days or, if an appeal is lodged, after the dismissal or lapsing of the appeal, as the case may be, or after such further period as may be allowed in either case by the Minister, the Minister may by warrant order the fugitive criminal, if not released on the decision of the court, to be surrendered to such person as is in his opinion duly authorized to receive the fugitive criminal by the country from which the requisition for the surrender proceeded, together with any property seized under the provisions of section 9(2), and the fugitive criminal and such property shall be surrendered accordingly.

(3) A person to whom the warrant is directed, and the person so authorized, may receive, hold in custody and convey into the jurisdiction of that country the criminal mentioned in the warrant.

(4) Where a criminal mentioned in a warrant issued under the provisions of this section escapes out of any custody to which he may be delivered on or in pursuance of the warrant, he may be retaken in the same manner as any person accused of any crime against the laws of Botswana may be retaken upon an escape.

DISCHARGE OF PERSONS APPREHENDED

13. Whenever a fugitive criminal who has been committed to prison is not surrendered and conveyed out of Botswana within two months after the committal, or if appeal against such committal

has been lodged after the decision of the court upon the matter, the High Court may—

(a) Upon application made to it by or on behalf of the criminal; and

(b) Upon proof that reasonable notice of the intention to make the application has been given to the Minister,

order the criminal to be released unless sufficient cause is shown to the contrary.

EXECUTION OF WARRANT

14. The warrant of a magistrate issued in pursuance of this Part may be executed in any part of Botswana in the same manner as if it had been originally issued or subsequently endorsed by a magistrate having jurisdiction in the place where it is executed.

TRIAL OF CRIMINAL SURRENDERED BY ANOTHER COUNTRY

15. Where in pursuance of an arrangement with another country any person accused or convicted of any crime is surrendered by that country, that person shall not, unless such arrangement provides to the contrary, until he has been restored or had an opportunity of returning to that country, be triable or tried for any offence committed prior to the surrender in Botswana other than an offence proved by the facts on which the surrender is grounded.

PART III

MISCELLANEOUS PROVISIONS

ATTORNEY-GENERAL MAY APPEAR AT EXTRADITION PROCEEDINGS

16. The Attorney-General or any person delegated by him may appear at any enquiry held under this Act.

ENTRY AND PASSAGE THROUGH BOTSWANA OF PERSONS IN CUSTODY

17. (1) Any person entering or passing through Botswana in custody by virtue of any warrant or order lawfully issued in any foreign country, shall during his passage through Botswana be deemed to be in lawful custody if the Minister has, at the request of the foreign country in which the warrant or order was issued, authorized such passage in custody.

(2) A certificate by the Minister that any such warrant or order was lawfully issued, shall be conclusive proof of the fact.

...

THE PENAL CODE

Law No. 2 of 1964 as amended by the Penal Code (Amendment) Law, 1965 (No. 14 of 1965); the Penal Code Amendment Act, 1966 (No. 4 of 1966); the Penal Code (Amendment) Act, 1967 (No. 42 of 1967); the Penal Code (Amendment) Act, 1967 (No. 26 of 1968); the Constitutional Amendment (Adaptation of Existing Laws), Order, 1965 (Legal Notice No. 28 of 1965); the Constitutional Amendment (Adaptation of Existing Laws) Order, 1968 (Legal Notice No. 84 of 1966); and the Constitutional Amendment (Adaptation of Existing Laws) Order, 1966 (No. 3) (Legal Notice No. 94 of 1966)¹⁰

PART I

GENERAL PROVISIONS

Chapter IV

GENERAL RULES AS TO CRIMINAL RESPONSIBILITY

IGNORANCE OF LAW

8. Ignorance of the law does not afford any excuse for any act or omission which would otherwise constitute an offence unless knowledge of the law by the offender is expressly declared to be an element of the offence.

BONA FIDE CLAIM OF RIGHT

9. A person is not criminally responsible in respect of an offence relating to property, if the act done or omitted to be done by him with respect to the property was done in the exercise of an honest claim of right and without intention to defraud.

INTENTION AND MOTIVE

10 (1) Subject to the express provisions of this Code relating to negligent acts and omissions, a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will, or for an event which occurs by accident.

(2) Unless the intention to cause a particular result is expressly declared to be an element of the offence constituted, in whole or part, by an act or omission, the result intended to be caused by an act or omission is immaterial.

(3) Unless otherwise expressly declared, the motive by which a person is induced to do or

omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility.

MISTAKE OF FACT

11 (1) A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

(2) The operation of this rule may be excluded by the express or implied provisions of the law relating to the subject.

PRESUMPTION OF SANITY

12. Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

IMMATURE AGE

15. (1) A person under the age of eight years is not criminally responsible for any act or omission.

(2) A person under the age of fourteen years is not criminally responsible for an act or omission unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

(3) A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

COMPULSION

17. A person is not criminally responsible for an offence if it is committed by two or more offenders, and if the act is done or omitted only because during the whole of the time in which it is being done or omitted the person is compelled to do or omit to do the act by threats on the part of the other offender or offenders instantly to kill him or do him grievous bodily harm if he refuses; but threats of future injury do not excuse the causing of, or the attempt to cause, death.

¹⁰ *Botswana Government Gazette*, Supplement C, of 26 April 1968. Text of the Penal Code reprinted on 26 April 1968 by direction of the Attorney-General in terms of Section 3 of the Amendments Incorporation Law, 1961.

DEFENCE OF PERSON OR PROPERTY

18. Subject to the express provisions of this Code or any other law for the time being in force, a person shall not be criminally responsible for the use of force in repelling an unlawful attack upon his person or property or the person or property of anyone whom it is his moral or legal duty to protect if the means he uses and the degree of force he employs in so doing are no more than is reasonably necessary in the circumstances.

USE OF FORCE IN EFFECTING ARREST

19. Where any person is charged with a criminal offence arising out of the lawful arrest, or attempted arrest, by him of a person who forcibly resists such arrest or attempts to evade being arrested, the court shall, in considering whether the means used were necessary, or the degree of force used was reasonable, for the apprehension of such person, have regard to the gravity of the offence which had been or was being committed by such person and the circumstances in which such offence had been or was being committed by such person.

COMPULSION BY HUSBAND

20. A married woman is not free from criminal responsibility for doing or omitting to do an act merely because the act or omission takes place in the presence of her husband; but on a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of, the husband.

PERSON NOT TO BE PUNISHED TWICE FOR SAME ACT OR OMISSION

21. A person cannot be punished twice either under the provisions of this Code or under the provisions of any other law for the same act or omission, except in the case where the act or omission is such that by means thereof he causes the death of another person, in which case he may be convicted of the offence of which he is guilty by reason of causing such death, notwithstanding that he has already been convicted of some other offence constituted by the act or omission.

Chapter VI

PUNISHMENTS

SENTENCE OF DEATH

27. (1) When any person is sentenced to death, the sentence shall direct that he shall be hanged by the neck until he is dead.

(2) Sentence of death shall not be pronounced on or recorded against any person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of eighteen years, but in lieu thereof the court shall sentence such person to be detained during the President's pleasure, and if so sentenced he shall be liable to be detained in such place and under such conditions as the President may direct, and whilst so detained shall be deemed to be in legal custody.

(3) Where a woman convicted of an offence punishable with death is found in accordance with the provisions of section two hundred and ninety-two of the Criminal Procedure and Evidence Proclamation to be pregnant, she shall be liable to imprisonment for life and not to sentence of death.

IMPRISONMENT

28 (1) Sentence of imprisonment shall not be passed on any person under the age of fourteen years.

(2) A person convicted of an offence punishable with imprisonment for life or any other period may be sentenced for any shorter term.

(3) A person convicted of an offence punishable with imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment.

CORPORAL PUNISHMENT

29. (1) Subject to the provisions of subsection (4), no person shall be sentenced to undergo corporal punishment for any offence unless such punishment is specifically authorised by this Code or any other law.

(2) A sentence of corporal punishment shall be to be caned once only. The sentence shall specify the number of strokes, which shall not exceed twelve, nor, in the case of a person under the age of eighteen years, six.

(3) No sentence of corporal punishment shall be passed upon any of the following persons—

(a) Females;

(b) Males sentenced to death;

(c) Males whom the court considers to be more than forty years of age.

(4) Where any male person under the age of eighteen is convicted of any offence punishable with imprisonment a court may, in its discretion but subject to the provisions of subsection (1) of section twenty-eight, order him to undergo corporal punishment in addition to or in substitution for such imprisonment:

Provided that this sub-section does not refer to any offence for which imprisonment may be ordered only on non-payment of any sum—

(a) Imposed as a fine;

(b) Ordered to be forfeit to the State or paid as compensation under section thirty-one.

(5) Where it is provided that any person shall be liable to undergo corporal punishment such punishment shall, if awarded, be inflicted in

accordance with the provisions of section three hundred of the Criminal Procedure and Evidence Proclamation.

...

PART II

CRIMES

Division I—Offences against public order

Chapter VII

TREASON AND OTHER OFFENCES AGAINST THE STATE'S AUTHORITY

...

PROHIBITED PUBLICATIONS

48. (1) If the President is of the opinion that there is in any publication or series of publications published within or without Botswana by any person or association of persons matter which is contrary to the public interest, he may in his absolute discretion, by order published in the *Gazette* and in such local newspapers as he may consider necessary, declare that that particular publication or series of publications, or all publications of any class of publication specified in the order published by that person or association of persons, shall be a prohibited publication or prohibited publications as the case may be.

(2) If an order made under the provisions of subsection (1) specifies by name a publication which is a periodical publication, such order shall, unless a contrary intention be expressed therein, have effect—

(a) With respect to all subsequent issues of such publication; and

(b) Not only with respect to any publication under the name, but also with respect to any publication published under any other name if the publishing thereof is in any respect a continuation of, or in substitution for, the publishing of the publication named in the order.

(3) If an order made under the provisions of subsection (1) declares that all publications of any class of publication published by a specified person shall be prohibited publications, such order shall, unless a contrary intention be expressed therein, have effect not only with respect to all publications of that class published by that person or association of persons before the date of the order but also with respect to all publications of that class so published on or after such date.

(4) An order made under the provisions of subsection (1) shall, unless a contrary intention is expressed therein, apply to any translation into any language whatsoever of the publication specified in the order.

(5) Where an order has been made under subsection (1) declaring all publications of any class of publication published by a specified person to be prohibited publications or specifying by name

a publication which is a periodical publication, any person who wishes to import into Botswana any particular publication affected by such order may apply to the Minister for a permit in that behalf and, unless the Minister is satisfied that the publication contains matter which is contrary to the public interest, he shall grant such a permit and the order shall thereupon cease to have effect with respect to that publication.

(6) Any person whose application to the Minister under subsection (5) of this section has been refused may appeal in writing against such refusal to the President whose decision thereon shall be final.

(7) For the purpose of this section and of any prosecution in respect of a prohibited publication, any publication which purports to be printed or published outside Botswana by any person shall, unless and until the contrary is proved, be deemed to be published outside Botswana by such person.

(8) In this section, "public interest" means the interests of defence, public safety, public order, public morality or public health.

...

SEIZURE AND DISPOSAL OF PROHIBITED PUBLICATIONS

50. (1) Any police officer or administrative officer may seize and detain any prohibited publication which he finds in circumstances which raise a reasonable presumption that an offence under this Code has been, is being or is intended to be committed in relation thereto, or which he finds abandoned or without an apparent owner or possessor or in the possession or custody of any unauthorized person.

...

SEDITIONS INTENTION

51. (1) A seditious intention is an intention—

(a) To bring into hatred or contempt or to excite disaffection against the person of the President or the Government of Botswana as by law established; or

(b) To excite the inhabitants of Botswana to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Botswana as by law established; or

(c) To bring into hatred or contempt or to excite disaffection against the administration of justice in Botswana; or

(d) To raise discontent or disaffection amongst the inhabitants of Botswana; or

(e) To promote feelings of ill-will and hostility between different classes of the population of Botswana;

but an act, speech or publication is not seditious by reason only that it intends—

(i) to show the President has been misled or mistaken in any of his measures; or

(ii) to point out errors or defects in the Government or Constitution of Botswana as by law established or in legislation or in the admi-

nistration of justice with a view to the remedying of such errors or defects; or

- (iii) to persuade the inhabitants of Botswana to attempt to procure by lawful means the alteration of any matter in Botswana as by law established; or
- (iv) to point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Botswana.

(2) In determining whether the intention with which any act was done, any words were spoken, or any document was published, was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances which he so conducted himself.

SEDITIONOUS OFFENCES

52. (1) Any person who—

- (a) Does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;
- (b) Utters any words with a seditious intention;
- (c) Prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;
- (d) Imports any seditious publication, unless he has no reason to believe that it is seditious; is guilty of an offence and is liable to imprisonment for three years; and any seditious publication shall be forfeited to the State.

(2) Any person who without lawful excuse has in his possession any seditious publication is guilty of an offence and is liable to imprisonment for three years; and such publication shall be forfeited to the State.

(3) It shall be a defence to a charge under subsection (2) that the person charged did not know that the publication was seditious when it came into his possession and that he did, as soon as the nature of the publication became known to him, deliver the publication to the nearest administrative officer or to the officer in charge of the nearest police station.

(4) Any printing machine which has been, or is reasonably suspected of being, used for or in connexion with the printing or reproduction of a seditious publication may be seized or otherwise secured by a police officer pending the trial and conviction or discharge or acquittal of any person accused of printing or reproducing any seditious publication; and, when any person is convicted of printing or reproducing a seditious publication, the court may, in addition to any other penalty which it may impose, order that the printing machine on which the publication was printed or reproduced shall be either confiscated for a period not exceeding one year, or be forfeited to the State, and may make such order whether or not the person convicted is, or was at the time when the publication was printed or reproduced, the owner of the printing machine. A printing machine forfeited under this subsection shall be sold, and

the proceeds, less expenses, shall be paid into the general revenue.

(5) When a proprietor, publisher, printer or editor of a newspaper is convicted of printing or publishing a seditious publication in a newspaper, the court may, in addition to any other punishment it may impose, and whether or not it has made an order under subsection (4), make an order prohibiting any further publication of the newspaper for a period not exceeding one year.

(6) The court may, at any time, on the application of the Attorney-General and on taking such security, if any, for good behaviour as the court may see fit to order, revoke any order made by it forfeiting or confiscating a printing machine or prohibiting further publication of a newspaper.

(7) A court, before ordering the forfeiture or confiscation of a printing machine under this section, shall be satisfied that the printing machine was the printing machine upon or by which the seditious publication was printed or reproduced.

(8) In any case in which a printing machine has been secured or confiscated under this section, the Commissioner of Police may, in his discretion cause—

- (a) The printing machine or any part of it to be removed; or
- (b) Any part of the machine to be sealed so as to prevent its use;

Provided that the owner of the printing machine or his agents shall be entitled to reasonable access to it to keep it in working order.

(9) The Commissioner of Police or any police officer acting in pursuance of the powers conferred by this section shall not be liable for any damage caused to a printing machine, whether by neglect or otherwise, not being damage wilfully caused to the machine.

ALARMING PUBLICATIONS

60. (1) Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace is guilty of an offence.

(2) It shall be a defence to a charge under subsection (1) if the accused proves that, prior to publication, he took such measures to verify the accuracy of such statement, rumour or report as to lead him reasonably to believe that it was true.

Chapter VIII

OFFENCES AFFECTING RELATIONS WITH FOREIGN STATES AND EXTERNAL TRANQUILITY

DEFAMATION OF FOREIGN PRINCES

61. Any person who without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to

hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb the peace and friendship between Botswana and the country to which such prince, potentate, ambassador or dignitary belongs, is guilty of an offence.

...

Chapter IX

UNLAWFUL SOCIETIES, UNLAWFUL ASSEMBLIES, RIOTS AND OTHER OFFENCES AGAINST PUBLIC TRANQUILITY

UNLAWFUL SOCIETY

65. (1) A society includes any combination of ten or more persons whether the society be known by any name or not.

(2) A society is an unlawful society—

(a) If formed for any of the following purposes—

- (i) levying war or encouraging or assisting any person to levy war on the Government or the inhabitants of any part of Botswana;
- (ii) killing or injuring or inciting to the killing or injuring of any person; or
- (iii) destroying or injuring or inciting to the destruction or injuring of any property; or
- (iv) subverting or promoting the subversion of the Government or of its officials; or
- (v) committing or inciting to acts of violence or intimidation; or
- (vi) interfering with, or resisting, or inciting to interference with or resistance to the administration of the law; or
- (vii) disturbing or inciting to the disturbance of peace and order in any part of Botswana; or

(b) If declared by an order of the President to be a society dangerous to peace and order in Botswana.

MANAGING UNLAWFUL SOCIETY

66. Any person who manages or assists in the management of an unlawful society is guilty of an offence and is liable to imprisonment for fourteen years.

BEING MEMBER OF UNLAWFUL SOCIETY

67. Any person who—

(a) Is a member of an unlawful society; or

(b) Knowingly allows a meeting of an unlawful society, or of members of an unlawful society, to be held in any house, building or place belonging to or occupied by him, or over which he has control; or

(c) Contributes or solicits anything as a subscription or otherwise in the name of or to be used directly or indirectly for the benefit of an unlawful society; or

(d) In any way takes part in any activity of an unlawful society or carries on any activity in the direct or indirect interests of an unlawful society in which activity it was or could have engaged prior to the date upon which it became an unlawful society;

is guilty of an offence and is liable to imprisonment for seven years.

PROSECUTIONS UNDER SECTIONS 66 AND 67

68. (1) A prosecution for an offence under section sixty-six or section sixty-seven shall not be instituted except with the written consent of the Attorney-General;

Provided that—

- (i) a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained;
- (ii) the consent of the Attorney-General shall not be required to any prosecution for an offence under either of the said sections in respect of a society declared, in accordance with the provisions of paragraph (b) of subsection (2) of section sixty-five of this Code, to be a society dangerous to peace and good order in Botswana.

(2) In any prosecution for an offence under section sixty-six or section sixty-seven of this Code, it shall not be necessary to prove that the society consisted of ten or more members; but it shall be sufficient to prove the existence of a combination of persons, and the onus shall then rest with the accused to prove that the number of members of such combination did not amount to ten.

(3) When any books, accounts, writing, papers, documents, banners or insignia of, or relating to, an unlawful society are found in the possession or under the control of any person, or when any person wears any of the insignia of, or is marked with any mark of, an unlawful society, it shall be presumed, until the contrary is proved, that such person is a member of the unlawful society.

(4) When any books, accounts, lists of members, minutes or correspondence of, or relating to, an unlawful society are found in the possession or under the control of any person, it shall further be presumed, until the contrary is proved, that such person assists in the management of the unlawful society.

POWERS OF ENTRY, ARREST AND SEARCH

69. Any police officer of or above the rank of, or authorised in writing by a police officer of or above the rank of, Assistant Superintendent may enter, with or without assistance, any house or

building or into any place in which he has reason to believe—

(a) That a meeting of an unlawful society or of persons who are members of an unlawful society is being held; or

(b) That a member of an unlawful society resides or is; or

(c) That documents, funds, moneys or other information relating to an unlawful society may be found;

and arrest or cause to be arrested all persons found therein, and search such house, building or place and seize or cause to be seized all insignia, banners, arms, books, papers, documents and all other property which he may have reasonable cause to believe to belong to any unlawful society or to be in any way connected with the purpose of the meeting or with the unlawful society.

...

89. (1) Any person who in a public place or at a public gathering, uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned is guilty of an offence and is liable to imprisonment for six months.

(2) In this section, "public gathering" means any meeting, gathering or concourse, whether in a public place or otherwise, which the public or any section of the public or more than fifteen persons are permitted to attend or do attend, whether on payment or otherwise, and includes a procession to or from a public place.¹¹

INSULTS RELATING TO BOTSWANA¹²

89A. Any person who does any act or utters any words or publishes any writing with intent to insult or to bring into contempt or ridicule—

(a) The Arms or Ensigns, Armorial of Botswana;

(b) The National Flag of Botswana;

(c) The Standard of the President of Botswana;

(d) The National Anthem of Botswana;

is guilty of an offence and liable to a fine of R500.

EXPRESSIONS OF HATRED, ETC., OF PERSONS BECAUSE OF RACE, ETC.

89B. (1) Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin, colour or creed is guilty of an offence and liable to a fine of R500.

(2) No prosecution for an offence under this section shall be instituted without the written consent of the Attorney-General.

¹¹ Subsection substituted by Act No. 26 of 1968 (*Botswana Government Gazette, Supplement B*, 8 March 1968).

¹² Sections 89A to 89C inserted by Act No. 26 of 1968 (*Ibid.*).

ABUSIVE, OBSCENE OR INSULTING LANGUAGE RE PRESIDENT AND OTHERS

89C. (1) Any person who in a public place or at a public gathering uses abusive, obscene or insulting language in relation to the President, any other member of the National Assembly or any public officer is guilty of an offence and liable to a fine of R500.

(2) In this section, "public gathering" has the same meaning as in section 89.

...

OBSTRUCTING COURT OFFICERS

123. Any person who wilfully obstructs or resists any person lawfully charged with the execution of an order or warrant of any court, is guilty of an offence and is liable to imprisonment for one year.

Chapter XIII

MISCELLANEOUS OFFENCES AGAINST PUBLIC AUTHORITY

FRAUDS AND BREACHES OF TRUST BY PUBLIC OFFICERS

124. Any person employed in the public service who, in the discharge of the duties of his office, commits any fraud or breach of trust affecting the public, whether such fraud or breach of trust would have been criminal or not if committed against a private person, is guilty of an offence.

...

Division III—Offences injurious to the public in general

Chapter XIV

OFFENCES RELATING TO RELIGION

INSULT TO RELIGION OF ANY CLASS

131. Any person who destroys, damages or defiles any place of worship or any object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, is guilty of an offence.

DISTURBING RELIGIOUS ASSEMBLIES

132. Any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony, is guilty of an offence.

...

Chapter XV

OFFENCES AGAINST MORALITY

DEFINITION OF RAPE

136. Any male person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent if the consent is obtained by force or means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of the offence termed rape.

PUNISHMENT OF RAPE

137. Any person who commits the offence of rape is liable to imprisonment for life, with or without corporal punishment.

ATTEMPTED RAPE

138. Any person who attempts to commit rape is guilty of an offence and is liable to imprisonment for life, with or without corporal punishment.

ABDUCTION OF FEMALES FOR IMMORAL PURPOSES

139. Any person who, with intent to marry or carnally know a woman of any age, or to cause her to be married or carnally known by any other person, takes her away, or detains her, against her will, is guilty of an offence and is liable to imprisonment for seven years.

ABDUCTION OF GIRLS UNDER SIXTEEN

140. Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her father or mother or other person having the lawful care or charge of her, and against the will of such father or mother or other person, is guilty of an offence.

...

Chapter XVIII

DEFAMATION

DEFINITION OF CRIMINAL DEFAMATION

192. Any person who, by print, writing, painting, effigy, or by any means otherwise than solely by gestures, spoken words, or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, is guilty of the offence termed criminal defamation.

DEFINITION OF DEFAMATORY MATTER

193. Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation.

DEFINITION OF PUBLICATION

194. (1) A person publishes defamatory matter if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed to be so dealt with, either by exhibition, reading, recitation, description, delivery, or otherwise, as that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.

(2) It is not necessary for criminal defamation that a defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged defamation itself or from any extrinsic circumstances, or partly by the one and partly by the other means.

DEFINITION OF UNLAWFUL PUBLICATION

195. Any publication of defamatory matter concerning a person is unlawful within the meaning of this Chapter, unless—

(a) The matter is true and it was for the public benefit that it should be published; or

(b) It is privileged on one of the grounds hereafter mentioned in this Chapter.

...

BRAZIL

ACT No. 5,536 OF 21 NOVEMBER 1968 ON THE CENSORING OF WORKS OF THE THEATRE AND THE CINEMA, THE ESTABLISHMENT OF THE HIGHER CENSORSHIP BOARD AND OTHER PROVISIONS ¹

Article 1. Works of the theatre shall be censored with a view to classifying them by reference to the age of the audience permitted to attend performances, the nature of the performance and the type of language employed in the work, subject to the exceptions provided herein.

1. Theatre presentations shall be classified either as permitted or as unsuitable for or barred to persons under the ages of ten, fourteen, sixteen or eighteen years.

2. The classification referred to in this article shall be shown in the censorship certificate and in any publicity for the presentation and a notice thereof shall be exhibited in a place visible to the public, adjoining the ticket office.

3. The classification shall be based on criteria which shall be set forth in regulations, through which the public shall be given, in so far as possible, a general idea of the nature of the presentation.

Article 2. The provisions of the preceding article, except for paragraphs 1 and 2, shall not apply to works of the theatre which are deemed in any manner:

- I. To constitute a threat to national security and the representative democratic system;
- II. To offend communities or religions or foster race prejudice or class struggle;
- III. To endanger friendly relations with other peoples.

Sole paragraph. The censoring of works of the theatre to which any of the exceptions mentioned in this article apply shall, subject to the provisions of article 8 (1), continue to be governed by earlier legislation on the banning or the whole or part of such works, and the authorities shall not substitute any material which constitutes an addition or implies collaboration.

Article 3. In the censoring of films of any type for the purpose of age-group classification or of

granting them full or partial approval, regard shall be had to whether they are contrary to national security and the representative democratic system, to public order and decorum, or to propriety, or offensive to communities or religions, or liable to foster race prejudice or class struggle.

Article 4. The censorship organs shall appraise the work within its own general context, taking into account its artistic, cultural and educational merit and without isolating scenes, passages or phrases, and they shall not make critical comments on censored works.

Article 5. The cinema work may be exhibited in its entirety, subject only to censorship for the purpose of age-group classification, in film libraries and film clubs organized for a cultural purpose.

Sole paragraph. The film libraries and film clubs referred to in this article shall be constituted as a non-profit association under the legislation in force, shall use their funds solely for maintenance and the furtherance of their aims, and shall not distribute profits, bonuses or any pecuniary benefits to their managers or supporting or associate members.

Article 6. Any premises registered with the National Cinema Institute for the sole purpose of exhibiting films of acknowledged artistic, educational or cultural merit may show such films in their entirety, subject only to censorship for the purpose of age-group classification and to existing legal regulations on the requisite proportion of national films.

Article 7. A Special Certificate shall be granted for the exhibition of films as provided in articles 5 and 6.

1. The Special Certificate shall not provide exemption from the obligation to obtain the appropriate certificate for exhibition in other premises.

2. Contravention of the provisions of articles 5 and 6 of this Act shall entail withdrawal of permission to exhibit films for which the Special Certificate has been issued.

¹ *Diário Oficial*, No. 226, of 22 November 1968.

Article 8. The Public Entertainments Censorship Service of the Federal Police Department shall take a decision and, where appropriate, issue the censorship certificate for each theatre or cinema work within twenty days of the submission of the relevant application.

1. Decisions of the Public Entertainments Censorship Service imposing a total ban on works to which any of the exceptions referred to in article 2 of this Act apply shall be submitted within the period laid down in this article for the approval of the Director-General of the Federal Police Department, who shall rule on them within five days of the date on which the relevant files are received.

2. If the periods specified in this article expire without the issue of a decision by the Public Entertainments Censorship Service or a ruling by the Director-General of the Federal Police Department, the work shall be deemed to be permitted, although barred to persons under the age of sixteen, without prejudice to the obligation to comply with any subsequent rulings by the censorship authorities.

Article 9. The applicant may, within thirty days of the date on which he is informed of the decision of the Public Entertainments Censorship Service, appeal against that decision to the Director-General of the Federal Police Department, who shall issue his ruling within ten days.

1. The decision appealed shall be deemed to be revoked and the work permitted if no ruling on the appeal is issued within the period specified in this article.

2. Appeals against the ruling of the Director-General of the Federal Police Department shall lie to the Higher Censorship Board.

3. Should the situation referred to in paragraph 1 of this article arise, the Director-General of the Federal Police Department may also appeal to the Higher Censorship Board.

Article 10. Censorship certificates for theatre and cinema works and for stories or plays for radio broadcasting shall be valid, throughout the national territory, for five years, both for the original or any other producer and for the original or any other cast, and during that period the age limit may be reviewed only if a new element is introduced into the presentation which may justify another classification.

Article 11. The texts of theatre works, once they have been approved by the censorship authorities, may not be altered or added to, this prohibition applying also to actual performances.

Sole paragraph. Violation of the provisions of this article shall entail the suspension of performances for three to twenty days, in addition to a fine.

Article 12. Film libraries and film clubs may exhibit any film which has already been censored whether or not the relevant certificate has been revalidated.

Article 13. Theatre and cinema works shall be censored by committees of three members having one of the grades in the Censorship Expert Category.

Article 14. The title of the grades constituting the present Federal Censor category, Code PF-101, of the Staff Table of the Federal Police Department shall be changed to Censorship Expert.

1. Candidates for posts in the Censorship Expert category shall, the provisions of article 95 (1) of the Constitution having been complied with, be required to submit a duly registered certificate of completion of university-level studies in social science, law, philosophy, journalism, pedagogy or psychology.

2. The personal situation of the present occupants of posts as Federal Censor shall not be adversely affected.

3. For the purpose of promotion to grade B, step 18, of the Censorship Expert category, preference shall be given to persons occupying posts in grade A, step 17, of that category who hold diplomas in the studies referred to in this article.

Article 15. The Higher Censorship Board (CSC) is hereby established as a subsidiary organ of the Ministry of Justice under its direct control.

...

Article 17. The functions of the Higher Censorship Board shall be to review, as appeal authority, final decisions on the censoring of presentations and public entertainments rendered by the Director-General of the Federal Police Department and to formulate rules of judgement to govern censorship practice, submitting them for approval to the Ministry of Justice.

Sole paragraph. Appeals to the Higher Censorship Board shall be submitted within fifteen days of the date on which the person concerned is informed of the decision appealed and shall be ruled upon within thirty days.

Article 18. A non-unanimous decision of the Higher Censorship Board may be appealed to the Ministry of Justice within fifteen days of the date on which the person concerned is informed of it and shall be ruled upon within thirty days.

Article 19. Decisions rendered on the basis of this Act shall be notified to the persons concerned, directly or by the publication of a summary in the Official Gazette of the Union.

Sole paragraph. If the person concerned so requests, he shall be issued a document containing the full text of the decision relating to the censoring of the theatre or cinema work in question.

Article 20. Members of the Higher Censorship Board shall be entitled, in respect of each meeting they attend, to such fee for participation in the work of a collective deliberative organ as may be fixed by the President of the Republic in the manner prescribed by law.

INSTITUTIONAL ACT No. 5, OF 13 DECEMBER 1968²

Article 1. The Constitution of 24 January 1967³ and the State Constitutions⁴ shall remain in force, subject of the amendments set forth in this Institutional Act.

Article 2. The President of the Republic may, by a Supplementary Act, order the National Congress, the Legislative Assemblies and the Municipal Councils to go into the recess, whether or not a state of siege has been proclaimed, the said bodies resuming their functions only when convened by the President of the Republic.

1. When a legislative body has been ordered into recess, the corresponding Executive Organ shall be empowered to legislate on all matters and to exercise the powers provided for in the Constitutions or in the Organic Law of the Municipalities.

2. During the period of recess Senators, Federal and State deputies, and municipal councillors shall receive only the fixed part of their salaries.

3. When a municipal council is in recess, financial and budgetary control of the municipality shall, in the case of those which do not have Tribunals of Accounts, be exercised by the Tribunal of Accounts of the State concerned, which shall take over the functions of auditing and verifying the accounts rendered by administrators and other persons responsible for public property and securities.

Article 3. The President of the Republic may, in the national interest, decree intervention in the States and Municipalities, without the limitations provided for in the Constitution.

Sole paragraph. The interventors in the States and Municipalities shall be appointed by the President of the Republic and shall exercise all the functions and powers pertaining to Governors and Prefects respectively and shall be entitled to the privileges, emoluments and benefits laid down by law.

Article 4. With a view to safeguarding the Revolution, the President of the Republic may, after consulting the National Security Council and without the limitations provided for in the Constitution, suspend the political rights of any citizen for a period of ten years and annul electoral mandates at Federal, States and municipal levels.

Sole paragraph. Those members of Federal, State and municipal legislative bodies whose electoral mandates are annulled shall not be replaced, and the legislative quorum shall be determined in proportion to the number of places actually filled.

Article 5. Suspension of political rights under this Act shall include the following, to be applied concurrently:

- I. Cessation of any *ex officio* privileges;
- II. Suspension of the right to vote and to be a candidate in trade union elections;
- III. Prohibition of any activity or demonstration of a political nature;
- IV. Application, when necessary, of the following security measures:
 - (a) Supervised liberty;
 - (b) Prohibition on frequenting specified places;
 - (c) Prescribed residence.

1. The instrument ordering suspension of political rights may impose restrictions or prohibitions relating to the exercise of any other public or private rights.

2. The security measures listed in IV above be implemented by the Minister of State for Justice, and his action shall not be subject to judicial review.

Article 6. The following constitutional or legal guarantees shall be suspended: life tenure, irremovability, security of tenure, and tenure of office for a specified period.

1. The President of the Republic may, by decree, dismiss, remove, pension off or place on a list of available personnel any persons enjoying the guarantees referred to in this article, as well as employees of autonomous bodies, public enterprises and mixed-economy enterprises; he may likewise dismiss, transfer to the reserve or retire military personnel or members of the military police forces, with pay and with such benefits as may be due them by virtue of their length of service.

2. The provisions of this article and of paragraph 1 thereof shall also be applied in the States, the Municipalities, the Federal District and the Territories.

Article 7. The President of the Republic may, in any of the cases provided for in the Constitution, decree a state of siege and extend it, specifying the respective time limit.

Article 8. The President of the Republic may, after an investigation, decree that the property of any person who has enriched himself unlawfully in the exercise of any public responsibility or function, including those exercised in connexion with autonomous bodies, public enterprises and mixed-economy enterprises, shall be confiscated without prejudice to such penalties as may be applicable.

Sole paragraph. Such property shall be restored upon proof that it was legitimately acquired.

Article 9. The President of the Republic may issue Supplementary Acts in implementation of this Constitutional Act and adopt, where the defence of the Revolution so requires, the measures provided for in article 152, paragraphs 2 (d) and (e), of the Constitution.

² *Ibid.*, No. 241, of 13 December 1968.

³ For extracts from the Constitution of 24 January 1967, see *Yearbook on Human Rights for 1967*, pp. 25-31.

⁴ See *Yearbook on Human Rights for 1947*, pp. 18-60, and *Yearbook on Human Rights for 1948*, pp. 18-22.

Article 10. The guarantee of habeas corpus shall be suspended in cases of political offences, offered against national security and the economic and social order, and offences involving economic abuses.

Article 11. No action taken pursuant to this

Institutional Act or to any act supplementing it, and no effect thereof, shall be subject to judicial review.

Article 12. This Institutional Act shall enter into force on this date, all contrary provisions of law being hereby revoked.

BULGARIA

NOTE ¹

A. PARTICIPATION IN INTERNATIONAL CONVENTIONS

In 1968, the People's Republic of Bulgaria ratified, *inter alia*, the Vienna Convention on Diplomatic Relations (Decree No. 766 of the Presidium of the National Assembly, *Official Gazette*, No. 28 of 9 April 1968). This ratification was accompanied by a reservation and a declaration expressing the unchanging position of the Bulgarian Government in favour of the sovereign equality of States:

Reservation concerning article 11 (1):

"Believing in the principle of equality among States, the People's Republic of Bulgaria considers that, in the event of disagreement concerning the determination of the size of a diplomatic mission, the question should be settled by agreement between the sending State and the receiving State."

Declaration concerning articles 48 and 50:

"The People's Republic of Bulgaria considers it necessary to stress that articles 48 and 50 of the Convention, which make it impossible for a number of States to accede to the Convention, are of a discriminatory nature. These provisions are incompatible with the very nature of the Convention, which is a universal instrument and should be open for accession by all States. By virtue of the principle of sovereign equality, no State has the right to prevent other States from acceding to such a convention."

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.

B. DOMESTIC LEGISLATION

I. Bulgarian Nationality Act

(Decree No. 755 of the Presidium of the National Assembly, published in the *Official Gazette* No. 79, of 11 October 1968)

GENERAL PROVISIONS

1. This Act shall govern the acquisition or loss of Bulgarian nationality.

2. Bulgarian nationality may not be established through legal action.

3. The description of persons as being of full age, not of full age or children within the meaning of this Act, shall be determined in accordance with the laws of the People's Republic of Bulgaria.

4. The marriage of a person of Bulgarian nationality to a person of foreign nationality shall not change the nationality of the Bulgarian and shall not confer Bulgarian nationality on the person of foreign nationality.

A change in the nationality of one spouse shall not alter the nationality of the other.

5. Adoption shall have no effect on the nationality of the person adopted.

TITLE I

ACQUISITION OF BULGARIAN NATIONALITY

Chapter I

ACQUISITION OF BULGARIAN NATIONALITY BY FILIATION

6. The following shall be Bulgarian nationals by filiation:

(a) Persons whose parents are Bulgarian nationals;

(b) Persons one of whose parents is a Bulgarian national and whose other parent is unknown, has no nationality or is of undetermined or unknown nationality;

(c) Persons born in Bulgaria of a Bulgarian national and a foreign national;

(d) Person born abroad, one of whose parents is a Bulgarian national unless born in the country of nationality of the other parent and the national legislation of that country grants them that nationality.

Chapter II

ACQUISITION OF BULGARIAN NATIONALITY BY PLACE OF BIRTH

7. The following shall be Bulgarian nationals by place of birth:

(a) Persons born in the People's Republic of Bulgaria of foreign parents who have not acquired the foreign nationality by filiation;

(b) Persons born in the People's Republic of Bulgaria of stateless parents or of parents whose nationality is undetermined or unknown;

(c) Persons born of parents who are stateless or of undetermined or unknown nationality on board a ship flying the Bulgarian flag in international waters or on the high seas, or on board a civil aircraft registered in the People's Republic of Bulgaria flying over the high seas;

(d) Children found in the territory of the People's Republic of Bulgaria both of whose parents are unknown.

Provisions (a), (b) and (c) shall also apply when one of the parents is unknown.

Chapter III

ACQUISITION OF BULGARIAN NATIONALITY BY NATURALIZATION

8. Bulgarian nationality may be acquired by a foreign citizen who has been living temporarily or permanently in the territory of the People's Republic of Bulgaria for at least five years before the date of his application and provided that he has been or will be released from his previous nationality.

The condition of release from the foreign nationality shall be considered to have been met if the person who has applied for Bulgarian nationality is stateless or loses his nationality, according to the national laws of his country, by becoming a naturalized Bulgarian.

9. In particular cases and for meritorious service to the People's Republic of Bulgaria, it shall be possible to acquire Bulgarian nationality without having fulfilled the requirements established in article 8.

10. A foreign national of Bulgarian origin who has stated in writing that he renounces the foreign

nationality or a stateless person of Bulgarian origin may acquire or recover Bulgarian nationality even if he does not fulfil the requirements set forth in article 8, provided that he has stated in writing that he wishes to become a Bulgarian citizen.

11. A foreign national or a stateless person may acquire Bulgarian nationality without fulfilling the requirements established in article 8 if his parents have been or are Bulgarian nationals or if one of his parents has been or is a Bulgarian national and the other parent is stateless or of unknown nationality or if he himself has been adopted by a Bulgarian national.

12. A foreign national or a stateless person who has married a Bulgarian national may acquire Bulgarian nationality without having to fulfil the requirements established in article 8.

13. A refugee, foreign national or stateless person who establishes his domicile in Bulgaria or has his permanent residence there may acquire Bulgarian nationality without having to fulfil the requirements established in article 8.

14. Children under 14 years of age shall acquire Bulgarian nationality if their parents or their surviving parent acquires Bulgarian nationality or if one of their parents acquires Bulgarian nationality where the other is already a Bulgarian citizen. In these conditions, children between 14 and 18 years of age shall acquire Bulgarian nationality if they so desire.

TITLE II

LOSS AND RESTORATION OF BULGARIAN NATIONALITY

Chapter IV

AUTHORIZATION TO RENOUNCE BULGARIAN NATIONALITY

16. A Bulgarian citizen may not acquire or retain foreign nationality unless he has been released from Bulgarian nationality. Nonetheless, he shall remain a Bulgarian citizen until the expiry of the term provided for under article 29.

A Bulgarian citizen of foreign origin who has emigrated from Bulgaria shall lose his Bulgarian nationality by virtue of his emigration.

17. Authorization to renounce Bulgarian nationality shall be given to persons who have settled or guaranteed their debts to the State, public enterprises, co-operative organizations and other social organizations as well as their debts arising out of injuries they have unlawfully caused and their maintenance obligations.

Authorization to renounce Bulgarian nationality shall not be given to persons against whom proceedings have been instituted under the Penal Code or on whom a final enforceable sentence has been passed.

Notwithstanding the above provisions, authorization to renounce Bulgarian nationality shall not

be given if it must be denied in the interests of national security or for other valid reasons.

18. Authorization given to parents to renounce Bulgarian nationality shall also apply to their children under 14 years of age only if a request has been submitted concerning them. In the case of children between 14 and 18 years of age, their own consent shall also be required.

If only one of the parents has submitted a request to renounce Bulgarian nationality, the children shall be released from Bulgarian nationality under the conditions set forth in the preceding paragraph, provided that the other parent has given his consent. This consent shall not be necessary if that parent has been deprived of his paternal authority.

Chapter V

REVOCATION OF NATURALIZATION

19. A person who has acquired Bulgarian nationality through naturalization may be deprived of Bulgarian nationality by having his naturalization revoked if he has given false information or data in order to acquire Bulgarian nationality.

Revocation of the naturalization of one spouse does not affect the naturalization of the other or of the children, except when they have acquired Bulgarian nationality by virtue of the same false information or data.

Naturalization may not be revoked until five years after the acquisition of Bulgarian nationality.

Chapter VI

DEPRIVATION OF BULGARIAN NATIONALITY

20. A person may be deprived of Bulgarian nationality:

- (a) If he leaves the country illegally;
- (b) If, having been duly authorized to leave the country, he does not return within six months after the expiry of the authorized period for no valid reasons;
- (c) If, being abroad, he fails to present himself for no valid reasons for his regular military service in the People's Army of Bulgaria or for purposes of serving under the flag of the People's Republic of Bulgaria in the event of mobilization;
- (d) If, being abroad, he occupies a government post or agrees to serve in a foreign army without authorization;
- (e) If, being abroad, he commits acts which jeopardize the security and interests of the Bulgarian State;
- (f) If, being abroad, he commits acts which undermine the prestige of the Bulgarian State or proves himself unworthy to be a Bulgarian citizen;
- (g) If, being abroad, he acquires a foreign nationality in violation of this Act.

The deprivation of Bulgarian nationality of one spouse shall not be extended to the other spouse or the children.

The State shall confiscate the property of persons deprived of Bulgarian nationality under paragraphs (a), (b), (c), (d) and (e) as from the date they are deprived of Bulgarian nationality and any property they may acquire as from the date of its acquisition. This provision may also be applied to the property of persons deprived of Bulgarian nationality under (f) and (g). The confiscation may be secured by seizure, interdiction and other related measures.

Chapter VII

RESTORATION OF BULGARIAN NATIONALITY

21. A person released from Bulgarian nationality may recover it if he has established his domicile in Bulgaria and if he has shown a favourable attitude towards the State and social structure of the People's Republic of Bulgaria.

22. A person who has been deprived of Bulgarian nationality may recover it if it is established that there was no valid reason for such deprivation or if the reason is no longer important.

Property confiscated by the State under article 20 shall be returned, and, in the event that it cannot be returned, the person concerned shall be compensated in cash or shall be given other appropriate property.

23. A person who has lost Bulgarian nationality or has been released from it as a result of marriage contracted with a foreign citizen may apply for restoration of his Bulgarian nationality if the marriage has been annulled or he has proven himself worthy of Bulgarian nationality by his favourable attitude towards the State and social structure of the People's Republic of Bulgaria.

24. When Bulgarian nationality is restored to the parents, their children under 14 years of age and those between 14 and 18 years of age shall also become Bulgarian nationals if they so request.

If only one spouse applies for restoration of Bulgarian nationality, the children may acquire Bulgarian nationality as described in the preceding paragraph provided that the other spouse gives his consent. This consent shall not be required if the latter has been deprived of parental authority.

TITLE III

PROCEDURE

Chapter VIII

PROCEDURE WITH REGARD TO THE ACQUISITION, LOSS AND RESTORATION OF BULGARIAN NATIONALITY

25. Bulgarian nationality may be acquired under the conditions set forth in chapter III,

title I, and may be lost and restored under the conditions set forth in title II, on the basis of a written application or on the proposal of the competent authorities. In the case of children, the application shall be made by their parents or guardians, and, in the case of young persons who are not of full age, it shall be countersigned by their parents or guardians. In the event of disagreement between young persons who are not of full age and their parents and in the event of disagreement between the parents, the Minister of Justice shall decide what action should be taken on the application.

If the parent has been deprived of parental authority, his consent under the preceding paragraph shall not be required.

26. Applications for the acquisition, loss or restoration of Bulgarian nationality shall be submitted to the Ministry of Justice.

If the applicant lives abroad, his application shall be submitted through the diplomatic or consular mission of the People's Republic of Bulgaria.

27. Acquisition of Bulgarian nationality under chapter III, title I, and its loss and restoration by virtue of an application submitted in accordance with article 25 shall be brought about by decree of the Presidium of the National Assembly on the proposal of the Minister of Justice. The decree shall enter into effect on the date of promulgation. The Ministry of Justice shall issue special documents certifying the change of nationality.

28. The Ministry of Justice shall transmit the information on the change of nationality to the people's council in the place of domicile of the person concerned so that it may be entered in the civil registers.

29. The decree under which a person is released from Bulgarian nationality shall cease to have effect if the person concerned does not acquire another nationality within a year from the date of the decree and continues to reside in the territory of the People's Republic of Bulgaria.

FINAL PROVISIONS

30. All persons who, at the date of entry into force of this Act, possess Bulgarian nationality in accordance with the provisions of the Bulgarian Nationality Act of 1948 shall be considered Bulgarian citizens.

31. An interministerial commission attached to the Ministry of Justice shall be established to give opinions concerning problems arising from the application of this Act.

This commission shall be appointed by order of the Minister of Justice after consultation with the Ministers and departments concerned.

32. The Minister of Justice shall issue regulations governing the application of title III of this Act.

33. This Act abrogates the Bulgarian Nationality Act of 1948.

II. Family law, individual rights, status of women who have borne children, status of girls, and status of young persons

1. FAMILY CODE

Published in the *Official Gazette*, No. 23, of 22 March 1968, the Family Code governs matters that were formerly covered by the Act concerning individuals and the family (*Official Gazette*, No. 182, 1949). It does not abrogate the Act completely; the provisions of the Act concerning legal competence, absence, guardianship of children and young persons as well as the provision concerning the status of legal persons will remain in force until they are incorporated into the future Civil Code of the People's Republic of Bulgaria.

The most important changes in earlier regulations introduced by the Family Code relate to the following matters:

(a) *Divorce*—Bulgarian law, both before and after the enactment of the Family Code, recognized a single ground for divorce, namely "profound marital discord" (art. 21, Family Code). Under the new legislation, however, the Court, in rendering its decision, is no longer required to take into account injuries committed by either of the spouses, unless the spouse alleging that injuries have been committed so requests (art. 21, para. II, F.C.). The Family Code has introduced divorce by mutual consent (art. 22, F.C.), provided that two years shall have elapsed from the date of the marriage (art. 23, F.C.). It should also be noted that the Court may not grant divorce by mutual consent unless the spouses have by agreement settled all questions relating to parental authority, support of children and property belonging to the spouses (art. 24, F.C.). A divorce may then be granted only after five months have elapsed following the filing of the petition for divorce [art. 259 (a), Code of Civil Procedure].

(b) *Matrimonial régime*—The matrimonial régime is established by law; any régime established in the marriage contract is not recognized under Bulgarian law.

Articles 13 and 14 of the Family Code provide for a type of limited community of acquired property, replacing the separation of property régime that was formerly in force. In contrast to other legislation the Bulgarian Family Code does not recognize the right of the spouses to disregard or modify the established matrimonial régime requiring community of property.

All property acquired by a spouse during the existence of the marriage by succession or gift, or property acquired for his (her) personal use or the exercise of his (her) profession, shall automatically be excluded from legal community of property.

The laws requires the consent of both spouses to any acts disposing of common property. Only acts of management may be performed separately. For the duration of the marriage, both spouses shall enjoy equal rights with regard to common property.

The limited community of acquired property provided by law shall be dissolved if one of the

spouses dies or if the marriage ends in divorce. The law provides that the community of property may also be terminated by judicial decision if "grave reasons" warrant termination.

If the community of property is dissolved as a result of divorce, each spouse may request the Court he (she) be granted a portion of the acquired property proportional to his (her) contribution. The spouse to whom the court has granted custody of the children may request that he (she) be granted "the larger part of the common property".

(c) *Protection of children in case of divorce or of dissolution of marriage resulting from the death of either spouse.* The Court hearing the divorce proceedings shall grant custody of the children to one of the spouses, and shall designate the home of one of the spouses as "the family dwelling". In rendering its decision on these two questions, the court shall be guided only by the interests of the children (art. 28 and 29, F.C.).

A parent with children by a previous marriage may, under art. 59 (II) of the Family Code, rely on the assistance of his (her) new spouse in providing support for the children.

(d) *Adoption.* Under regulations established by the Family Code, adoption shall not have the effect of severing the ties between an adopted child and his natural parents (art. 55, F.C.). These regulations were established by an amendment to art. 75 of the Act concerning individuals and the family in 1961.

(e) *Maintenance obligations.* In contrast to previous legislation, the Family Code provides that categories shall be defined establishing an order of priority for persons entitled to claim maintenance allowances as well as for persons required to provide such allowances (art. 82, F.C.).

Divorced parents shall be obliged to provide maintenance to their adult children who are not over twenty-five years of age and who are pursuing their education (art. 88, F.C.).

A divorced spouse shall not be entitled to maintenance allowance if the divorce decree was granted against him (her) (art. 89, F.C.).

2. LEGAL PROTECTION OF GIRLS AND OF WOMEN WITH CHILDREN

The rights and interests of women are protected not only under the Family Code, but also under many provisions of the new Penal Code enacted in 1968. A special section deals with marriage, the family and youth. It guarantees the sexual inviolability of girls and women and their independence in deciding on questions relating to love and marriage. This is highly important for girls and women belonging to ethnic minorities who were often the victims of outmoded ancestral or religious traditions which imposed the absolute power of the father as head of the family. The new Penal Code makes punishable not only the abduction of a person of the female sex for the purpose of forcing marriage upon her, but also the acceptance by a parent of a ransom in exchange for permitting his daughter or other female relative to marry.

In the field of labour relations, the status of Bulgarian women is based upon the three principles of free access to all professions and jobs, no discrimination with regard to remuneration and special protective measures for maternity.

The Decree of the Presidium of the National Assembly designed to encourage an increase in the number of births published in the *Official Gazette*, No. 15, of 23 February 1968, improved the existing regulations protecting women during pregnancy and after childbirth. Order No. 61 of the Central Committee of the Bulgarian Communist Party and of the Council of Ministers published in the *Official Gazette*, No. 2, of 9 January 1968, provides for bonuses for each live birth, a lightened work and job schedule for mothers, privileges for large families, improvement in medical care for children and mothers and an increased number of pre-school establishments. Under the Order, a woman is entitled to a pregnancy and maternity leave of 120 calendar days for her first child, 150 calendar days for her second child, and 180 calendar days for her third child, 45 days of this leave to be taken before the birth of each child and the rest afterward. A woman who adopts a newborn child is granted leave during the first 75 days of the child's life for a first child, 105 days for a second child, and 135 days for a third child. The mother of the child and the woman who adopts it are entitled to an unpaid leave of eight months for the first child, nine months for the second child and twelve months for the third child, as well as three months for the fourth and subsequent children. Mothers are also granted two hours off during their working day for the purpose of nursing their children.

When the first child is born, a mother receives a lump-sum payment of 20 leva; she receives 200 leva for her second child, 500 leva for her third child and 20 leva for her fourth and subsequent children. Family allowances, which are paid without regard to family income, were increased as of 1 January 1969 as follows: 5 leva for the first child, 15 leva for the second child, and 35 leva for the third child. Families with three or more children are granted a 30 per cent reduction in kindergarten and day-care centre fees. They are also entitled to privileges with regard to housing, access to employment, building loans, scholarships, admission of their children to pre-school establishments, etc.

Unmarried women also enjoy the above-mentioned rights, since Bulgarian law does not differentiate between children born in wedlock and children born out of wedlock.

3. PROTECTION OF YOUTH

Under a decree of the Presidium of the National Assembly, published in the *Official Gazette*, No. 12, of 13 February 1968, a Committee for Youth and Sport was established. The regulations concerning the organization, objectives and rights of the Committee for Youth and Sport, published in the *Official Gazette*, No. 55, of 16 July 1968, states that it is a social and public body, with ministerial rank, responsible for co-ordinating and supervising

the activities of the public and social bodies which deal with youth, sports and tourism. The preamble of the regulations states that the Committee shall strive to ensure the necessary co-ordination of the activities of public bodies and social groups concerned with youth and sports to broaden the material and technical basis of youth education to ensure the active participation of young people in the management of the State, economic and social affairs, and particularly to solve problems of technological progress, education, culture and the arts, education in patriotism and internationalism, physical education, sport and tourism: it shall undertake studies on the over-all problems of youth and shall submit proposals for solutions to the Government. It shall be assisted by departmental commissions for youth and sport, which shall be responsible to the executive councils of the departmental people's councils, and which shall function as social and public bodies, co-ordinating and supervising the activities of the public bodies and social groups within each department which deal with youth and sports.

The Committee for Youth and Sport has broad powers, including the powers to establish the principal guidelines and the main objectives of public bodies—the ministries, administrative bodies, and executive councils of the people's councils—with regard to youth and sports, to submit them to the Council of Ministers for approval and to present conclusions and proposals to the competent authorities regarding the allocation of State funds, within the limits of the plan and the budget for the purposes of promoting professional and technical training, improving living conditions and promoting physical education, sports, tourism and other mass youth activities.

The impact of the Committee for Youth and Sport on the Council of Ministers and the genuine protection of the rights of youth are guaranteed by the provision which states that "the decisions of the Committee, within the limits of its powers and its competence, shall be binding on all ministries, administrative bodies, executive councils of the people's councils, establishments, enterprises and organizations".

III. Penal Code

The new Penal Code of the People's Republic of Bulgaria (*Official Gazette* of 2 April 1968), abrogating the Penal Code of 1954, marks an important step towards the defence of human rights through penal law. It also reflects the most recent theoretical and practical advances in criminal law and at the same time takes into account the principles of democracy and socialist humanism in its approach to offenders.

1. The rights of the individual represent an important area for protection in criminal courts. Crimes against the human person and against fundamental human rights are second only to crimes against the State in importance. The physical integrity, freedom, honour and dignity of citizens, which are fundamental rights proclaimed by the Constitution, are effectively protected by

criminal law. Acts are considered as crimes when they violate such major rights as: the right to national and racial equality, freedom of religion, the right to vote, the inviolability of the home and the mails, labour rights and copyright. Private property acquired through work and savings is protected by socialist legislation and criminal law. Marriage, the family and youth are also protected under the new Penal Code.²

For the first time in Bulgarian legislation, the new Penal Code defines crimes against peace and humanity and war crimes (Art. 407-419). The relevant provisions in Bulgarian domestic legislation are in full accord with the generally accepted norms of international law reflected, *inter alia*, in the Universal Declaration of Human Rights, the Moscow Declaration of 1943, the documents of the Teheran, Yalta and Potsdam conferences, the Statutes of the International Military Tribunal, the Hague Conventions concerning the laws and customs of war, the Geneva Convention for the Protection of War Victims and the Convention on the Prevention and Punishment of the Crime of Genocide.

These crimes are classified as follows:

(a) Crimes against peace: the planning, preparation and conduct of a war of aggression, propaganda in support of a war of aggression, provocation of an armed attack by one State against another through the press, the spoken word or other means;

(b) War crimes: the murder, or the subjecting of the sick, the wounded, the shipwrecked, medical personnel, prisoners of war and civilians to torture, inhuman treatment or maiming, biological experiments and great suffering and other damage to health; the destruction of populated areas, cultural monuments, etc., in violation of the laws and customs of war; the use of prohibited procedures and methods of warfare, etc.;

(c) Crimes against humanity (genocide): the total or partial extermination of national, ethnic, racial or religious groups; the murder of members of these groups or the infliction upon them of serious bodily injury and torture; the forcible subjection of members of these groups to living conditions which result in their total or partial extermination, prevent them from bearing children or compel them to move from one group to another.

Crimes against peace and humanity and war crimes are not subject to statutory limitation. This important principle is formally proclaimed in article 79 of the new Penal Code.

The People's Republic of Bulgaria first gave effect to the principle of the non-applicability of statutory limitation to war crimes and crimes against peace and humanity in its legislation in 1965 by virtue of a decree of the Presidium of the National Assembly (see data in the *Yearbook on Human Rights for 1965*, p. 26). The provisions in question are now incorporated in the Penal Code.

2. The new Penal Code contains many new provisions attenuating and humanizing punish-

² See II, 2 above.

ment. It specifies a wider range of penalties which makes it possible to fit the punishment to the crime more effectively in specific cases. Deprivation of liberty is the principal penalty imposed under the correctional system. It may last for a maximum of fifteen years and, in exceptional circumstances, twenty years. The latter term is reserved for cases involving very serious crimes. The new Penal Code makes no provision for deprivation of liberty for life. It does provide for lighter punishments, including such penalties not entailing deprivation of liberty as corrective labour, suspended sentence, social censure, fines, etc.

The new Penal Code provides for capital punishment only as a temporary and exceptional measure to be applied solely to the most serious premeditated crimes. A definitive trend towards restricting the use of capital punishment is emerging in the Bulgarian penal system. It is clearly reflected in the new Penal Code, which lists nearly one-third fewer crimes punishable by death than the old Code.

The death penalty is prescribed for the following crimes:

(a) Serious crimes against the State: treason, high treason, espionage, diversionary activities and sabotage;

(b) Premeditated murder described as serious, robbery involving murder and serious crimes constituting a threat to public order and causing the death of several persons, and

(c) War crimes and crimes against peace and humanity.

The death penalty may be imposed in certain cases instead of deprivation of liberty. It can be imposed on persons who were twenty years of age at the time the crime was committed, and, in the case of military personnel and in time of war, on persons eighteen years of age. It may not be imposed upon pregnant women, who instead shall be punished by deprivation of liberty for twenty years. Capital punishment may not be carried out, even if the sentence has become final, until the Presidium of the National Assembly has decided whether to commute the sentence to deprivation of liberty.

The new Penal Code unlike the old one, does not provide for the deprivation of rights, particularly of electoral and pension rights, the right to guardianship and parental authority, nor does it provide for the forfeiture of Bulgarian nationality or expulsion from the territory of the Republic.

IV. Rights deriving from labour legislation

1. PROTECTION IN THE EVENT OF UNJUST DISMISSAL

Article 172 of the Penal Code provides that any official who fails to carry out a decision which has become final calling for the reinstatement of an unjustly dismissed wage or salary earner shall be liable to punishment. The penalties are corrective labour or a fine not exceeding 300 leva, as well as social censure.

2. OCCUPATIONAL SAFETY

Article 72, para. II, of the Regulation on public enterprises (*Official Gazette*, No. 89, 1968) authorizes the trade union committee to prevent the implementation of illegal decisions taken by the director of an enterprise or by other officials which infringe the labour rights of wage and salary earners and provisions regarding occupational safety. Such cases are brought before higher administrative and trade union authorities.

3. REDUCTION IN THE HOURS OF WORK

A decree by the Presidium of the National Assembly, published in the *Official Gazette*, No. 1, of 5 January 1968, authorizes the Council of Ministers to institute a five-day work week, the weekly hours being 42 hours and 30 minutes for wage and salary earners who previously worked 46 hours a week; 40 hours for those working 41 hours per week; and 35 hours for those working 36 hours. No reduction is made in the remuneration of wage and salary earners in cases where the working day has been reduced.

V. Act concerning inventions and labour-saving devices

This Act, published in the *Official Gazette*, No. 81, of 18 October 1968, abrogates the Act on discoveries, inventions and labour-saving devices published in *Izvestia* of the Presidium of the National Assembly, No. 10, 1961 with the exception of articles 5, 6, 7, 13, 17, 19, 20, 21, 23 and 24, and the chapter dealing with discoveries. The new Act entered into force on 1 January 1969.

Article 2 of the Act stipulates that inventions and labour-saving devices as a mass movement shall be subject to planned promotion and development, and the creative work and interests of the creators of inventions and labour-saving devices shall be harmonized with the objectives and interests of socialist society. The Act promotes the revolutionary development of science and technology in Bulgaria, which is the chief prerequisite for a higher standard of living for the people.

In view of the nature of this Act, the State Committee on Science and Technological Progress (para. 9, sub-para. I) was appointed as the supervisory body for inventions and labour-saving devices. It exercises its supervisory functions through the Institute of Inventions and Labour-Saving Devices. The Council of Ministers establishes regulations governing the applicability of the Act and the State Committee for Science and Technological Progress issues instructions and guidelines on the application of its various provisions (para. 98).

Inventions and labour-saving devices are financed by a special invention and labour-saving devices fund and, where necessary, by funds to be used for investments and technological progress, bank credits and budgetary appropriations (para. 75).

The Act specifies the procedure to be followed with regard to the application for and recognition of patent rights for inventions and labour-saving devices and the system governing the use of inventions and labour-saving devices and the payment of fees. Claims relating to the recognition of rights and the payment of fees are settled partly through administrative and partly through judicial channels (with regard to the latter, see paras. 71, 81, etc.).

Patent rights arising out of an invention or labour-saving devices may be enjoyed solely by the inventor or creator of the device (para. 3, sub-para. II). Patent rights and non-pecuniary personal rights relating to patent rights are not transferable. Only the right to dispose of patent rights is transferable, and may be inherited (para. 5, sub-para. I). In the event that the inventor should die before he has received documentary

proof of his patent rights, his heirs shall be entitled to request that the document should be issued on his behalf, and to receive the remuneration to which he is entitled (para. 5, sub-para. II).

The Act regulates certain assumed rights relating to the participation of foreign nationals. Thus Bulgarian nationals shall be authorized by the Chairman of the State Committee for Science and Technological Progress to send, export, register, surrender, sell or use recognized inventions and labour-saving devices to or in other countries or to surrender, deliver or sell them to foreign nationals in accordance with the procedure established for that purpose (para. 6, sub-para. I). Foreign nationals who are not members of the Union for the Protection of Industrial Property shall have the same rights and obligations as Bulgarian nationals under this Act, on a reciprocal basis (para. 7).

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

RESULTS OF THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SSR IN 1968 — REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR

(EXTRACT)

V: RISE IN THE MATERIAL PROSPERITY AND CULTURAL LEVEL OF THE PEOPLE

The net national income was 9 per cent greater in 1968 than in 1967. It rose by 33 per cent over the first three years of the five-year period.

The average number of manual and non-manual workers employed in the national economy over the year was 2,800,000, an increase of 5.4 per cent over 1967.

In pursuance of decisions taken at the September (1967) Plenum of the Central Committee of the Communist Party of the Soviet Union [*sic*] on measures to further improve the material prosperity of the Soviet people, the minimum wage scales of manual and non-manual workers were raised from 40-45 to 60 roubles per month with effect from 1 January 1968. This increase was brought about by basing working people's wage rates and officials' post salaries on scales starting at not less than 60 roubles a month. In some categories, wages and salaries have risen to 70 roubles a month. Wage rates for machine-tool operators in engineering and metal-working plants and shops in all branches of the economy have similarly been raised. The length of paid holidays has been extended to 15 working days for manual and non-manual workers who had previously enjoyed only 12 working days. The scales of allowances for temporary incapacity were also raised. The rate of taxation on the wages of manual and non-manual workers earning between 61 and 80 roubles a month was cut on average by 25 per cent.

During the past year, the average monthly cash wages of manual and non-manual workers rose by 8.4 per cent over the 1967 level.

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

In 1968, the people of the Republic received out of social consumption funds payments and benefits totalling more than 1,700 million roubles, or 12 per cent more than in 1967; these payments and benefits took the form of pensions, allowances, grants, paid holidays, free education, and free medical care.

Individual deposits in savings banks rose by 22 per cent over the year, amounting on 1 January 1969 to more than 918 million roubles; by the end of 1968, the number of deposits stood at around 2 million.

State and co-operative retail trade turnover in 1968 amounted to 4,366 million roubles, having increased by 11 per cent, in comparable prices, as compared with 1967. The retail turnover of consumer co-operatives rose by 10 per cent over the same period.

Over the first three years of the five-year period, the volume of retail trade has increased by 42 per cent—by 44 per cent in the case of consumer co-operatives—in comparable prices.

The 1968 plan for retail trade turnover was fulfilled by 102 per cent, including a figure of 104 per cent in the public catering sector.

The Ministry of Trade fulfilled its 1968 target for retail trade turnover by 103 per cent, while the Byelorussian Union of Co-operatives fulfilled its plan to the extent of 99.3 per cent.

State and co-operative enterprises and organizations, collective farms and the general public in towns and country centres in the Republic brought into use in 1968 more than 75,000 new flats, with all amenities, totalling 4,100,000 square metres of general (useful) living space. About 370,000 persons moved into new dwellings or improved their living conditions in existing ones.

Much capital was channelled into the construction of educational, cultural and public health buildings.

The yearly plan of works on the provision of utilities and amenities for the public was fulfilled over-all by 104 per cent, the volume of such works increasing by 23 per cent over the 1967 figure; in country centres, the increase was 34 per cent. Work continued on the construction and bringing into service of new combines, mechanized laundries, workshops and workrooms for repairing and sewing clothes, footwear and knitwear, and for repairing domestic machines and appliances, and other enterprises providing household services. More than 400 units were added to the network of such enterprises in the course of the year.

Work was also carried out on the further improvement of utilities and amenities in towns and villages. During 1968 a gas supply was laid on to more than 113,000 flats.

Further successes were scored in developing national education, science and culture.

More than 2,700,000 persons received instruction of one kind or another. Of this total, 1,829,300 were taught in general educational schools of all types, 131,500 in institutions of higher education, and 140,500 in technical colleges and other specialized secondary schools. One hundred and sixty-three thousand nine hundred pupils completed their eight-year schooling, and 98,800 their general secondary education.

At the beginning of the 1968/69 school year, there were 137,600 children attending extended-day schools and groups, or 18 per cent more than in the previous school year.

More than 258,000 young children were trained in permanent pre-school institutions, or 10 per cent more than in 1967. In addition, more than 170,000 children were cared for in seasonal children's institutions.

During the summer, some 350,000 children and adolescents spent holidays in pioneers' (scout) and

school camps and children's sanatoria, or at excursion or tourist centres, or went away for country vacations at rural resorts with children's institutions.

The Republic's higher and specialized secondary educational establishments turned out 47,900 specialists; of these, 16,000—or 13 per cent more than in 1967—left with university or equivalent qualifications, while 900—or 12 per cent more than in the previous year—graduated from technical colleges or specialized secondary schools. At the end of 1968, more than 497,000 specialists with higher or specialized secondary training were at work in the national economy, their number having increased by more than 25 per cent over the last three years. In the past year, 71,700 students were admitted to institutions of higher education or to technical colleges and other specialized secondary schools, 28,000 to the former category and 42,900 to the latter.

In 1968, vocational and technical colleges and schools trained and assigned to production 50,000 young skilled workers. In addition, about 560,000 persons were taught new trades, or improved their skills and/or qualifications, through individual or group apprenticeship or in-service training courses, run by enterprises and organizations, as well as by collective farms.

The number of scientific workers employed in scientific institutions, higher educational establishments and other organizations at the end of the year was 18,000; of them 4,800 held a D.Sc. degree or were candidates for that distinction.

There were almost 6,000 cinema installations in the Republic. Attendances totalled about 130 million during the year.

Public medical services continued to improve. The number of beds in hospital institutions, sanatoria, prophylactic establishments and rest homes increased. The total number of doctors practising in all branches of medicine was 21,000.

On 1 January 1969, the population of the Byelorussian SSR was 8,900,000.

LAW OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC OF 10 OCTOBER 1967

State Budget of the Byelorussian SSR for 1968

(EXTRACT)

The Supreme Soviet of the Byelorussian Soviet Socialist Republic *resolves* as hereunder:

Article 1. To approve the State Budget of the Byelorussian SSR for 1968 as submitted by the Council of Ministers of the Byelorussian SSR, with the amendments adopted on the report of the Planning and Budgetary, and Sectoral, Commissions of the Supreme Soviet of the Byelorussian SSR, entailing total revenue and expenditure amounting to 2,228,786,000 roubles.

Article 2. To fix revenue from State and co-operative enterprises and organizations—turnover tax, charges on fixed productive and circulating capital, profits tax, income tax and other income

from the socialist economy—in the State budget of the Byelorussian SSR for 1968 at 2,066,642,000 roubles.

Article 3. To appropriate a total of 1,112,896,000 roubles in the State Budget of the Byelorussian SSR for 1968 for financing the national economy: continued development of heavy industry, the building industry, the light industries, the food-stuffs industry, agriculture, transport, housing and municipal services, and other branches.

Article 4. To appropriate a total of 1,034,842,000 roubles in the State Budget of the Byelorussian SSR for 1968, including 201,440,000 roubles transferable from the State social insurance budget, for social and cultural developments: general education schools, technical colleges, institutions of higher education, scientific research institutes, industrial trade schools, libraries, clubs, theatres, the press, broadcasting and other educational and cultural activities; hospitals, crèches, sanatoria and other public health and physical culture establishments; and pensions and allowances.

RESOLUTION OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC OF 17 APRIL 1968

Application of the Decree of the Presidium of the Supreme Soviet of the Byelorussian SSR of 11 July 1967: "Amendment and amplification of the Code of Acts on marriage, the family and guardianship of the Byelorussian SSR".

Pursuant to questions that have arisen as to the application of the Decree of the Presidium of the Supreme Soviet of the Byelorussian SSR—"Amendment and amplification of the Code of Acts on marriage, the family and guardianship of the Byelorussian SSR"—(SZ BSSR [Collection of Laws of the Byelorussian SSR], 1967, No. 20, p. 277), the Presidium of the Supreme Soviet of the Byelorussian SSR, proceeding from point "b" of Article 31 of the Constitution of the Byelorussian Soviet Socialist Republic, *resolves*:

1. To rule that the right, provided for in the Decree of the Presidium of the Supreme Soviet of the Byelorussian SSR entitled "Amendment and amplification of the Code of Laws on marriage, the family and guardianship of the Byelorussian SSR", of a needy spouse unfit for work to receive maintenance from the other partner in the marriage after the latter has been dissolved extends also to those cases where the incapacitated spouse was, until the day on which the said Decree came into force, in receipt of or entitled to maintenance from the second spouse in virtue of the legislation previously in force.

2. To rule that the right, provided for in the Decree of the Presidium of the Supreme Soviet of the Byelorussian SSR entitled "Amendment and amplification of the Code of Laws on marriage, the family and guardianship of the Byelorussian SSR", of an office of guardianship or tutelage to appropriate for a child the family name of the parent in whose custody it remained after the divorce, or to change the first name of minor adopted children at the request of the adoptive parent, extends also to cases where the marriage was dissolved or the adoption took place before the said Decree came into force.

LAW OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC OF 19 JUNE 1968

Village and settlement Soviets of Working People's Deputies

(EXTRACTS)

Chapter II

RIGHTS AND DUTIES OF VILLAGE AND SETTLEMENT SOVIETS OF WORKING PEOPLE'S DEPUTIES

Article 10. In the field of planning, reporting and accounting, the village or settlement Soviet of Working People's Deputies shall:

(a) Review and approve the plans for the economic, social and cultural construction for which it is responsible;

(b) Approve the production and financial plans of its subordinate enterprises, institutions and organizations;

(c) Take part in the review of the long-term and annual plans of collective farms, state farms,

and of local industrial enterprises; submit proposals relating to the draft production and financial plans of collective farms, state farms, enterprises, institutions and other organizations affiliated to higher authorities, in so far as they concern: house-building; social, cultural, municipal and trading services to the public; the provision of villages, country areas and settlements with utilities and amenities; the building of local roads; and the utilization of local raw materials and manpower;

(d) Receive from the executive committee of the next higher Soviet information about the plan targets for collective farms, state farms, enterprises and organizations of local importance situated on its territory, and exercise control over their fulfilment;

(e) Exercise control over the state of the records and accounts kept by its subordinate enterprises, institutions and organizations; and keep in good and due form the economic register and statistics of the population and report thereon to the next higher State authority; and

(f) Call for, where necessary, and receive from collective farms, state farms, enterprises and organizations of local importance situated on its territory certified statistical and other information on their work.

Article 11. In the financial and budgetary field, the village or settlement Soviet of Working People's Deputies shall:

(a) Review and approve the village or settlement budget; approve the working case in hand under the budget and the quarterly distribution of income and expenditure; distribute budget funds among the various heads of expenditure; transfer funds as necessary from one head or subhead to another head or subhead of the budget (appropriations for wages excepted); organize the implementation of the village or settlement budget; and discuss and approve the report on its fulfilment;

(b) Approve the budget estimates of the institutions carried on the village or settlement budget, make timely arrangements for financing them, and ensure that the workers in such institutions are paid their wages at the prescribed intervals; fix the amounts of contributions to its budget from its subordinate enterprises and organizations and the disbursements under the budget required to finance them; and deal with questions relating to the opening of current accounts with agencies of the State Bank of the USSR or with State labour savings banks;

(c) Organize the receipt of tax, insurance and other payments from the population, carry out the collection procedure in its territory, ensure that the moneys received are delivered promptly to agencies of the State Bank of the USSR, and help the State labour savings banks on its territory to collect such payments from the population;

(d) Exercise control over the prompt payment by collective farms, state farms, enterprises and organizations situated on its territory of the sums due from them under the village or settlement budget and of collective-farm contributions to the Central Union Social Insurance Fund for Collective Farmers; and hear the reports of the heads of collective farms, state farms, enterprises and organizations on these matters;

(e) Grant relief from local taxes and levies in accordance with Article 2 of the Decree of the Presidium of the Supreme Soviet of the USSR on local taxes and levies, and also, after prior consultation with the district or urban financial authorities, from agricultural taxes in accordance with Article 18 of the Soviet Union law on agricultural taxes;

(f) Channel extra funds received during the implementation of the village or settlement budget, together with any excess of income over expenditure at the year-end resulting from over-fulfilment of the income target or from savings in expenditure, into the financing of economic, social and cultural measures, including capital investment, and covering the erection of and repairs to the offices of the executive committee of the village or settlement Soviet, and the acquisition for it of means of transport, supplies and equipment (the withdrawal from a village or settlement Soviet of the funds referred to in this paragraph is not permitted);

(g) Take decisions, by the prescribed procedure, on the granting by agencies of the State Bank of the USSR of cash loans for private house-building, within the financial limits set for rural and settlement Soviets;

(h) Render assistance to the State labour savings banks in their work and in the organization of voluntary insurance;

(i) Organize in accordance with the legislation in force self-taxation by the rural population; ensure the execution, against self-taxation funds, of measures proposed by citizens' meetings, and account to the public for the way in which these funds are spent; and

(j) Redistribute surplus property and equipment among institutions and organizations carried on the village or settlement budget.

Article 12. In the agricultural sector, the village or settlement Soviet of Working People's Deputies shall:

(a) Exercise control over the observance by collective farms, state farms and other agricultural enterprises of the laws, the timely fulfilment of their plans and the due discharge of their obligations to the State;

(b) Render assistance to collective farms and state farms in the expansion of agricultural production, in the fulfilment of their production and financial plans, in the discharge of their obligations to the State, in the efficient utilization of arable land, materials and manpower, in the organization and development of subsidiary enterprises, in raising the productivity of labour and strengthening labour discipline, and in improving the material and cultural standard of living of collective farmers and of workers and employees on state farms; and review the reports on these matters rendered by the management boards of collective farms, directors of state farms, and heads of teams, sections and departments situated on its territory, make appropriate recommendations to them and, where necessary, submit relevant proposals to the executive committee of the next higher Soviet;

(e) Exercise control over the preservation and plans for land improvement, the acquisition and correct use of reclaimed land, and the maintenance in proper condition of land drainage systems;

(d) Submit to the executive committee of the next higher Soviet observations and proposals relating to the charters of agricultural cartels situated on its territory; and ensure observance of the terms of such charters;

(e) Exercise control over the preservation and correct utilization on collective farms of agricultural equipment and installations, mineral fertilizers and noxious chemicals;

(f) Promote the development of inter-collective-farm ties and communications, and the work of inter-collective-farm enterprises and organizations;

(g) Ensure that measures for protecting crops and plantations at collective farms and state farms and other State and public economic units are properly carried out; exercise control over the performance by collective farms, state farms, state forestry stations, other enterprises, institutions and organizations, and the public performance of the compulsory measures for controlling plant pests, plant diseases and weeds; and ensure observance of the safety rules and regulations for the safe handling of crop-protection chemicals, and observance of crop quarantine regulations;

(h) Exercise control over veterinary and sanitary conditions at the livestock sections of collective farms, state farms, and other enterprises and organizations, and also, in accordance with the legislation in force, the observance of the quarantine regulations and the carrying out of other measures for preventing and wiping out animal diseases;

(i) Control the work of the procurement agencies on its territory in the purchase of agricultural surpluses;

(f) Promote the carrying out of measures for the development and protection of State and collective-farm forests, forest improvement and forestry organization and, where necessary, submit proposals on these matters to the executive committee of the next higher Soviet; and

(k) Exercise control over the observance by all enterprises, institutions and organizations, and by members of the public; of the laws on the protection of nature, and the implementation of measures for the preservation and restoration of natural resources and the animal population; and watch over the fulfilment of the legal regulations governing the practice of hunting and fishing.

Article 13. In the field of land use, the village or settlement Soviet of Working People's Deputies shall:

(a) Exercise control over the observance by all land users on its territory of the laws on land use, and the implementation of measures to control erosion;

(b) Take decisions about the allocation of plots from lands of a rural centre of population or settlement, within the limits, and in accordance with the procedure, established by law;

(c) Control the proper use of the household land stock of collective farms and state farms,

and ensure observance of the standards for household plots; and settle disputes between citizens over land; and

(d) Distribute among enterprises, institutions and members of the public the lands allocated to it by the established procedure from the State reserve land stock of market gardens, meadowland and pasture.

Article 14. In the industrial sector, the village or settlement Soviet of Working People's Deputies shall:

(a) Direct the work of its subordinate local industrial enterprises, and ensure that they fulfil their production and financial plans;

(b) Organize control over the observance of the laws at industrial undertakings affiliated to higher authorities but situated on its territory;

(c) Render assistance to industrial enterprises situated on its territory in expanding output, making efficient use of materials and manpower, increasing the productivity of labour and raising the material and cultural standard of living of their workers and employees; and review the reports on these matters rendered by the heads of the enterprises, make appropriate recommendations to them and, where necessary, submit relevant proposals to the executive committee of the next higher Soviet;

(d) Take steps to develop the production of consumer goods and building materials, using both local raw materials and production wastes from industrial enterprises operating on its territory, and to develop the processing of agricultural produce, and cottage industries and handicrafts; supervise the proper processing of non-metallic minerals (clay, sand, stone, peat, etc.); and prospect for additional deposits of local raw materials and fuels and, where necessary, submit proposals for working them to higher authorities; and

(e) Take steps to develop fisheries and trapping.

Article 15. In the building, transport and communications sector, the village or settlement Soviet of Working People's Deputies shall:

(a) Review and submit to the executive committee of the next higher Soviet proposals for the planning and development of centres of population on its territory; ensure observance of development plans; and stop building where it involves a breach of town-planning regulations;

(b) Check on the progress of the construction of dwellings, social and cultural institutions and municipal enterprises in its territory; and review the reports of the heads of collective farms, state farms, enterprises and building organizations on the progress of such works;

(c) Organize the building of dwellings, municipal enterprises and installations (water mains, main drains and sewers, power, heat and gas supply, water reservoirs, wells, bathhouses, etc.) out of the funds available to local Soviets for these purposes;

(d) Settle, with the agreement of collective farms, state farms, enterprises and other organizations situated on its territory, matters affecting the joint utilization of the funds they set aside for building and repairing dwellings and public buildings and, where necessary, pool these funds;

(e) Organize the construction and repair of local roads, bridges and ferries; check that they are in serviceable condition; and enlist, following the established procedure, the services of collective farms, state farms, enterprises and other organizations in carrying out these works;

(f) Exercise control over the implementation by collective farms, state farms, and industrial, transport, building and other enterprises and economic organizations of the plans for the construction and repair of motor-vehicle roads;

(g) Exercise control over the work of transport organizations in providing the public with motor-vehicle and other modes of transport on its territory;

(h) Issue regulations to collective farms, state farms, enterprises, institutions and other organizations governing the provision by them of vehicles in the event of natural calamities or fires, for moving the sick and taking medical personnel to visit the seriously ill, or in other emergency situations; and

(i) Render assistance to the communications authorities in extending local telephone and postal services, providing broadcasting and television facilities, and in repairing and protecting communications line installations; and control the work of the agencies responsible for transporting mail and delivering it to the population living in its territory.

Article 16. In the field of housing and municipal services and the provision of utilities and amenities, the village or settlement Soviet of Working People's Deputies shall:

(a) Run the housing and municipal services for which it is responsible; ensure the proper exploitation of the dwellings, municipal enterprises, administrative buildings and other premises under its control, and organize major and running repairs to them; and ensure the correct economic utilization of the premises under its control other than dwellings;

(b) Exercise control over the activities of the collective farms, state farms, enterprises, institutions, and other organizations affiliated to higher authorities, situated on its territory, in the field of housing and municipal services; and over the proper exploitation of the housing stock, municipal enterprises and installations belonging to them;

(c) Allocate the housing stock for which it is responsible; and approve joint decisions of the administration and of factory, plant and district trade-union committees on the allocation of living space in dwellings belonging to state, co-operative and public organizations, except where the law provides otherwise;

(d) Take steps to provide fuel, light and equipment for the educational, cultural and public health institutions carried on the village or settlement budget, to keep their premises in good repair and to create the necessary housing and other amenities for their staff, and enlist the services of collective farms, state farms, enterprises and other organizations, regardless of their administrative affiliation, in carrying out the said measures;

(e) Direct the extension of utilities and amenities to centres of population, and secure the assistance of collective farms, state farms, enterprises, institutes and other organizations, regardless of their administrative affiliation, in this work; pool, with the agreement of collective farms, state farms, enterprises and other organizations, the funds set aside by them for such purposes; exercise control over the utilities and amenities of production areas; organize the development of green belts in population centres; take steps to protect and tend open spaces, woods, artificial lakes and places where the working people take their leisure; name, in accordance with the legislation in force, streets, lanes, alleys, squares, places and parks; and see to the numbering of houses;

(f) Appoint and remove the heads of the housing and public utility enterprises under its control, in agreement with higher agencies of the housing and municipal services administration;

(g) Organize the carrying out of preventive fire measures in population centres; direct the work of volunteer fire brigades; and take steps to safeguard human life on water;

(h) Initiate petitions to the executive committee of the next higher Soviet for the award and presentation of the medals *Za otvagu na pozhare* and *Za spavenie utopayushchikh* ("For bravery at a fire" and "For rescue from drowning");

(i) Take steps to prevent natural calamities and to overcome their consequences, and, where necessary, enlist by the established procedure the aid of the public in these activities; and

(j) Ensure that cemeteries and common graves are maintained in a fitting condition.

Article 17. In the trade, public catering and personal services sector, the village or settlement Soviet of Working People's Deputies shall:

(a) Exercise control over state, co-operative and collective-farm trade in its territory; approve plans for the siting and specialization of trading and public catering enterprises; and promote the introduction of progressive forms of trading services for the public;

(b) Take steps to organize personal services for the public, and to extend the chains of laundries, hairdressers', shoemakers' and dressmakers' shops, and workrooms for repairing clothing, footwear and household articles; exercise control over their work; and promote the introduction of new types and forms of personal services for the public;

(c) Exercise control over the work of shops, restaurants, tea-rooms and markets; ensure observance of the regulations governing trade, official prices and the courteous treatment of customers; and ensure the timely delivery of stocks of food-stuffs and industrial goods, with due regard for effective local demand;

(d) Control the work of consumer co-operative enterprises in processing and marketing agricultural produce and raw materials, as well as that of procurement agencies in making the planned purchases of mushrooms, wild fruits, soft fruits, berries and medicinal plants;

(e) Hear the reports of the heads of trading and public catering enterprises and the managing

boards of village consumer societies on the state of business and the progress being made in fulfilling the planned turnover and other targets, as well as reports from the heads of personal service enterprises on their business activities;

(f) Ensure observance of the Charter of Consumer Co-operatives;

(g) Appoint and remove the heads of the personal service enterprises for which it is responsible, in agreement with higher agencies of the private services administration; and

(h) Fix, in the light of local conditions, hours convenient to the public for the opening and closing of trade, public catering and personal service enterprises; and ensure that such establishments respect the working hours so fixed.

Article 18. In the field of national education, the village or settlement Soviet of Working People's Deputies shall:

(a) Ensure universal compulsory education and keep account of children of school age;

(b) Exercise control over the work of schools, boarding schools and children's pre-school and out-of-school institutions situated on its territory;

(c) Decide, in accordance with the legislation in force, questions of exempting children from payment for meals at extended-day schools (or groups) carried on the village or settlement budget;

(d) Take steps to extend the system of schools, boarding schools and children's pre-school and out-of-school institutions and to strengthen their instructional materials, supplies and funds; support the initiative of collective farms, state farms and enterprises in building schools and permanent and seasonal pre-school and out-of-school institutions from their own resources, and decide where such institutions shall be sited in its territory; and take steps to organize on-the-spot summer holidays and leisure activities for the pupils;

(e) Take steps to bring up children bereft of parental care in boarding schools or children's homes, or to place them with private families; and exercise control over the work of the children's homes situated on its territory;

(f) Take steps to provide free travel facilities to and from school for pupils attending primary, eight-year and general secondary schools but living in country areas;

(g) Appoint and remove, in agreement with the higher educational authorities, heads of the schools and children's pre-school and out-of-school institutions for which it is responsible; and

(h) Set up for the schools a general education fund financed out of its own budget but calling also on the resources of collective farms, consumer societies and the trades-unions; distribute this fund among the schools; and exercise control over its proper utilization.

Article 19. In the cultural and instructional field, the village or settlement Soviet of Working People's Deputies shall:

(a) Direct the work of the village clubs, cultural institutes, libraries, *krasnye ugolki* ("red corners", devoted to educational and propaganda facilities:—*Translator*) and other cultural institutions for

which it is responsible; control and co-ordinate the work of other cultural institutions situated on its territory, regardless of their administrative affiliation; and take steps to extend the network of cultural institutions;

(b) Exercise control over the proper utilization of the special funds of the cultural institutions for which it is responsible, as well as over the proper allocation and disbursement of the cultural funds of the collective farms and consumer societies and, where necessary and in agreement with these bodies, make arrangements for such funds to be administered centrally;

(c) Organize the holding of public lectures, the reading of reports and public debates; and render assistance to public scientific and instructional organizations in their work;

(d) Appoint and remove, in agreement with the higher cultural authorities, the heads of the cultural institutions for which it is responsible;

(e) Make arrangements for regular cinema performances for the public; and take steps to develop the creative talents of the people and their amateur artistic activities;

(f) Organize mass celebrations on State holidays and red-letter days; and promote the introduction into daily life of new civil rites and ceremonies; and

(g) Ensure the protection of historical monuments, cultural monuments and sanctuaries, as well as that of monuments to the battles fought by the Soviet Army and partisans on its territory.

Article 20. In the domain of public health, the protection of mother and child, physical culture and sport, the village or settlement Soviet of Working People's Deputies shall:

(a) Take steps to provide free medical care for the public; direct the organization of the work of the medical establishments carried on the village or settlement budget, and look to their extension and to the strengthening of their material basis; and exercise control over the organization of the work of medical establishments affiliated to higher authorities but situated on its territory;

(b) Ensure the rational siting on its territory of sectional hospitals, maternity homes, midwifery stations, pharmacies and other medical institutions;

(c) Hear the reports of the heads of the medical establishments situated on its territory on the state of public medical, sanitary and prophylactic services;

(d) Appoint and remove, with the agreement of the higher public health authorities, the heads of the medical establishments and institutions for which it is responsible;

(e) Render assistance to the public health authorities in carrying out sanitary, prophylactic and epidemic-control measures, and in the organization of public health instructional activities among the population; and exercise control over sanitary conditions in population centres, at water-supply sources and in trading and public catering establishments, dwellings, schools and other institutions;

(f) Make arrangements, in the event of an epidemic outbreak of a communicable disease, to take over premises for accommodating the sick;

put quarantine procedures into operation; and supervise their implementation;

(g) Take steps to encourage the wide-spread development of physical culture and sport among the population and to construct sports grounds and other sporting installations;

(h) Ensure the performance of measures for the protection of mother and child; and

(i) Initiate petitions to the executive committee of the next higher Soviet concerning the conferment on mothers of many children of the honorary title of *Mat'-geroinya* ("Heroine-Mother"), and proposals for the award to such mothers of orders of *Materinskaya Slava* ("Glory of Motherhood") and the *Medal' materinstva* ("The Motherhood Medal").

Article 21. In the field of labour and social security, the village or settlement Soviet of Working People's Deputies shall:

(a) Help citizens to find jobs and to acquire a trade or profession; co-operate with the trade-union organizations in ensuring the observance of the labour laws, the rules for the protection of labour, and safety practices at collective and state farms and at the enterprises situated on its territory; control the application of the regulations governing the hiring and dismissal of adolescents and young persons;

(b) Ensure the placement of disabled persons and members of the families of servicemen killed in the war and partisans; exercise control over the grant to such persons of the privileges and advantages to which they are entitled by law; and help in the vocational training of the disabled;

(c) Ensure that the pension laws are being observed; where necessary, assist manual workers, non-manual workers, collective farmers and members of their families to obtain their pensions; control the work of collective-farm councils for the social security of collective farmers and the administration of collective-farm mutual insurance funds; ensure that the labour books of collective farmers are accurately kept; and check the security of records and archives at collective farms;

(d) Grant, within the limits of the appropriations provided for the purpose in the village or settlement budget, financial assistance to persons not entitled to receive a State pension;

(e) Submit proposals to the executive committee of the next higher Soviet concerning the grant of financial assistance to mothers with many children and to unmarried mothers, and for the payment of lump-sum grants to the victims of natural calamities; and help the families of short-service members of the armed forces to obtain the allowances to which they are entitled by law;

(f) Take care of the improvement of the material, housing and living conditions of disabled persons, families with no breadwinner and large families generally; and

(g) Take steps, through the social security agencies, to place disabled and infirm persons in homes for the disabled and for old people; render assistance in the construction of homes for the disabled and for old people at collective farms and groups of collective farms; and exercise control over their work.

Article 22. With regard to the maintenance of the rule of law in the country, the safeguarding of State and public order and the protection of the rights of citizens, the village or settlement Soviet of Working People's Deputies shall:

(a) Ensure that the collective farms, state farms, enterprises, institutions and other organizations situated on its territory, and officials and citizens, respect the country's law; and safeguard citizens' political, labour, housing and other personal and property rights and their lawful interests;

(b) Quash orders and directives issued by the heads of the enterprises and institutions for which it is responsible where such orders or directives conflict with the laws; and suspend the implementation of decisions of meetings of collective farmers or of members of consumer co-operatives, or of management boards of collective farms or rural retail co-operatives, and that of orders or directives issued by the heads of enterprises, institutions or organizations affiliated to higher authorities situated on its territory, concerning matters of land use, public utilities, facilities and amenities, the development of population centre, or the protection of nature and of cultural monuments, where such decisions, orders or directives conflict with the laws, informing the appropriate higher authority accordingly;

(c) Render assistance to popular control groups at collective farms, state farms, enterprises and other organizations situated on its territory;

(d) Direct the activities of the people's militia and comrades' courts at collective farms and at citizens' homes; and control the work of the district special constabulary on its territory;

(e) Grant interviews to citizens; examine, within the time limits prescribed by law, citizens' proposals, claims and complaints, and take the necessary action on them; and ensure that the prescribed procedure for dealing with proposals, claims and complaints is duly complied with by the collective farms, state farms, enterprises, institutions and other organizations situated on its territory;

(f) Carry out, in accordance with the established procedure, the registration and de-registration of citizens; and ensure that officials and citizens comply with the regulations of the identity-card system;

(g) Inflict administrative sanctions on officials and citizens for infringements of the rules and regulations on the maintenance of cleanliness in population centres and the protection of nature and cultural monuments, or of those governing the development of population centres and their public utilities and amenities, and the trade in alcoholic beverages; for being in possession of unlawfully distilled spirits; for the destruction of crops by livestock on collective and state farms; and for offences in the cases and in accordance with the procedures prescribed by the laws of the Byelorussian SSR;

(h) Set up, where necessary and with the consent of the executive committee of the next higher Soviet, an administrative tribunal attached to its own executive committee, to deal with infringe-

ments of the law punishable by administrative process; and exercise control over its activity;

(i) Register, in accordance with the requirements of Byelorussian law, civil status documents;

(j) Appoint guardians and tutors, and supervise the way in which they carry out their duties;

(k) Register the partitioning of family property of collective-farm (peasant) households;

(l) Perform notarial functions in accordance with the Statute of the State Notary's Office of the Byelorussian SSR;

(m) Issue citizens with papers establishing their identity and family and property status; and with other certificates provided for by the laws;

(n) Take steps to safeguard and make use of ownerless property, and property that has accrued to the State by inheritance; and ensure the safe custody of hereditary property in the interests of the State, of state, co-operative and public organizations, and of citizens; and

(o) Ensure respect for the laws on religious cults.

Article 24. A village or settlement Soviet of Working People's Deputies may, in addition to the matters designated in the present Act, deal with other matters relating to economic, social and cultural construction where authorized to do so by the laws of the USSR and the Byelorussian SSR.

Chapter III

ORGANIZATION OF THE WORK OF VILLAGE OR SETTLEMENT SOVIETS OF WORKING PEOPLE'S DEPUTIES

4. Members of village or settlement Soviets of Working People's Deputies

Article 57. The term of office of a member of a village or settlement Soviet of Working People's Deputies runs from the day of his election to the day of the elections for the village or settlement Soviet of Working People's Deputies of the next convocation.

Article 58. A member of a village or settlement Soviet of Working People's Deputies shall take part in the Soviet's work, carry out its commissions, keep in constant touch with his electors, keep them informed about the decisions taken by the Soviet and its executive committee, see that effect is given to their instructions and proposals, see citizens in person, and help them to get their claims and complaints settled.

Article 59. A member of a village or settlement Soviet of Working People's Deputies has the right to table for discussion by the Soviet, its executive committee and its standing commissions proposals relating to matters arising in the course of his parliamentary duties.

Article 60. A member of a village or settlement Soviet of Working People's Deputies has the right at sittings to address questions to the executive committee of the Soviet or the heads of collective

farms, state farms, enterprises, institutions and other organizations situated on the Soviet's territory.

The executive committee of the Soviet, or the head of the collective farm, state farm, enterprise, institution or other organization, to which or to whom a deputy's question is directed, shall give an answer to the question at the same sitting or, if more time is needed to prepare the reply, within a time limit fixed by the Soviet. The latter shall take a decision in the light of the reply to the question.

Article 61. A member of a village or settlement Soviet of Working People's Deputies has the right of special access to the head of the executive committee of the Soviet and to the heads of enterprises, institutions and organizations in the settlement of questions arising in the discharge of his parliamentary duties.

Article 62. Where a member of a village or settlement Soviet of Working People's Deputies appeals to the head of a collective farm, state farm, enterprise, institution or other organization situated on the Soviet's territory about a matter arising in the discharge of his parliamentary duties, the person approached shall give an answer to the appeal within a period not exceeding five days.

Article 63. A member of a village or settlement Soviet of Working People's Deputies may take part in checks on the work of collective farms, state farms, enterprises, institutions and other organizations situated on the territory of the Soviet, and submit relevant proposals relating to the results of the check.

Article 64. Under Article 117 of the Constitution of the Byelorussian SSR, a member of a village or settlement Soviet of Working People's Deputies is required to account to the electors for his own work and for that of the Soviet of which he is a member.

Such account by a member of a village or settlement Soviet of Working People's Deputies shall be rendered not less often than twice a year. The electors may call upon a deputy to report to them in this way at any time.

Article 65. A member of a village or settlement Soviet of Working People's Deputies may not be dismissed from his work at an enterprise, institution or organization, or expelled from a collective farm, at the instance of the administration; nor may be charged with a criminal offence or arrested on the Soviet's territory without its consent, or, in the intervals between sessions, without that of its executive committee.

Article 66. A member of a village or settlement Soviet of Working People's Deputies shall, during sessions, or during meetings of the executive committee if elected thereto, be exempted from fulfilling his production or service obligations without loss of wages or of his average earnings at his regular place of work.

Article 67. The mandate of a member of a village or settlement Soviet of Working People's

Deputies who fails to justify the trust placed in him may be revoked at any time by decision of a majority of his electors taken in accordance with the procedure prescribed by law.

Article 68. A member of a village or settlement Soviet of Working People's Deputies who moves his permanent domicile to a place outside the Soviet's territory, or who is unable for other reasons to discharge his parliamentary duties in his constituency, shall make a statement thereon to his village or settlement Soviet, asking to be released from his functions. The Soviet concerned shall consider the deputy's statement at an ordinary session, reach a decision on it, and bring the decision to the notice of the electors.

Article 69. The mandate of a member of a village or settlement Soviet of Working People's Deputies may be terminated prematurely if his constituents recall him, or in virtue of the Soviet's decision on his request to be released from his functions.

Article 70. Where a deputy ceases to be a member of a village or settlement Soviet of Working People's Deputies, the executive committee of the latter shall, within a period not exceeding two months from the date of the deputy's departure, call elections for a new deputy in the constituency concerned.

5. Participation of the population in the work of village or settlement Soviets of Working People's Deputies—General assemblies of citizens and village meetings

Article 71. A village or settlement Soviet of Working People's Deputies shall ensure the active participation of citizens in settling questions of local and general state interest, draw them into its activities, and direct the work of agencies of popular initiative.

Article 72. The executive committee of a village or settlement Soviet of Working People's Deputies shall convene general assemblies of citizens resident in the Soviet's territory, or village meetings, as a whole or by population centres, streets or wards, as well as meetings of representatives of the residents of the village or settlement itself, to discuss the most important matters affecting the lives of the citizens and to explain to the working people the laws, and the major decisions of local Soviets.

Such meetings or assemblies of the citizens of villages, country areas or settlements shall discuss questions of public utilities and amenities, municipal, household and cultural services to the population, and the maintenance of public order; hear reports on the work of the executive committee of the village or settlement Soviet; and deal with other business as provided for in the legislation of the Byelorussian SSR. Village meetings shall discuss and take decisions on questions relating to self-taxation of the population.

**5. RESOLUTION OF THE CENTRAL COMMITTEE OF THE COMMUNIST PARTY OF BYELORUSSIA AND OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR
OF 4 DECEMBER 1968**

Improvement of the administration of physical culture and sport in the Byelorussian SSR

(EXTRACT)

1. With the object of improving the administration of physical culture and sport in the Byelorussian SSR, a union-republican committee on physical culture and sport shall be set up under the Council of Ministers of the Byelorussian SSR based on the Republican Council of Unions of Sporting Societies and Organizations of the Byelorussian SSR.

The desirability is recognized of setting up in each region, town and urban district a committee on physical culture and sport attached to the executive committee of each region, town and urban district Soviet of Working People's Deputies.

The Committee on Physical Culture and Sport of the Council of Ministers of the Byelorussian SSR is entrusted with the administration of physical training in the Republic with the following terms of reference: to work out and put into practice a scientific system of physical training for the population; to carry out republican directives relating to sport; to supervise sporting competitions; to ensure the participation of Byelorussian teams in all-Union and international competitions; to organize scientific working methods to train and assign physical-culture teams; to distribute sports material and equipment; and to co-ordinate plans for building sports facilities and installations.

CAMEROON

LAW No. 68-LF-1 OF 11 JUNE 1968 TO ORGANIZE CIVIL DEFENCE ¹

1. There shall be established a Civil Defence Service whose mission shall be, at all times and everywhere:

(a) To preserve the civilian population, the material resources and the various national sources of wealth from the risks and effects of war;

(b) To assist the victims of such effects.

2. The organization of civil defence shall involve, *inter alia*:

— Measures for training and officering the population;

— Local security measures;

— Protective measures;

— Measures of assistance.

...

¹ *Official Gazette of the Federal Republic of Cameroon*, No. 2 (Supplementary), of 15 July 1968.

LAW No. 68-LF-3 OF 11 JUNE 1968 TO SET UP THE CAMEROON NATIONALITY CODE²

Chapter I

GENERAL

Section 1. Cameroon nationality attaches at birth, as the nationality of origin, by operation of law.

Section 2. Cameroon nationality is acquired or lost after birth either by operation of law or by the decision of a public authority under the law.

Section 3. Provisions regarding nationality contained in international treaties or agreements duly ratified and published shall have effect in Cameroon even though contrary to the provisions of Cameroon internal legislation.

Section 4. Majority for the purposes of this code is attained at the full age of twenty-one years.

Section 5. The attachment or acquisition of Cameroon nationality extends automatically to the minor unmarried children of the person in question.

Chapter II

NATIONALITY OF ORIGIN

A. BY DESCENT

Section 6. Cameroon nationality attaches to:

(a) A legitimate child born of Cameroonian parents;

² *Ibid.*

(b) An illegitimate child whose natural parents are both Cameroonians.

Section 7. Cameroon nationality attaches to:

(a) A legitimate child born of a Cameroonian father or a Cameroonian mother;

(b) An illegitimate child born of parents of whom one is Cameroonian, when his affiliation to that one is first established, though the other be foreign; but subject in either case to the minor's right to renounce Cameroon nationality within six months before his majority, either if he was born out of Cameroon or if, according to the national law of the foreign parent, he is able to avail himself of that nationality.

Section 8. Cameroon nationality attaches to:

(a) A legitimate child born of a Cameroonian mother and a father of no nationality or of unknown nationality;

(b) An illegitimate child born of parents of whom one is Cameroonian, though his affiliation to that one be later established, if the other is of no nationality or of unknown nationality.

B. BY BIRTH

Section 9. Cameroon nationality attaches to every child born in Cameroon of unknown parents. Provided that, if during his minority his affiliation is established with regard to a foreign parent and if in accordance with the national law of this foreign parent, he has the nationality of the latter, he shall be deemed never to have been a Cameroonian.

Section 10. A new-born child found in Cameroon will be presumed *prima facie* to have been born in Cameroon.

Section 11. Cameroon nationality attaches, subject to the right to renounce it within six months before majority, to:

(a) A legitimate child born of foreign parents, if both he and his father or mother were born in Cameroon;

(b) An illegitimate child born of foreign parents, if both he and the parent to whom his affiliation is first established were born in Cameroon.

Section 12. The acquisition of Cameroon nationality extends automatically to any person unable to claim any other nationality of origin if that person was born in Cameroon.

C. COMMON

Section 13. (1) A child having Cameroon nationality under the provisions of this Chapter shall be deemed to have been Cameroonian from birth even if the conditions required by law for the attachment of that nationality are not satisfied until later.

(2) Provided that in that case the attachment of Cameroon nationality from birth shall not affect the validity of the acts-in-the-law of the person in question or the rights acquired by third parties on the basis of the child's apparent nationality.

Section 14. To be effective in causing Cameroon nationality to attach, affiliation must be established by Cameroon law or custom.

Section 15. The affiliation of an illegitimate child has no effect on his nationality unless established in the course of his minority.

Section 16. The provisions of Section 11 of this law are not applicable to children born in Cameroon to foreign diplomatic representatives or career consuls, but such children may voluntarily acquire Cameroon nationality under Section 20 of this law.

Chapter III

ACQUISITION

A. BY MARRIAGE

Section 17. Subject to the following provisions, a foreign woman marrying a Cameroonian may, by express request, acquire Cameroon nationality at the moment of celebration of the marriage.

Section 18. (1) A woman whose national law permits her to retain her nationality of origin may declare, at the time of celebration of the marriage and in the form prescribed by Sections 36 and following of this law, that she declines Cameroon nationality.

(2) She may exercise this right without authorization even if a minor.

Section 19. Within six months after the celebration of marriage while this law is in force or within six months from the date of the promulgation of this law in the case of any marriage celebrated earlier, the Government may by Decree prevent such an acquisition of Cameroon nationality.

B. BY DECLARATION

Section 20. Any person born in Cameroon of foreign parents may claim Cameroon nationality within six months before attaining his majority by declaration in the manner prescribed by Sections 36 and following of this law, provided that on such date he has had his domicile or residence in Cameroon for at least five years.

Section 21. The adopted child of a Cameroonian may declare within six months before attaining his majority and in the manner prescribed by Sections 36 and following of this law, that he claims Cameroon nationality, provided that at the time of his declaration he has his domicile or residence in Cameroon.

Section 22. The married minor children or major children of a parent restored to Cameroon nationality under Section 28 of this law, wherever born and of whatever residence, may claim Cameroon nationality by declaration in the manner prescribed in Sections 36 and following of this law.

Section 22. Cameroon nationality may be acquired by declaration under Section 20, or 21,

or 22 of this law at the date of signature of the declaration, subject to the Government's right to prevent such acquisition by decree.

C. BY NATURALIZATION

Section 24. Cameroon nationality may be conferred by decree on a foreigner requesting it.

Section 25. Cameroon nationality may not be conferred on a person:

(a) Who has not attained the full age of twenty-one years;

(b) Who cannot show habitual residence in Cameroon for five consecutive years up to presentation of his application;

(c) Whose main interests are not based in Cameroon at the time of the signature of the naturalization decree;

(d) Who is not of good character and morals, or has suffered conviction of an offence against ordinary law, not expunged by rehabilitation or amnesty;

(e) Who has not been found to be of sound body and mind.

Section 26. Notwithstanding the provisions of the foregoing section, no probationary period shall be required of a foreigner:

(a) Born in Cameroon or married to a Cameroon wife;

(b) Who has rendered exceptional services to Cameroon or whose naturalization would be highly advantageous to Cameroon.

Section 27. The manner of dealing with the application and the ascertainment of the assimilation and state of health of a foreigner applying for naturalization as well as the determination of the duty payable to the Treasury shall be prescribed by decree.

D. RESTORATION

Section 28. Restoration to Cameroon nationality shall be conferred by decree without condition of age or probation, but subject to necessity of proof that the applicant was formerly a Cameroonian and showing residence in Cameroon at the moment of restoration.

Section 29. No person who has forfeited Cameroonian nationality under Section 34 of this law may be restored to it without having later rendered exceptional service to Cameroon.

E. COMMON

Section 30. (1) Acquisition of Cameroon nationality implies enjoyment from the same date thereof of all rights attached to nationality.

(2) A naturalized foreigner may not, however, be invested with any elective office for a period of five years from the date of his naturalization.

(3) Exceptionally, if the naturalized foreigner has rendered outstanding services to Cameroon or

if this naturalization is of exceptional interest to Cameroon, this incapacity may be annulled by decree.

Chapter IV

LOSS AND FORFEITURE

A. Loss

Section 31. Cameroon nationality is lost by:

(a) Any Cameroon adult national who wilfully acquires or keeps a foreign nationality;

(b) Renunciation under this law;

(c) Any person who, occupying a post in a public service of an international or foreign body, retains that post notwithstanding an injunction by the Cameroonian Government to resign it.

Section 32. (1) A Cameroon woman marrying a foreigner shall retain her Cameroon nationality unless she expressly renounces it at the moment of marriage and in the manner prescribed by Sections 36 and following of this law.

(2) She may declare without authorisation even if a minor. Provided always that no such declaration shall be valid unless by her husband's national law the wife will or may acquire his nationality.

Section 33. In all the foregoing cases loss of Cameroon nationality frees from allegiance to Cameroon.

B. FORFEITURE

Section 34. A foreigner who has acquired Cameroon nationality may forfeit it by decree:

(a) If he has been convicted of an act defined as a criminal act or an offence against the internal or external security of the State;

(b) If he has committed acts harmful to the interests of the State.

Section 35. Forfeiture is incurred only if the events contemplated by the foregoing Section took place within ten years of acquisition of Cameroon nationality, and may be pronounced only within ten years from the commission of such an act.

Chapter V

FORM OF ACTS

Section 36. Any declaration acquiring, declining or renouncing Cameroon nationality, or abandoning the right to renounce it under the circumstances prescribed by law, shall be signed before the Judge or President of the Civil Court at the chief-town of the subdivision in which the declarant resides.

LAW No. 68-LF-4 OF 11 JUNE 1968 TO ORGANIZE
THE SYSTEM OF REQUISITIONS ³

1. DEFINITION

Requisitioning is an act of public authority whereby some civil or military body imposes the performance of certain services on some natural person or corporate body under conditions strictly defined by the law.

2. PURPOSES OF REQUISITION

Every requisition must be warranted by reasons of public utility, either for the purpose of meeting inadequacies in the usual ways and means at the disposal of the Armed Forces (military requisitions), or in order to guarantee national requirements (civil requisitions), both with regard to Defence and in cases of natural disaster or of very serious mishap.

3. SERVICES LIABLE TO REQUISITION

All property and services necessary for Defence or national requirements shall be liable to unrestricted requisition. With regard to property, however, only movable goods and chattels shall be liable to requisition of ownership.

4. THE REQUISITIONING AUTHORITY

The requisitioning authority is the authority by whom the requisition order is issued and made enforceable.

Every requisition shall give rise to a written order signed by that authority and to a receipt for the goods or services requisitioned in the matter of property.

The Civil and Military Authorities to whom right of requisition is delegated shall be appointed by decree.

5. COMMENCEMENT AND TERMINATION OF THE RIGHT TO REQUISITION

The right to requisition shall commence with the decree establishing a state of alert, emergency, partial or general mobilization, or exception.

Nevertheless, this decree may defer the exercise of that right or make it subject to special decree.

The right to requisition shall lapse when the state which gave rise to it comes to an end, barring special provisions made by decree for a specific period subject to renewal.

In the event of natural calamities or very serious accidents, the Heads of Administrative Areas, Police Superintendents and Constabulary Officials shall be entitled to impress any persons and to requisition any means necessary for organizing relief.

...

³ *Ibid.*

DECREE No. 68-DF-478 OF THE 16 DECEMBER 1968 TO ESTABLISH RULES
OF PROCEDURE UNDER THE NATIONALITY CODE ⁴

Chapter I

PROCEDURE FOR THE ACQUISITION OF CAMEROON
NATIONALITY BY MARRIAGE

1. (1) The declaration provided for by section 36 (a) of the Nationality Code shall be signed in three copies before the President of the District Court or the Judge of the Magistrates Court or the diplomatic or consular representative of Cameroon abroad either before or at the latest, at the moment of celebration of the marriage between a Cameroonian and a foreign woman or one presumed to be foreign.

2. (1) Before the celebration of marriage, the civil status registrar shall inform the woman whom he presumes to be foreign of the conditions for the acquisition of Cameroon nationality.

(2) He shall notify her in particular of the provisions of sections 17, 18 and 19 of the Nationality Code.

3. After the celebration of marriage, the civil status registrar shall transmit to the Ministry of Justice, within the month following the celebration, a copy of the marriage registration together with the declaration made by the foreign woman for the purposes of registration.

4. Where the marriage is celebrated by a foreign civil status registrar, the competent diplomatic or consular representative of Cameroon shall be responsible for implementing the provisions of articles 2 and 3.

Chapter II

CONDITIONS FOR THE EXAMINATION OF APPLICATIONS
FOR NATURALIZATION AND RESTORATION

9. (1) An application for naturalization shall be addressed to the Minister of Justice, Keeper of the Seals.

(2) The applicant must set out clearly in his application the grounds for his desire to acquire Cameroon nationality.

10. (1) The Minister of Justice shall cause a police inquiry to be conducted into the morals, conduct and loyalty of the person concerned, his degree of assimilation to the Cameroonian Community and the interest of his naturalization from a national point of view.

Chapter III

PROOF OF NATIONALITY BEFORE THE COURTS

15. (1) The burden of proof in matters of nationality shall rest with the party who, by an

action or by an incidental plea of defence, claims that he possesses or does not possess Cameroon nationality.

(2) Provided that the burden of proof shall be transferred to the party who, by the same means, disputes the Cameroon nationality of a person in possession of a certificate of Cameroon nationality issued in pursuance of section 12 of the Nationality Code.

(3) Refusal to deliver a certificate of nationality shall be established by an attestation of the authorities referred to in section 42 of the Nationality Code.

16. Proof of a declaration to acquire nationality shall be established by the production of a registered copy of such declaration or, failing this, of an attestation delivered by the Minister of Justice, either certifying that this declaration has been duly signed and registered or issued in lieu of registration.

17. Where the law provides the right to sign a declaration renouncing or declining Cameroon nationality, proof that such a declaration has not been signed may only be established by an attestation delivered by the Minister of Justice.

18. (1) Proof of a decree of naturalization or restoration shall be established by the production of a copy of the *Official Gazette* in which such decree was published.

(2) In lieu of this, proof may be established by an attestation from the Keeper of the Seals certifying the existence of such decree.

(19) Proof of the loss or forfeiture of nationality in the circumstances referred to in sections 31c and 34 of the Nationality Code shall be established under the conditions prescribed by article 16.

20. Proof of a declaration renouncing Cameroon nationality shall be established by the production of a registered copy of such declaration or, failing this, of an attestation from the Minister of Justice certifying that the declaration of renunciation has been duly signed and registered.

21. Where nationality is lost in circumstances not provided for by sections 31, 32 and 34 of the Nationality Code, proof shall be established by ascertaining the veracity of the facts and acts which resulted in the loss of nationality.

22. (1) Apart from cases of loss and forfeiture of Cameroon nationality, proof of foreign nationality may be established by any means.

(2) Provided that proof of the foreign nationality of a person possessing the status of a Cameroonian may only be established by a demonstration that the person concerned satisfies one of the conditions imposed by law for possession of the status of Cameroonian.

⁴ *Official Gazette of the Federal Republic of Cameroon*, No. 1, of 15 January 1969.

CANADA

NOTE¹

In 1968, both Federal and Provincial Governments assented to a number of acts which directly affect the fundamental human freedoms outlined in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. The period is characterized by extensive reappraisals and reforms. The Federal-Provincial Conferences, the report of the Royal Commission on Bilingualism and Biculturalism, the reform of the Criminal Code and inquiries such as the inquiry into civil rights in Ontario, reflect the deep concern of Canadians for fundamental human freedoms and the measures that must be taken to bring them about.

As much of the legislation dealing with education, the family, employment standards, housing, health plans, discrimination and citizens remedies against the actions of administrative tribunals are provincial matters and generally are duplicated across Canada. The Acts listed here are only representative of the human freedoms outlined in the two covenants mentioned above. We are also concerned with the International Convention on the Elimination of All Forms of Racial Discrimination.

Provincial legislation dealing with discrimination

International Year for Human Rights was celebrated widely in Canada,² and one Province, Prince Edward Island, specifically acknowledged the International Year in drafting its Human Rights Code, which is similar in scope to the Nova Scotia and Ontario Human Rights Acts. The Code prohibits discrimination on the grounds of race, religion, religious creed, colour or ethnic or national origin in public accommodation, housing, employment, trade union membership and in published notices or signs. The text of the act taken from the Statutes of Prince Edward Island 1968 is as follows:

¹ Note furnished by the Government of Canada.

² See also below, p. 72.

AN ACT RESPECTING HUMAN RIGHTS³

(Assented to 25 April 1968)

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations; and

Whereas it is recognized in Prince Edward Island as a fundamental principle that all persons are equal in dignity and human rights without regard to race, religion, religious creed, colour or ethnic or national origin; and

Whereas 1968 has been proclaimed by the General Assembly of the United Nations as International Year for Human Rights and it is fitting that the aforementioned principle be reaffirmed by the enactment of a measure whereby the rights of the individual may be safeguarded;

Therefore, be it enacted by the Lieutenant-Governor and Legislative Assembly of the Province of Prince Edward Island as follows:

1. This Act may be cited as the Human Rights Code.

...

3. Nothing in this Act shall be construed as enlarging or restricting or otherwise altering the force and effect of any provision in any other Act.

4. No person shall deny to any person or class of persons admission to or enjoyment of the accommodation, services or facilities available in any place to which the public is customarily admitted only because of the race, religion, religious creed, colour or ethnic or national origin of such person or class of persons.

5. No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall,

³ Statutes of Prince Edward Island, 1968, c. 24.

(a) Deny to any person or class of persons occupancy of any dwelling unit in any building; or

(b) Discriminate against any person or class of persons with respect to any term or condition of occupancy of any dwelling unit in any building only because of the race, religion, religious creed, colour or ethnic or national origin of such persons or class of persons, or of any other person or class of persons.

6. (1) No employer or person acting on behalf of an employer shall refuse to employ or to continue to employ or otherwise discriminate against any person in regard to employment or any term or condition of employment because of his race, religion, religious creed, colour, or ethnic or national origin.

(2) No employer or person acting on behalf of an employer shall use, in the hiring or recruitment of persons for employment, an employment agency that discriminates against persons seeking employment because of their race, religion, religious creed, colour or ethnic or national origin.

(3) No trade union shall exclude any person from full membership or expel or suspend or otherwise discriminate against any of its members or discriminate against any person in regard to his employment by any employer, because of that person's race, religion, religious creed, colour or ethnic or national origin.

(4) No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or oral inquiry in connection with employment that expresses either directly or indirectly any limitation, specification, or preference as to race, religion, religious creed, colour or ethnic or national origin.

(5) This section does not apply,

(a) To a domestic employed in a private home;

(b) To an exclusively charitable, religious, philanthropic, educational, fraternal or social organization that is not operated for profit, or

(c) To any organization that is operated primarily to foster the welfare of a religious or ethnic group and that is not operated for private profit.

7. (1) No employer and no person acting on his behalf shall pay a female employee at a rate of pay less than the rate of pay paid to a male employee employed by him for substantially the same work done in the same establishment.

(2) A difference in the rate of pay between a female and a male employee based on any factor other than sex shall not constitute a failure to comply with this section.

8. (1) No person shall,

(a) Publish or display or cause to be published or displayed; or

(b) Permit to be published or displayed on lands or premises or in a newspaper, through a radio broadcasting station or by means of any other medium which he owns or controls, any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or any class of persons

for any purpose because of the race, religion, religious creed, colour, or ethnic or national origin of such person or class of persons.

(2) Nothing in this section shall be deemed to interfere with the free expression of opinions upon any subject by speech or in writing.

9. No person, employer, or trade union shall evict, discharge, suspend, expel or otherwise discriminate against any person because he has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

10. (1) When a person claiming to be aggrieved by an alleged violation of this Act makes a complaint in writing to the Minister on a form prescribed by the Minister, the Minister may designate an official of the Department of Labour and Manpower Resources to inquire into the complaint and endeavour to effect a settlement of the matter complained of.

(2) Nothing in this section restricts the right of an aggrieved person to initiate proceedings under any other provisions of this Act before a court, judge or magistrate against any person for an alleged contravention of this Act.

11. If the official designated by the Minister is unable to effect a settlement of the matters complained of, he shall so report to the Minister.

12. (1) The Minister shall inquire into the matters complained of and shall give full opportunity to all parties to present evidence and make representations and, in the case of any matter involved in a complaint in which settlement is not effected in the meantime, he finds that the complaint is supported by the evidence, shall direct the course that ought to be taken with respect to the complaint.

(2) The Minister may issue whatever order he considers necessary to carry out the course of action into effect.

(3) Every person in respect of whom an order is made under this section shall comply with such order.

13. (1) The Minister has power to administer this Act.

(2) Without limiting the generality of the foregoing, it is the function of the Minister,

(a) To forward the principle that every person is free and equal in dignity and rights without regard to race, religion, religious creed, or colour or ethnic or national origin.

(b) To promote an understanding of, acceptance of and compliance with this Act;

(c) To develop and conduct educational programmes designed to eliminate discriminatory practices related to race, religion, religious creed, colour or ethnic or national origin.

14. Every person who does anything prohibited by this Act or who refuses or neglects to do anything required by or under this Act is liable on summary conviction:

(a) If an individual, to a fine not exceeding one hundred dollars; and

(b) If a corporation, trade union, employers' organization or employment agency, to a fine not exceeding five hundred dollars.

15. (1) No prosecution for an offence under this Act shall be instituted without the consent in writing of the Minister.

(2) No proceedings under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity.

16. A prosecution for an offence under this Act may be brought against an employers' organization or a trade union in the name of the organization or union, and for the purpose of such prosecution an employers' organization or trade union shall be deemed to be a person, and any act or thing done or omitted by an officer or agent of an employers' organization or trade union within the scope of his authority to act on behalf of the organization or trade union shall be deemed to be an act or thing done or omitted by the employers' organization or trade union.

17. (1) Where a person has been convicted of an offence under this Act, the Minister may apply by way of petition to a judge of the Supreme Court for an order enjoining such person from continuing such offence.

(2) The judge, in his discretion, may make such order and the order may be enforced in the same manner as any other order or judgment of the Supreme Court.

18. The Lieutenant-Governor-in-Council may make such regulations as he deems necessary or desirable for the better attainment of the objects and purposes of this Act.

19. The prohibitions contained in this Act apply to and bind the Crown in right of Prince Edward Island and every agency thereof.

20. The Equal Pay Act, 8 Elizabeth II, 1959, Chapter 11 and all amendments thereto, is hereby repealed.

In Ontario, the Age Discrimination Act⁴ which forbids discrimination by employees and trade unions against persons between 40 and 65 years because of their age was amended to prohibit a limitation or specification based on age in job advertising.⁵

The pertinent article of the Age Discrimination Act, to which clause (c) has been added, now reads as follows:

"5.—(1) No employer or person acting on behalf of an employer shall,

(a) Refuse to employ or to continue to employ any person or discriminate against any person with regard to employment or any condition of employment; or

(b) Refuse promotion to an employed person;

(c) Publish or display or cause to be published or displayed or permit to be published or displayed any notice, sign, advertisement or publication, which expresses directly or indirectly any attention to make any limitation, specification or discrimination with respect to

the employment or prospective employment of any person, because of his age.

(2) No trade union shall exclude from membership or expel or suspend any person or member or discriminate against any person because of his age."

Provincial Ombudsman Acts

An amendment to the Ombudsman Act in Alberta brought the Workmen's Compensation Board within the jurisdiction of the Ombudsman.⁶

AN ACT TO AMEND THE OMBUDSMAN ACT

(Assented to 25 April 1968)

1. *The Ombudsman Act* is hereby amended as to section 2, clause (a) by adding at the end thereof the words "and includes The Workmen's Compensation Board".

2. This Act comes into force on the day upon which it is assented to.

The New Brunswick Ombudsman Act⁷ was amended to provide that no rule of law that authorizes the withholding of information on the grounds of protecting the public interest applies to the Ombudsman. The expression "rule of law" was substituted for "Act" and covers not only statutes but also regulations, including Orders-in-Council.

AN ACT TO AMEND THE OMBUDSMAN ACT⁸

(Assented to 22 March 1968)

1. Subsection (2) of section 19 of the Ombudsman Act, Chapter 18 of 16 Elizabeth II, 1967, is repealed and the following substituted therefor:

"(2) Subject to subsection (1), a rule of law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question on the ground that the disclosure of the document, paper or thing, or the answering of the question would be injurious to the public interest, does not apply in respect of any investigation by or proceedings before the Ombudsman."

Civil and political rights

An Act to amend the Criminal Code abolished capital punishment for a trial five-year period except for capital murder which is now defined as causing the death of a law enforcement officer or employee of a prison acting in the course of his duties.

⁴ *Statutes of Ontario*, 1966, chap. 3.

⁵ *Statutes of Ontario*, 1968, chap. 2.

⁶ *Statutes of Alberta*, 1967, chap. 75.

⁷ *Statutes of New Brunswick*, 1967, chap. 18.

⁸ *Statutes of New Brunswick*, 1968, chap. 44.

AN ACT TO AMEND THE CRIMINAL CODE⁹*(Assented to 21 December 1967)*

1. Subsection (2) of section 202A of the *Criminal Code* is repealed and the following substituted therefor:

"(2) Murder is capital murder, in respect of any person, where such person by his own act caused or assisted in causing the death of

(a) A police officer, police constable, constable, sheriff, deputy sheriff, sheriff's officer or other person employed for the preservation and maintenance of the public peace, acting in the course of his duties, or

(b) A warden, deputy warden, instructor, keeper, gaoler, guard or other officer or permanent employee of a prison, acting in the course of his duties, or conselled or procured another person to do any act causing or assisting in causing the death."

2. Subsection (3) of section 656 of the said Act is repealed and the following substituted therefor:

"(3) Notwithstanding any other law or authority, a person in respect of whom a sentence of death has been commuted to imprisonment for life or a term of imprisonment or a person upon whom a sentence of imprisonment for life has been imposed as a minimum punishment, shall not be released during his life or such term, as the case may be, without the prior approval of the Governor in Council."

3. (1) Where proceedings in respect of an offence that, under the provisions of the *Criminal Code* existing immediately prior to the coming into force of this Act, was punishable by death were commenced before the coming into force of this Act, the following rules apply, namely:

(a) The offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of that offence shall be imposed, as if this Act had not come into force; and

(b) Where a new trial of a person for the offence has been ordered and the new trial is commenced after the coming into force of this Act, the new trial shall be commenced by the preferring of a new indictment before the court before which the accused is to be tried, and thereafter the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act.

(2) Where proceedings in respect of an offence that would, if it had been committed before the coming into force of this Act, have been punishable by death are commenced after the coming into force of this Act, the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed, as if it had been committed after the coming into force of this Act irrespective of when it was actually committed.

(3) For the purposes of this section, proceedings in respect of an offence shall be deemed to have commenced upon the preferring of an indictment pursuant to the provisions of Part XVII of the *Criminal Code*.

4. (1) Subject to subsection (2), this Act shall continue in force for a period of five years from the day fixed by proclamation pursuant to section 5, and shall then expire unless before the end of that period Parliament, by joint resolution of both Houses, directs that it shall continue in force.

(2) Upon the expiration of this Act, the law existing immediately prior to the coming into force of this Act, in so far as it is altered by this Act, shall again operate except in respect of any offence alleged by an indictment to have been committed on, or on or about, a day prior to the expiration of this Act, or between two days the earlier of which is prior to the expiration of this Act, in respect of which offence this Act shall continue in force.

5. This Act shall come into force on a day to be fixed by proclamation.

RIGHT TO COUNSEL

*Regina v. Ballegeer*¹⁰

Shortly after 9.00 p.m. on Friday, 21 June, two constables of the Royal Canadian Mounted Police came to the Remote Weather Observation site of the Department of Transport of the City of Winnipeg, where the accused was employed as a meteorological technician. They informed the accused that he was being charged with breaking and entering and theft. He asked to be allowed to make a telephone call to his lawyer. It may be noted that there was a telephone in the adjoining room. His request was refused. Here unquestionably was a patent and deliberate denial to the accused of a legal right.

Another employee of the Department of Transport then came to relieve the accused. While the constables were talking with this other employee, the accused went into the adjoining office and, without the knowledge of the constables, placed a call to his lawyer, Mr. Rees Brock, at his home in Winnipeg. Before he was able to receive any advice from Mr. Brock, one of the constables came into the office and demanded that the accused give him the telephone. Mr. Brock then asked phone was then handed to the constable, who that he could ascertain the nature of the charge and obtain information concerning bail. The telephone was then handed to the constable who informed Mr. Brock about the charge. What took place thereafter is best set forth in the following extract from the affidavit of Mr. Brock:

I discussed bail with Constable Taylor and then asked to again speak to Ballegeer. Constable Taylor refused saying he wanted to get a statement first and get the tires back. I told Constable Taylor that I wanted to advise Ballegeer not to make a statement until I could talk to him but Taylor re-

⁹ *Statutes of Canada, 1967-1968, chap. 15.*

¹⁰ (1969) *Dominion Law Reports* (3rd) 74.

fused. I asked Taylor to relay my advice to Ballegeer but he said he would not do so.

In the Crown's lengthy report on facts to this Court, no attempt whatever was made to controvert the foregoing allegation.

Here is a spectacle of a police officer wilfully, and, alas, successfully, frustrating the due process of law. What the constable did was wrong and unjustifiable, and his conduct cannot receive the sanction of the Court. Why he acted thus, contrary to law and to the usual and accepted practice, may be gleaned from a telephone conversation which took place later that night. At about 11.30 p.m., after the alleged confession had been obtained from the accused, the latter, still in custody, again phoned Mr. Brock. Again a quote from Mr. Brock's affidavit:

Constable Taylor came on the phone to explain his earlier refusal to allow me to continue my discussion with Ballegeer and told me he had driven 130 miles to get a statement from Ballegeer.

The constable had travelled a long distance in the hope of obtaining a statement from the accused, and evidently he was not going to permit a lawyer's intervention to prevent that purpose from being realized. His excessive zeal resulted in a denial of the rights of the accused.

In his affidavit, the accused points out that when he appeared in Court, he felt that his signed statement committed him to enter a plea of guilty. I may add that he appeared at the hearing without counsel.

I would allow the appeal, set aside the conviction and sentence, permit the accused to withdraw the plea of guilty that was entered, and direct a new trial.

Although there is a heavy onus on an accused who, after pleading guilty in Court and after having been sentenced, seeks leave to change the plea to one of not guilty and to be given a new trial, the onus is met where the accused shows that legal advice which he sought to obtain had been actively and deliberately denied him by the police. The right, on being arrested or detained, to retain and instruct counsel without delay is a right enshrined in English common law, vindicated by many judicial decisions of high authority, and clearly and unmistakably affirmed in the Canadian Bill of Rights, 1960 (Can.), c. 44, s. 2(c)(ii).

*Re Vinarao*¹¹

The appellant, a nurse, arrived in Canada seeking admission as an immigrant to Canada from the Philippines. She had a passport which was endorsed with a non-immigrant visa and in which her status was characterized as visitor or tourist.

After an examination at the port of entry, she was reported to a Special Inquiry Officer and thereupon detained for an immediate inquiry to determine whether or not she was admissible. Such an inquiry was held and an order for deportation was made.

The appeal is based, as was the application below, upon the premise or submission that the required procedure under the statute was not properly carried out by the Special Inquiry Officer and that such officer exceeded and lost his jurisdiction by reason thereof.

The appellant submits that s. 27(2) of the Immigrant Act and s. 4 of the Immigration Regulations, Part II (SOR/62-37), provide that at such an inquiry by a Special Inquiry Officer, the person concerned has the right to be represented by counsel and to be so told at the commencement of the inquiry. In this particular case, at the opening of the inquiry, the Special Inquiry Officer advised the appellant that she could, if she desired, at her own expense, have the right to retain and instruct and be represented by counsel, and in so stating, virtually used language set out in said s. 4 of the Regulations so made under and by virtue of the Immigration Act. There is no suggestion that such words used were not in compliance with the statute and the Regulations. However, after such question as to whether she wished to have counsel was asked, the appellant stated, "Yes", and then proceeded to state that the counsel she wished to have was Mr. James Johannesson. Mr. Johannesson was then present and, in response to a question by the Special Inquiry Officer, stated that he was authorized to act as counsel for the appellant, and the inquiry proceeded.

It was ruled that an immigrant who appears before a Special Inquiry Officer who is conducting an inquiry into the right of admission of that immigrant in accordance with the Immigration Act, R.S.C. 1952, c. 325, and Regulations, is not denied "counsel" within the meaning either of that Act and its Regulations (Part II, SOR/62-37) or of the Canadian Bill of Rights, 1960 (Can.) c. 44, when, after her right to counsel has been explained to her, she is permitted to appear with and be represented by a friend who is not a lawyer. Nor does the presence of the friend constitute a failure by the officer to conduct the inquiry "separate and apart" from the public as required by the Act and Regulations.

Economic, social, cultural rights

SOCIAL RIGHTS

The Divorce Act provided additional grounds for divorce in Canada, in particular where either spouse has had no knowledge of the whereabouts of the other for a period of three years. Other grounds are outlined in the following sections 3 and 4 of the Act:¹²

"Grounds for divorce

"3. Subject to section 5, a petition for divorce may be presented to a court by a husband or wife, on the ground that the respondent, since the celebration of the marriage,

¹¹ *Dominion Law Reports* 1968.

¹² *Statutes of Canada*, 1967-1968, chap. 24.

- (a) Has committed adultery;
- (b) Has been guilty of sodomy, bestiality or rape, or has engaged in a homosexual act;
- (c) Has gone through a form of marriage with another person; or
- (d) Has treated the petitioner with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

"4. (1) In addition to the grounds specified in section 3, and subject to section 5, a petition for divorce may be presented to a court by a husband or wife where the husband and wife are living separate and apart, on the ground that there has been a permanent breakdown of their marriage by reason of one or more of the following circumstances as specified in the petition, namely:

- (a) The respondent
 - (i) has been imprisoned, pursuant to his conviction for one or more offences, for a period or an aggregate period of not less than three years during the five year period immediately preceding the presentation of the petition, or
 - (ii) has been imprisoned for a period of not less than two years immediately preceding the presentation of the petition pursuant to his conviction for an offence for which he was sentenced to death or to imprisonment for a term of ten years or more, against which conviction or sentence all rights of the respondent to appeal to a court having jurisdiction to hear such an appeal have been exhausted;

(b) The respondent has, for a period of not less than three years immediately preceding the presentation of the petition, been grossly addicted to alcohol, or a narcotic as defined in the *Narcotic Control Act* and there is no reasonable expectation of the respondent's rehabilitation within a reasonably foreseeable period;

(c) The petitioner, for a period of not less than three years immediately preceding the presentation of the petition, has had no knowledge of or information as to the whereabouts of the respondent and, throughout that period, has been unable to locate the respondent;

(d) The marriage has not been consummated and the respondent, for a period of not less than one year, has been unable by reason of illness or disability to consummate the marriage, or has refused to consummate it; or

(e) The spouses have been living separate and apart

- (i) for any reason other than that described in subparagraph (ii), for a period of not less than three years, or
- (ii) by reason of the petitioner's desertion of the respondent, for a period of not less than five years,

immediately preceding the presentation of the petition.

(2) On any petition presented under this section, where the existence of any of the circumstances described in subsection (1) has been established, a permanent breakdown of the marriage by reason of those circumstances shall be deemed to have been established."

ECONOMIC RIGHTS

The British Columbia Mediation Commission Act implements some of the recommendations of Mr. Justice Nathan T. Nemetz of the British Columbia Supreme Court, based on his study of the Swedish industrial relations system.

The Mediation Commission is an independent agency, separate and apart from the Department of Labour. In order to make informed decisions, the Commission will conduct research into economic growth, wages, prices, productivity, labour-management relations and problems of technological change.

The Commission function is to investigate and assist in resolving labour management disputes and to recommend fair and reasonable terms of settlement.

The setting up of this Commission represents a trend in Canada towards the protection of the public interest and public welfare by offering an alternative to strike action.

AN ACT RESPECTING BARGAINING AND MEDIATION¹³

(Assented to 6 April 1968)

1. This Act may be cited as the *Mediation Commission Act*.

...

Part I

COLLECTIVE BARGAINING AND COLLECTIVE AGREEMENTS

3. Where the Board has certified a trade union for employees in a unit and no collective agreement is in force,

(a) The trade union may by written notice require the employer to commence collective bargaining; or

(b) The employer or an employers' organization authorized by the employer may by written notice require the trade union to commence collective bargaining.

4. Either party to a collective agreement, whether entered into before or after the coming into force of this Act, may, at any time within four months immediately preceding the date of expiry of the agreement, by written notice require the other party to the agreement to commence collective bargaining.

5. (1) Where notice to commence collective bargaining has been given

(a) Under section 3, the certified trade union and the employer, or an employers' organization authorized by the employer; or

(b) Under section 4, the parties to the collective agreement shall, within five days after the date of

¹³ *Statutes of British Columbia*, 1968, chap. 26.

the notice, commence to bargain collectively, and shall make every reasonable effort to conclude a collective agreement or a renewal or revision thereof.

(2) A collective agreement shall contain the provisions prescribed by subsection (1) of section 22 of the *Labour Relations Act* or, in the absence of such provisions, the provisions prescribed by the Minister pursuant to subsection (2) of section 22 of that Act.

6. A collective agreement is binding upon

(a) The trade union which has entered into the agreement and every employee covered by the agreement; and

(b) The employer who has entered into the agreement and the employer on whose behalf an employers' organization, authorized by the employer, has entered into the agreement.

7. (1) Every person who is bound by a collective agreement, whether entered into before or after the coming into force of this Act, shall do everything he is required to do, and shall refrain from doing anything that he is required to refrain from doing, by the provisions of the collective agreement, and failure to do so or refrain from so doing is an offence against this Act.

...

Part II

MEDIATION

(a) *At instance of parties or Minister*

11. (1) Where

(a) Collective bargaining has continued for at least ten days and there is a dispute unresolved; and

(b) Either party makes a written request to the Commission to appoint a Mediation Officer to confer with the parties to assist them to conclude a collective agreement or a renewal or revision thereof, and where the request is accompanied by a statement of the differences that have been encountered in the course of collective bargaining, the Commission may appoint a Mediation Officer to confer with the parties.

(2) The Minister may, at any time during the course of collective bargaining between any employer or group of employers and his or their employees or a trade union, if he considers that the public interest is or may be affected by a dispute, direct the Commission to appoint a Mediation Officer to confer with the parties, and the Commission shall comply with such a direction.

...

17. The parties may at any time resolve any dispute and conclude a collective agreement, or a renewal or revision thereof, and thereupon all proceedings before the Commission with respect to such dispute are ended.

(b) *At instance of the Lieutenant-Governor in Council*

18. (1) Where a dispute between any employer or group of employers and his or their employees

or a trade union is not resolved, and, in the opinion of the Lieutenant-Governor in Council, it is necessary, in order to protect the public interest and welfare, that

(a) No employee shall strike, and no employer shall lock out his employees; or

(b) An existing strike or lockout shall immediately cease, the Lieutenant-Governor in Council may

- (i) refer the dispute to the Commission;
- (ii) order that the Decision of the Commission with respect to the dispute, whether such Decision is given on a reference pursuant to paragraph (i) or otherwise, is final and binding upon the parties except to the extent that the parties agree to vary the same.

(2) An Order given under this section expires on all parties to the dispute signing and executing a collective agreement.

19. (1) The Lieutenant-Governor in Council may at any time

(a) Refer to the Commission

(i) any matter affecting the general welfare and conditions of employment of persons employed by the Crown in right of the Province, or otherwise appointed pursuant to the *Civil Service Act*; or

(ii) any difference relating thereto between the Civil Service Commission and a group of employees (within the meaning of that Act) or their authorized representatives;

(b) Order that the Decision of the Commission with respect to the reference shall be final and binding upon the employer and such employees to whom the Decision relates.

(2) For the purposes of this section, the Executive Council shall be deemed to be the employer of persons employed by the Crown in right of the Province, and this section applies to the Crown in right of the Province accordingly.

...

21. (1) Where an Order is made under section 18, then until the parties sign and execute a collective agreement, the Decision shall have effect as if it were, and shall be deemed to be, a collective agreement entered into between them for the term therein specified or, if no term is specified, for a term of two years.

(2) Where an Order is made under section 18 and a strike or lockout is in effect on account of the dispute,

(a) Each employer who has locked out employees shall, within twenty-four hours of the date of the Order, discontinue the lockout and resume the normal operations of his business; and

(b) Each employee who is then on strike or locked out shall, within twenty-four hours of the date of the Order, discontinue his part in the strike (if any) and, in either case, return to the duties of his employment with his employer; and

(c) Each trade union, any member of which is then on strike or locked out, shall forthwith notify its members to discontinue the strike (if any) and, in either case, to return to and continue their employment.

(3) Where an Order is made under section 18 but a strike or a lockout is not in effect on account of the dispute, or such a strike or lockout has terminated in consequence of the Order,

(a) No trade union or other person shall declare or purport to authorize a strike;

(b) No employee shall strike;

(c) No person shall declare or purport to authorize a lockout; and

(d) No employer shall lock out employees, until after the expiration of the term of the collective agreement made consequent upon the Decision to which the Order relates or, if no such collective agreement is made, the collective agreement deemed to have been made and, in either case, the conditions specified in section 24 are satisfied thereafter.

(4) No employer and no person acting on behalf of an employer shall

(a) Refuse to permit, or authorize or direct another person to refuse to permit, an employee who is on strike or locked out to return, in accordance with the foregoing provisions of this section, to the duties of his employment with his employer; or

(b) Discharge or authorize or direct another person to discharge such an employee to whom the foregoing provisions of this section apply, by reason of the employee having gone on strike or having been locked out.

22. Where an Order is made under section 19, then, without prejudice to subsection (2) of section 50, if there is a strike in effect on account of the difference referred to in the Order,

(a) Each employee who is then on strike shall, within twenty-four hours of the date of the Order, discontinue his part in the strike and return to the duties of his employment; and

(b) Every person who has acted as an authorized representative in relation to the difference shall forthwith notify the employees to discontinue the strike and to return to and continue their employment.

Part III

CONDITIONS UNDER WHICH STRIKES AND LOCKOUTS ARE ILLEGAL

23. (1) No employee bound by a collective agreement, whether entered into before or after the commencement of this Act, shall strike during the term of the collective agreement, and no person shall declare or purport to authorize a strike of such employees during that term.

(2) No employer bound by a collective agreement, whether entered into before or after the commencement of this Act, shall, during the term of the collective agreement, lock out any employee bound by the collective agreement.

24. A trade union shall not declare or authorize a strike and no employee shall strike, and the employer shall not declare or cause a lockout, until

(a) The trade union and the employer, or representatives authorized by them in that behalf, have bargained collectively with respect to the dispute which is the cause or occasion of the strike or lockout and failed to conclude a collective agreement; and

(b) In the case of a trade union, or an employee in the unit affected, either

(i) the provision of section 25 have been complied with; or

(ii) the employer has given notice, pursuant to clause (b) of subsection (2) of section 26, that he is going to lock out his employees;

(c) In the case of an employer, either

(i) the provisions of section 26 have been complied with; or

(ii) the trade union has given notice, pursuant to clause (b) of subsection (2) of section 25, that the employees are going to strike,

and, unless the provisions of this section are satisfied, the strike or, as the case may be, the lockout is illegal.

25. (1) No person shall declare or authorize a strike, and no employee shall strike, until after a vote has been taken by secret ballot of the employees in the unit affected as to whether to strike or not to strike, and the majority of such employees who vote have voted in favour of a strike.

(2) Except as otherwise agreed in writing between the employer or employers' organization authorized by the employer and the trade union representing the unit affected, where the vote is in favour of a strike,

(a) No person shall declare or authorize a strike, and no employee shall strike, except during the three months immediately following the date on which the vote was taken; and

(b) No employee shall strike until the employer has been given written notice by the trade union that the employees are going to strike and seventy-two hours have elapsed from the time such notice was given and, where a Mediation Officer has been appointed under section 11, until the trade union has been advised by the Commission that the Officer has made his report to the Commission.

26. (1) Where more than one employer is engaged in the same dispute with their employees, no person shall declare or authorize a lockout, and no employer shall lock out his employees, until after a vote has been taken by secret ballot of all employers as to whether to lock out or not to lock out and a majority of such employers who vote have voted in favour of a lockout.

(2) Except as otherwise agreed in writing between the employer or employers' organization authorized by the employer and the trade union representing the unit affected,

(a) Where a vote is required to be taken under subsection (1) and the vote is in favour of a lockout, no person shall declare or authorize a lockout and no employer shall lock out his employees except during the three months immediately following the date on which the vote was taken;

(b) No employer shall lock out his employees until the trade union has been given written notice

by the employer that the employer is going to lock out his employees and seventy-two hours have elapsed from the time such notice was given and, where a Mediation Officer has been appointed under section 11, until the employer has been advised by the Commission that the Officer has made his report to the Commission.

27. Nothing in this Act shall be interpreted to prohibit the suspension or discontinuance by an employer of operations in his establishment, whether in whole or in part, for a cause not constituting a lockout. The onus of proof that operations in his establishment are or were suspended or discontinued for a cause not constituting a lockout is on the employer.

Part IV

THE MEDIATION COMMISSION

(a) *Constitution and administration*

28. (1) There is hereby established a commission to be known as the "Mediation Commission", which shall consist of a Chairman and, if the Lieutenant-Governor in Council so determines, such number of other members as may be so determined.

...

(b) *Jurisdiction, procedure and powers*

38. (1) The Commission has exclusive jurisdiction to inquire into, hear, and determine all matters and questions of fact and law arising under this Act, and the action or Decision of the Commission thereon is final and conclusive and is not open to question or review in any Court, and no proceedings by or before the Commission shall be restrained by injunction, prohibition, or other process or proceeding in any Court or be removable by certiorari or otherwise into any Court, nor shall any action be maintained or brought against any member of the Commission in respect of any act, omission, or decision done or made in the bona fide belief that the same was within the jurisdiction of the Commission.

(2) Without restricting the generality of subsection (1), the Commission has exclusive jurisdiction to inquire into, hear, and determine for the purposes of exercising its functions in relation to a dispute, or other difference or matter referred to it, or of giving its Decision,

(a) The matters in dispute or differences between parties;

(b) The facts in any dispute or difference between parties;

(c) The law in relation to such matters or facts;

(d) Any other point at issue which is incidental to a dispute, difference, or matter.

(3) The Commission does not have jurisdiction to determine

(a) Any question within the exclusive jurisdiction of the Labour Relations Board, as provided by the *Labour Relations Act*;

(b) Any grievance or complaint by an employee or employer under the terms of a collective agreement.

39. (1) In addition to its other functions, the Commission shall inquire into any matter referred to it by the Minister, including, but without limiting the generality of the foregoing, matters relating to economic growth, labour-management relations, productivity, problems of adjustment, industrial research, and technology research which will assist in improving the means of disseminating industrial and labour information, and such other matters as seem calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes.

(2) The Commission shall report the results of such inquiry to the Minister.

...

43. (1) The Commission has the like powers as the Supreme Court for compelling the attendance of witnesses and of examining them under oath, and compelling the production and inspection of books, papers, documents, and things; and persons appearing before the Commission have the same privileges as persons appearing in the like capacity before the Supreme Court.

(2) The Commission may cause depositions of witnesses residing within or without the Province to be taken before any person appointed by the Commission in a manner similar to that prescribed by the Rules of the Supreme Court for the taking of like depositions in that Court before a Commissioner.

44. The Commission or any person who has been authorized for such purpose in writing by the Commission may, without any other warrant than this section, at any time during regular working-hours, enter a building, ship, vessel, factory, workshop, place, or premises of any kind wherein work is being or has been done or commenced by employees, or in which an employer carries on business, or any matter or thing is taking place or has taken place concerning the matters referred to the Commission, and may inspect and view any work, material, machinery, appliance, or article therein.

...

Part V

GENERAL

(a) *Offences and penalties*

49. Every employer, employers' organization, or trade union who refuses or fails to bargain collectively as required by this Act, or fails to cause representatives authorized in that behalf to bargain collectively on his behalf as required by this Act, is guilty of an offence against this Act.

50. (1) Every employer, employers' organization, trade union, employee, and other person who contravenes subsection (2), (3), or (4) of section 21, or section 22, 23, or 24, is guilty of an offence against this Act.

(2) Every person employed by the Crown in right of the Province who takes part in a strike, and every person who declares or purports to authorize a strike by persons so employed, is guilty of an offence against this Act.

51. (1) Every employer, employers' organization, trade union, employee, or other person who commits an offence contrary to section 49 or 50 is liable, on summary conviction,

(a) If an individual, to a fine not exceeding one thousand dollars; or

(b) If a corporation, trade union, or employers' organization, to a fine not exceeding ten thousand dollars,

and, in addition, if the offence is a continuing one, to a fine not exceeding one hundred and fifty dollars a day for each day and part of a day the offence continues.

(2) If an employers' organization, corporation, or trade union is guilty of an offence contrary to section 49 or 50, any officer, agent, or authorized representative of the employers' organization, corporation, or trade union who assented to the commission of the offence is a party to and guilty of the offence.

...

Part VII

COMMENCEMENT

84. (1) Save as provided in subsection (2), this Act shall come into force on a day to be fixed by the Lieutenant-Governor by his Proclamation, and he may make separate Proclamations fixing different days in respect of the several provisions thereof.

(2) Section 1 and this section come into force on Royal assent.

The Ontario Labour-Management Arbitration Commission Act assented to 13 June 1968 established a seven-member commission, three members representative of employees and three of employers. Its function is to facilitate the conduct of grievance arbitrations throughout the province through a system of registration and training of arbitrators.¹⁴

THE ONTARIO LABOUR-MANAGEMENT ARBITRATION COMMISSION ACT, 1968

(Assented to 13 June 1968)
(Session prorogued 23 July 1968)

...

2. (1) There is hereby established a commission to be known as The Ontario Labour-Management Arbitration Commission.

(2) The Commission shall consist of seven members appointed by the Lieutenant-Governor

in Council, of whom one shall be designated as chairman to hold office during the pleasure of the Lieutenant-Governor in Council.

(3) Three members of the Commission shall be representatives of employers and three members shall be representatives of employees.

...

3. (1) The Commission may issue its approval to any person whom it deems suitable to act as an arbitrator.

(2) The Commission shall cause to be entered in a register maintained for the purpose the name of every person to whom its approval is issued under subsection 1.

(3) The Commission may, after a hearing which may be either public or *in camera* as it deems proper, refuse to issue its approval or may suspend or revoke its approval.

...

5. The duties and functions of the Commission are to,

(a) Maintain for the use of parties to an arbitration a register of approved arbitrators;

(b) Assist arbitrators by making the administrative arrangements required for the conduct of arbitrations;

(c) Sponsor training programmes for arbitrators;

(d) Sponsor the publication and distribution of information in respect of arbitration processes and awards; and

(e) Sponsor research in respect of arbitration processes and awards.

...

10. This Act comes into force on a day to be named by the Lieutenant-Governor by his proclamation.

11. This Act may be cited as *The Ontario Labour-Management Arbitration Commission Act, 1968*.

THE RIGHT OF APPEAL IN THE MATTER OF SOCIAL WELFARE

Ontario has extended the right of appeal to the provisions of social assistance legislation. Changes have been made in the structure of the Review Board set up under the Family Allowances Act which applies to the recipients of provincial assistance. A further change provides that applicants for, or recipients of, assistance under this Act, who are not satisfied with the Review Board's decision, may make a second appeal to the Court of Appeals on a question of law (Statutes of Ontario, 1968, chap. 39).

The General Social Assistance Act, which formerly did not provide for appeals, has been amended to permit appeals against decisions taken by municipal social welfare officials. The procedure is the same as that provided for in the Family Allowances Act (Statutes of Ontario, 1968, chap. 48).

The relevant measures are as follows:

¹⁴ *Statutes of Ontario*, 1968, chap. 86.

Chapter 39

AN ACT TO AMEND THE FAMILY
BENEFITS ACT, 1966

(Assented to 28 March 1968)
(Session prorogued 23 July 1968)

1. Section 3 of *The Family Benefits Act, 1966* is amended by adding thereto the following subsection:

(3) The Director, with the consent in writing of the Deputy Minister of Social and Family Services, may authorize any employee or class of employee of the Family Benefits Branch of the Department of Social and Family Services to exercise and discharge any of the powers conferred or the duties imposed upon him under this Act.

2. Section 11 of *The Family Benefits Act, 1966* is repealed and the following substituted therefor:

11. (1) There shall be a board of review that shall be composed of not more than such number of members as is prescribed by the regulations, who shall be appointed by the Lieutenant-Governor in Council.

(2) One of the members of the board of review shall be appointed by the Lieutenant-Governor in Council to be chairman of the board of review and one or more other of the members of the board may be appointed by the Lieutenant-Governor in Council to be vice-chairmen of the board.

(3) The members of the board of review shall be paid such remuneration and expenses as the Lieutenant-Governor in Council from time to time determines.

(4) Each member of the board of review shall hold office for three years.

(5) Three members of the board of review constitute a quorum and are sufficient for the exercise of all the powers of the board.

(6) Such officers, clerks and servants as are from time to time deemed necessary by the Lieutenant-Governor in Council for the proper conduct of the business of the board of review may be appointed under *The Public Service Act, 1961-62*.

(7) Sittings of the board of review may be held at such places in Ontario and at such times as the board deems most convenient for the proper discharge and speedy dispatch of its business.

11a. (1) Any applicant or recipient may, by notice in writing served upon the chairman of the board of review, request a hearing and review by the board of a decision, order or directive of the Director affecting the applicant or recipient, as the case may be.

(2) Where a hearing and review are requested, the chairman of the board of review shall serve notice upon the applicant or recipient who requested the review notifying him of the time and place of the hearing.

(3) Where a review is taken under this section, the board of review may by its order direct the Director to make such decision as the Director is authorized to make under this Act and as the board deems proper, and thereupon the Director shall act accordingly.

(4) Notice of the decision of the board of review shall be served forthwith upon the applicant or recipient who requested the review.

11b. (1) Where the board of review has reviewed a decision, order or directive and given its decision on the review, the applicant or recipient who requested the review may appeal on a question of law alone to the Court of Appeal.

(2) Every appeal shall be upon notice of motion served upon the chairman of the board of review within thirty days after the delivery of the notice of decision under subsection 4 of section 11a, and the practice and procedure in relation to the appeal shall be the same as upon an appeal from a report or certificate of a master of the Supreme Court.

...

Chapter 48

AN ACT TO AMEND THE GENERAL
WELFARE ASSISTANCE ACT

(Assented to 28 March 1968)
(Session prorogued 23 July 1968)

1. *The General Welfare Assistance Act* is amended by adding thereto the following section:

7d. (1) In this section, "welfare administrator" means municipal welfare administrator or regional welfare administrator, as the case may be.

(2) Any applicant or recipient affected by a decision, order or directive made under this Act or the regulations by a welfare administrator, in respect of the payment of a class of assistance prescribed as general in the regulations, may request a hearing and review of the decision, order or directive by the board of review appointed under *The Family Benefits Act, 1966*.

(3) The provisions of *The Family Benefits Act, 1966* relating to the powers, duties and procedures of the board of review appointed under that Act, and relating to procedure on appeals therefrom to the Court of Appeal, apply *mutatis mutandis* to a hearing and review by the board under this Act.

2. This Act comes into force on the day it receives Royal Assent.

3. This Act may be cited as *The General Welfare Assistance Amendment Act, 1968*.

PRINCE EDWARD ISLAND

An amendment¹⁵ to the Prince Edward Island Industrial Relations Act¹⁶ authorizes the Labour Relations Board to deal with complaints of unfair

¹⁵ *Statutes of Prince Edward Island, 1968, chap. 27.*

¹⁶ *Statutes of Prince Edward Island, 1968, chap. 18.*

practices filed by an employer, employer's organization, trade union or any other person. If the chief executive officer of the Board is unable to bring about a settlement he may institute an inquiry. Where an infringement of the Act is found to have occurred, the Board issues a cease and desist order, directs reinstatement, compensation for lost wages and any other rectification it considers just.

International Year for Human Rights

In December 1968, the final conference to celebrate the International Year for Human Rights passed a motion establishing a Canadian Council for Human Rights to continue the work of the conference.

During 1968, Human Rights Committees were formed in each Province made up of represent-

atives of voluntary and government agencies and organizations with an active interest in the human rights field. Many of these representatives attended the final conference and returned to their communities to continue to work with their respective provincial committees.

A Provisional Executive which consisted of the Executive Committee of the Canadian Commission for the International Year for Human Rights and to which was to be added provincial representation, was instructed to establish the Constitution, by-laws, and programme of action of the Canadian Council for Human Rights. They were asked to take into account the work done by the conference and to confer with interested and competent individuals, government departments, agencies and commissions.

The Council is to be a private voluntary organization.

CENTRAL AFRICAN REPUBLIC

ORDINANCE No. 68/26 OF 7 JUNE 1968 AMENDING AND SUPPLEMENTING NEW ARTICLES 231 AND 232 *BIS* OF THE PENAL CODE ¹

Article 1. New articles 231 and 232 *bis* of the Penal Code shall be amended and supplemented as follows:

“*Article 231.* Persons guilty of armed robbery shall be liable to the death penalty.

“*Article 232.* Any person guilty of theft shall be liable to a penalty of imprisonment with hard labour for ten to twenty years if the crime is committed either by means of house-breaking from without or within, scaling or false keys in an inhabited or habitable house, apartment, room or lodging or in a building or warehouse, 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, or if the person has used a motor vehicle to facilitate commission of the theft or escape;

“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.”

...

¹ *Journal officiel de la République centrafricaine*, No. 14, of 15 July 1968.

DECREE No. 68/279 OF 9 OCTOBER 1968 ESTABLISHING THE CONDITIONS FOR THE ISSUE OF IDENTITY CARDS AND TRAVEL DOCUMENTS TO REFUGEES IN THE CENTRAL AFRICAN REPUBLIC ²

Title I

INTRODUCTION AND PERIOD OF VALIDITY OF THE REFUGEE IDENTITY CARD AND THE OBLIGATION TO CARRY SUCH A CARD

Article 1. In order to make it possible to identify the refugees of various nationalities who have found asylum in the territory of the Central African Republic and who come *prima facie* within the mandate of the United Nations High Commissioner for Refugees, a special document

to be known as the “Refugee Identity Card” shall be introduced with effect from the date of publication of this decree.

Article 2. The Refugee Identity Card shall be accepted as an official identity document throughout the territory of the Central African Republic. It shall be valid for ten years, but must be surrendered by any refugee who expresses the desire to return to his country of origin and thereby loses his refugee status, or who becomes a citizen of the Central African Republic or applies for re-acquisition of his original nationality.

Article 3. Possession of the Refugee Identity Card shall be compulsory throughout the territory of the Central African Republic.

² *Ibid.*, No. 22, of 15 November 1968.

Article 4. The Refugee Identity Card shall not be considered as a travel document and shall not entitle the holder to travel outside the administrative frontiers of the Central African Republic.

Title II

CONDITIONS FOR ISSUING AND ESTABLISHING
THE REFUGEE CARD

Article 5. All refugees who have attained the age of twelve years must be in possession of the Refugee Identity Card.

...

Article 7. With the advice of the Director of the *Sûreté Nationale* of the Central African Republic, and in agreement with the Representative of the Office of the High Commissioner for Refugees in Bangui, the Minister of the Interior shall determine the practical procedures for establishing and distributing the Refugee Identity Card.

...

These procedures, which shall be uniform throughout the territory of the Central African Republic, shall be described in a Circular of the Minister of the Interior.

...

CHILE

NOTE ¹

I. LEGISLATION

ACTS

Act No. 16744, of 23 January 1968 (*Diario Oficial*, No. 26957, of 1 February 1968) lays down standards covering industrial accidents and occupational diseases.

Act No. 16746 of 24 January 1968 sets up the National Science Prize to be awarded annually to the Chilean scientist or team of scientists whose work in the field of pure or applied sciences merits such a distinction. It also creates an autonomous corporation, with legal capacity under the national law and with its seat in Santiago, called the National Commission for Scientific and Technological Research, which is to advise the President of the Republic in the planning, promotion and development of research in the pure and applied sciences.

Act No. 16781 of 28 March 1968 (*Diario Oficial*, No. 27032, of 2 May 1968) provides for the granting of medical and dental aid to certain specified contributors to the Insurance Funds.

Act No. 16772 of 21 March 1968 (*Diario Oficial*, No. 27043, of 15 May 1968) cancels the final section of article 323 of the Labour Code.

Act No. 16880 of 19 July 1968 (*Diario Oficial*, No. 27113, of 7 August 1968) sets forth provisions on neighbourhood committees and other community organizations.

Act No. 16899 of 7 August 1968 (*Diario Oficial*, No. 27119, of 14 August 1968) establishes the Appeals Court of Rancagua, fixes or raises the level of certain courts, amends the Judicature and Labour Codes, and amends certain specified Acts in the matter of jurisdiction.

LEGISLATIVE DECREES

Decree No. 6 of 23 October 1967 of the Ministry of Labour and Social Insurance (*Diario Oficial*, No. 26940, of 12 January 1968) regulates the application of the Trade Union Education and Extension Fund of the Labour Board established by Act No. 16625 of 29 April 1967.

Decree No. 725 of 11 December 1967 of the Ministry of Public Health (*Diario Oficial*, No. 26956, of 31 January 1968) introduces some administrative amendments to Legislative Decree No. 226 of 1931 approving the Health Code.

Decree No. 163 of 26 July 1968 of the Under-Secretariat of Social Insurance (*Diario Oficial*, No. 27144, of 13 September 1968) establishes the text of Act No. 10383 of 8 August 1952, incorporating the amendments thereto, including those in Act No. 16840 of 24 May 1968, concerning social security.

Decree No. 5311 of 7 August 1968 of the Ministry of Education (*Diario Oficial*, No. 27150, of 23 September 1968) sets forth general regulations for the National Council for Student Help and Scholarships.

SUPREME DECREES

Decree No. 49 of 13 January 1968 of the Ministry of National Defence (*Diario Oficial*, No. 26962, of 7 February 1968) approves regulations for the application of article 83 of the Labour Code in respect of the activities of river and lake shipping enterprises in Valdivia Province.

Decree No. 4 of 30 May 1967 of the Ministry of Labour (*Diario Oficial*, No. 26974, of 21 February 1968) establishes the Institute of Labour and Social Development.

Decree No. 626 of 14 October 1967 of the Ministry of Foreign Affairs (*Diario Oficial*, No. 27015, of 9 April 1968) promulgates the Agreement on Migration between the Government of the Republic of Chile and the Government of the Kingdom of the Netherlands.

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

Decree No. 627 of 14 October 1967 of the Ministry of Foreign Affairs (*Diario Oficial*, No. 27015, of 9 April 1968) promulgates the Basic Agreement on Cultural Co-operation and Scholarships between Chile and Panama.

Decree No. 35 of 5 January 1968 of the Ministry of Foreign Affairs (*Diario Oficial*, No. 27016, of 10 April 1968) approves the Single Convention on Narcotic Drugs, signed at New York on 30 March 1961.

Decree No. 654 of 2 November 1967 of the Ministry of Foreign Affairs (*Diario Oficial*, No. 27016, of 10 April 1968) approves the International Convention concerning Inter-American Indian Congresses and the Inter-American Indian Institute, signed in Mexico in April 1940.

Decree No. 165 of 24 January 1967 of the Ministry of Justice (*Diario Oficial*, No. 27023, of 20 April 1968) approves a Standard Statute for Rural Workers Committees which such committees can adopt for the purpose of being granted corporate status.

Decree No. 101 of 29 April 1968 of the Under-Secretariat of Social Insurance (*Diario Oficial*, No. 27061, of 7 June 1968) approves regulations for the application of Act No. 16744, which lays down standards covering industrial accidents and occupational diseases.

Decree No. 528 of 10 July 1968 of the Ministry of Public Health (*Diario Oficial*, No. 27109, of 2 August 1968) approves regulations for the granting of sickness benefits as provided for in Act. No. 16781.

Decree No. 488 of 30 July 1968 of the Ministry of Foreign Affairs (*Diario Oficial*, No. 27119, of 14 August 1968) proclaims and provides for the full application as a law of the Republic of the amendment to Article 109 (1) of the United Nations Charter adopted by the General Assembly of that Organization in New York on 20 December 1965, and by the Chilean National Congress.

Decree No. 352 of 5 August 1968 of the Ministry of Labour and Social Insurance (*Diario Oficial*, No. 27130, of 28 August 1968) approves regulations concerning the constitution and functioning of the National Employment Service Board.

II. JUDICIAL DECISIONS

Ruling on inapplicability, 4 January 1968. The Supreme Court fixes the limits of the guarantee of property rights. (*El Mercurio* of 6 January 1968.)

Jurisprudence in the regulation of journalism. (*El Mercurio* of 4 February 1968.)

CHINA

OUTLINE OF FOUR LEGAL INSTRUMENTS RELATING TO THE PROTECTION OF HUMAN RIGHTS PROMULGATED OR REVISED BY THE GOVERNMENT OF THE REPUBLIC OF CHINA IN 1968¹

1. *Regulations Governing the Use of Weapons by the Police*—Promulgated by order of the President on 22 November 1968.

These regulations have a direct bearing on the protection of the personal liberties of the people. The text of the regulations is given below.

2. *Provisions to be Observed by Wardens of Prisons and Houses of Detention in the Use of Weapons and Firearms*—Promulgated by the Ministry of Judicial Administration on 23 November 1968.

These provisions have a direct bearing on the protection of the human rights of prisoners under sentence and accused persons under detention. The text of the provisions is given below.

3. *Labour Insurance Statute*

Revised by order of the President on 23 July 1968. This Statute is mainly aimed at protecting the living conditions of workers and promoting social security. It provides payments in respect of birth, injury, sickness, disabilities, old age and death. It has an important bearing on the protection of the fundamental human rights of workers. Extracts from the Statute appear below.

4. *Revised Portions of the Code of Civil Procedure which concern the protection of human rights*

The Code of Civil Procedure was revised on 1 February 1968. More strict provisions are now included concerning the procedure for the arrest of a witness who is duly summoned but fails to appear without good cause. The relevant revisions are as follows:

(1) The revised paragraphs 1 and 2 of article 303 of the Code of Civil Procedure provides that if a witness duly summoned fails to appear without good cause, the court may, by a ruling, impose upon him a fine not exceeding fifty *yuan*, but he

is not subject to arrest. However, if he fails to appear after being duly summoned twice without good cause, the court may compel him to appear under arrest.

(2) The revised paragraph 3 of the same article provides that the provisions of the Code of Criminal Procedure relating to the arrest of an accused shall apply *mutatis mutandis* to the arrest of a witness. Under articles 77 and 79 of the Code of Criminal Procedure, a warrant is required for the arrest of an accused person. The warrant shall contain the reason for the arrest and the place to which the accused is to be taken. A copy of the warrant shall be given to the accused or to a relative of the accused.

The revised article 329 of the Code of Criminal Procedure provides that no expert witness may be compelled to appear under arrest.

REGULATIONS GOVERNING THE USE OF WEAPONS BY THE POLICE

Promulgated by order of the President on 22 November 1968²

Article 1. Weapons used by police officers in performing their duties may include clubs, swords, firearms or other certified weapons.

The types and specifications of the weapons mentioned above shall be determined by the Executive Yuan.

Article 2. Police clubs may be used by police officers to give directions while performing one of the following duties:

1. Directing traffic;
2. Dispersing crowds; and
3. Preventing accidents.

¹ Outline and texts referred to therein furnished by the Government of the Republic of China.

² Text published in *Journal of Jurisprudence*, No. 213.

Article 3. Police clubs may be used as a means of coercion on others under any of the following circumstances:

1. If resistance is encountered by police officers while assisting in the investigation of a crime or while effecting a search, attachment, arrest with or without warrant, or detention;

2. If police officers are threatened while performing their duties under law; and

3. If the use of police clubs as a means of coercion is deemed necessary in one of the circumstances specified in article 4 below of the present regulations.

Article 4. The use of police swords or firearms shall be permitted only in one of the following circumstances:

1. When the use of police swords or firearms is appropriate in order to prevent the occurrence of serious incidents and to maintain social order;

2. When disturbances threaten the established social order and the use of police swords or firearms is deemed necessary in order to quell such disturbances;

3. When a suspect under arrest or detention offers resistance or attempts to escape and the use of police swords or firearms is necessary to control him;

4. When land, premises, vehicles, vessels or aircraft under police protection or the life, personal freedom, liberty or property of others are in danger or are being threatened and the use of police swords or firearms is necessary for their protection; and

5. When the life and personal freedom of police officers are in danger or are being threatened and the use of police swords or firearms is necessary in resisting violence and for the purposes of self-defence.

Under any of the above-mentioned circumstances, the use of other certified weapons may also be permitted.

Article 5. Except in emergency circumstance, police officers must give ample warning prior to the use of police swords, firearms or other certified weapons.

Article 6. When the circumstance which permits police officers to use weapons is ceasing or has ceased to exist, the use of weapons shall be halted immediately.

Article 7. In using police weapons police officers shall exercise due care to avoid injuring others.

Article 8. In using police weapons police officers shall exercise due care to avoid injuring a vital part of the body of the suspect, unless they find themselves in an emergency situation.

Article 9. Following the use of police weapons by a police officer in an incident, he shall report the details of the incident immediately to his superior. However, this provision shall not apply to the use of police clubs by police officers for giving directions.

Article 10. A police officer who has used police weapons or other certified weapons under circumstances other than those enumerated in article 4 shall be reprimanded by his superior. If a person suffers injury and dies as a result of such police action, the police officer concerned shall be subject to punishment in accordance with the provisions of the Criminal Code. The victim shall be given funds to cover his medical expenses or compensation by the government office concerned. If the casualty is caused by deliberate action on the part of the police officer, the government office concerned may recover from the offender the funds provided to cover medical expenses or the compensation paid to the victim. If an action is taken by a police officer in accordance with the provisions of the present regulations as a result of which a person suffers injury or dies, the victim's medical or burial expenses shall be defrayed by the government office concerned. The scale of payments for medical expenses, compensation or burial expenses mentioned in the above two sections shall be decided by the provincial (municipal) government and approved by the Ministry of the Interior.

Article 11. The use of police weapons by police officers in accordance with the provisions of these regulations shall be a lawful action.

Article 12. The provisions of the present regulations shall apply *mutatis mutandis* to gendarmes performing judicial police duties.

Article 13. The manufacture, sale and possession of police weapons without the authorization of the Ministry of the Interior shall be prohibited. Contraband weapons shall be confiscated by the police authorities unless otherwise provided by law.

Article 14. The present regulations shall enter into force on the date of promulgation.

PROVISIONS TO BE OBSERVED BY WARDENS OF PRISONS AND HOUSES OF DETENTION IN THE USE OF WEAPONS AND FIREARMS

Approved by order of the Executive Yuan
No. *Tai* 57-8681) on 1 November 1968
Promulgated by order of the Ministry of Judicial Administration (No. *Chien* 7515)
on 23 November 1968³

Article 1. The use and possession of weapons and firearms (including gas guns) by wardens of prisons and houses of detention (hereinafter referred to as prison officials) shall be governed by the present regulations, unless otherwise provided by law.

Article 2. The term "prison officials" used in the present regulations refers to the administrative and educational personnel of all ranks serving in prisons and houses of detention.

³ *Ibid.*

Article 3. The use and possession of weapons and firearms by prison officials shall be permitted only in one of the circumstances mentioned in article 24 of the Regulations Governing the Execution of Penalties Imposed on Prisoners under Sentence.

Article 4. The situation "where a prisoner under sentence uses violence or threatens to use violence on others", as referred to in article 24, paragraph 1, of the Regulations Governing the Execution of Penalties Imposed on Prisoners under Sentence, means the situation in which a prisoner under sentence uses brute force (not limited to physical strength) to cause bodily harm to others or threatens to use such force.

Article 5. The situation "where a prisoner under sentence is in possession of objects which can be used to cause violence and refuses to surrender such objects after being commanded to do so", as referred to in article 24, paragraph 2, of the Regulations Governing the Execution of Penalties Imposed on Prisoners under Sentence, means the situation in which a prisoner under sentence is in possession of fluid, solid or chemical substances which can be used to cause violence and refuses to surrender such substances after being commanded to do so.

Article 6. The situation "where prisoners under sentence create mob disturbances", as referred to in article 24, paragraph 3, of the Regulations Governing the Execution of Penalties Imposed on Prisoners under Sentence, means the situation in which a number of prisoners under sentence assemble to cause a disturbance with the intention to commit unlawful action, and refuse to obey the command to disperse.

Article 7. The situation "where a prisoner under sentence is abducted by violence or is helped to commit violence or to abscond", as referred to in article 24, paragraph 4, of the Regulations Governing the Execution of Penalties Imposed on Prisoners under Sentence, means the situation in which a prisoner under sentence is being abducted by force or being assisted in committing violence or absconding.

Article 8. The situation "where a prisoner under sentence attempts to abscond by resisting arrest or absconds by avoiding recapture", as referred to in article 24, paragraph 5, of the Regulations Governing the Execution of Penalties Imposed on Prisoners under Sentence, means the situation in which a prisoner under sentence attempts to abscond by offering resistance to recapture or succeeds in absconding by avoiding recapture.

Article 9. These provisions shall apply to an accused under detention in any of the situations mentioned in article 24 of the Regulations Governing the Execution of Penalties Imposed on Prisoners under Sentence.

Article 10. In using weapons and firearms, prison officials shall observe the following provisions:

1. The use of weapons and firearms shall be permitted only when no alternative can be used for the control and pacification of prisoners under sentence.

2. The use of weapons and firearms shall be permitted only when no alternative can be used for the enforcement of security measures and to prevent prisoners from absconding.

3. The use of weapons and firearms shall be permitted only when no alternative can be used for the purpose of resisting violence or for self-defence.

4. Ample warning shall be given prior to the use of weapons and firearms. When the prisoner under sentence shows signs of compliance during or after the use of weapons and firearms, such use shall be halted immediately.

5. In using weapons and firearms, prison officials must exercise due care to avoid injuring others.

6. Following the use of weapons and firearms, regardless of whether anyone is injured, the prison official concerned shall report the incident to the warden of the prison or house of detention. The latter shall report the incident to the competent supervisory authority.

Article 11. The present regulations shall enter into force upon approval by the competent authority.

REVISED LABOUR INSURANCE STATUTE

Promulgated by order of the President
on 23 July 1968⁴

Chapter I

GENERAL PROVISIONS

Article 1

This Statute is enacted to protect workers' living conditions and to promote social security.

Article 2

Labour insurance as referred to in this Statute is of seven kinds: maternity, injury, sickness, disability, unemployment, old-age and death.

...

Chapter II

INSURER

Article 6

The competent authority in the Central Government shall be in charge of labour insurance admi-

⁴ Text published in *Journal of Jurisprudence*, No. 210.

nistration throughout the country. The country shall be divided into districts in accordance with the distribution of workers. A Labour Insurance Bureau shall be established by the government of a province or a municipality within each district where the number of workers is comparatively large to act as an insurer responsible for the operation of labour insurance; if necessary, the competent authority of the Central Government may establish a bureau in a given district directly.

A Labour Insurance Control Commission consisting of representatives designated by the government concerned, representatives of workers, representatives of management and experts shall be organized to supervise insurance operations and to deliberate on insurance disputes; the organic rules of the Labour Insurance Control Commission and procedures for deliberation on insurance disputes shall be formulated and submitted by the provincial (municipal) government concerned to the Ministry of the Interior for decision.

Article 7

The authority in charge of labour insurance administration shall be the Ministry of the Interior in the case of the Central Government and the provincial department or municipal bureau of social affairs in the case of a provincial government or municipal government.

Chapter III

INSURED PERSONS

Article 8

All workers in the territory of the Republic of China between fourteen and sixty years of age who fall within any of the following categories shall be insured under labour insurance:

1. Industrial workers employed by a public or private factory, mine, saltern, farm, ranch, forest, or tea plantation, employing ten or more workers, and workers employed by communications enterprises and public utilities;
2. Artisans;
3. Professional fishery workers;
4. Skilled workers, chauffeurs and members of the service staff of government offices and public schools;
5. Staff members of business concerns and stores employing ten or more persons.

Workers as referred to in the preceding paragraph shall include staff members eligible for trade union membership; working labourers who are over sixty years of age but are physically fit and willing to work and who are retained by their employers may continue to participate in labour insurance.

Article 9

Staff members and workers of foreign nationality falling within the categories enumerated in the

preceding article may participate in labour insurance in accordance with this Statute.

Article 10

In the case of staff members and workers other than those provided for in this Statute who wish to participate in labour insurance, the provisions of this Statute may be applied.

...

Chapter IV

PREMIUM

Article 17

The labour insurance premium rates for maternity, injury and sickness benefits to cover payments in respect of hospitalization and clinic treatment and for disability, old age and death benefits shall be 8 per cent of the monthly insured wage of the insured person.

...

Article 24

A labour insurance premium which has been paid may not be refunded.

Article 25

An insured person may, in the event of an accident covered by insurance, be exempted from payment of premium for the period during which he is in receipt of insurance benefits and is unable to earn wages or loses his income.

Chapter V

INSURANCE BENEFITS

Section 1. General Provisions

Article 26

Application by an insured person or his beneficiary for insurance benefits in the event of an accident covered by insurance shall be made in accordance with the provisions of this Statute.

...

Article 27

Even after his withdrawal from the insurance scheme, an insured person shall be entitled to insurance benefits for a period of one year for any injury or sickness covered by insurance which occurred within the period during which the insurance was valid, if such injury or sickness requires continued application for insurance benefits or continued hospitalization. The payment of benefits in respect of injury shall be made in accordance with the provisions of articles 45 and 46. A hospitalized insured person must leave the hospital when, in the opinion of the designated hospital personnel, he is well enough to do so.

If the insured person becomes disabled or dies as a result of the same injury or sickness during the period of continued payment of insurance benefits, he or his beneficiary may apply for disability or death benefits.

Article 31

Application may not be made more than once for an insurance benefit of the same kind in respect of the same accident covered by insurance.

Article 32

An insured person or his beneficiary or other interested person shall not be entitled to insurance benefits for an accident covered by insurance if such accident is caused by an intentional act for the purpose of claiming insurance benefits. However, burial expenses shall be paid if the accident results in death.

Article 33

Where an insured person has received insurance benefits through fraud or other improper act, the insurer may, within one year from the date on which this circumstance is discovered, deny all benefits payable to him for a period of not more than six months.

Article 34

Where a factory, mine, business concern, store, office, school or organization intentionally causes persons other than those specified in this Statute to participate in the insurance scheme and receive insurance benefits, the insurer may, in addition to taking action under the provisions of the preceding article, deprive such persons of their status as insured persons.

Article 35

If the insured person refuses, without good cause, to undergo medical diagnosis, treatment or examination as required by the insurer, or to submit necessary documents, or if the beneficiary fails to provide additional documents as required, the insured person or his beneficiary shall not be entitled to insurance benefits.

Article 36

No insurance benefits shall be payable if the accident covered by insurance is caused by any criminal act of the insured person or his father, mother, son, daughter or spouse, or by war or public disturbance.

Article 37

An adoptive son or daughter of an insured person shall not be entitled to insurance benefits before the adoption has been registered with the census registration office for a period of six months.

Article 38

In reviewing an application for insurance benefits, the insurer may, when it deems it necessary,

verify all documents connected with the insured person at his place of employment or other appropriate agencies.

Article 39

The right of an insured person or his beneficiary to each kind of insurance benefit may not be transferred, cancelled or seized.

Article 40

Entitlement to insurance benefits shall be extinguished if not exercised within two years.

The extinguishment of right by prescription as mentioned in the preceding paragraph and other related matters shall be governed by the provisions of the Civil Code.

Section 2. Insurance Benefits in respect of Maternity

Article 41

An insured person may apply for maternity benefits in the event of childbirth or of a miscarriage after at least four months of pregnancy if in the two years preceding the birth or miscarriage the insurance has been in effect for at least ten months on the basis of premium payments or exemption therefrom in accordance with law, or a combination of both. The preceding paragraph shall also apply to childbirth or miscarriage in the case of an insured person's spouse.

Section 3. Insurance Benefits in respect of Injury

Article 43

When an insured person is injured in an accident and becomes incapacitated for work, with the result that he is unable to draw remuneration, and if he is under medical care, he shall be paid an ordinary injury allowance from the fourth day of such injury and incapacity for work.

Article 44

When an insured person is injured in the performance of his duties and becomes incapacitated for work, with the result that he is unable to draw remuneration, and if he is under medical care, he shall be paid an occupational injury allowance from the fourth day of such injury and incapacity for work.

Article 45

An ordinary injury allowance shall be payable semi-monthly at the rate of 50 per cent of the average monthly insured wage of an insured person for a maximum period of six months; provided that where a person has been insured for one year or more through premium payments or exemption therefrom in accordance with law, or a combination of both, such allowance shall be payable for an additional three months.

Article 46

An occupational injury allowance shall be payable semi-monthly at the rate of 70 per cent of the average monthly insured wage of an insured person. If the insured person has not recovered after six months, the allowance shall be reduced to 50 per cent of the average monthly insured wage, which shall be payable for a maximum period of one year.

...

Section 4. Insurance Benefits in respect of Sickness

Article 50

Insurance benefits in respect of sickness shall be of two kinds: benefits towards treatment at a clinic and benefits towards hospitalization.

Article 51

An insured person who is sick may apply to a clinic established by the insurer or a designated hospital clinic for treatment and shall be entitled to benefits therefor.

...

Article 56

When an insured person receives treatment in a hospital, and if the period of hospitalization exceeds one month, application for continued hospitalization shall be made for each additional month. An insured person receiving treatment in a designated hospital shall leave it without delay when the hospital, after examination, releases him. If he refuses to leave, he shall be liable for the charges for continued hospitalization.

Article 57

An insured person shall have the right freely to choose a designated hospital for hospitalization; provided that where there is a specific provision concerning this matter, such provision shall prevail.

Article 58

If an insured person has become disabled as a result of injury or sickness and has been receiving disability benefits, he shall not apply for hospitalization with respect to the same injury or sickness.

Article 59

While receiving sickness benefits an insured person may, during the period covered by insurance, be entitled to other insurance benefits.

Article 60

Payment of charges for hospitalization shall be made by the insurer directly to a designated hospital at third-class ward rates. No insured person may request that the payment shall be made to him in cash.

...

Section 5. Insurance Benefits in respect of Disability

Article 64

An insured person who becomes permanently disabled as the result of an ordinary injury or sickness may, upon the termination of medical treatment, apply for a lump-sum disability grant on the basis of his average monthly insured wage...

The provisions of the preceding paragraph shall apply to an insured person who, after receiving a full ordinary injury allowance or after receiving medical treatment for a sickness for one year or more, has not recovered and whose injury or sickness is considered to be permanently incurable by the designated hospital after examination.

Article 65

In the case of an insured person who, upon termination of medical care, is permanently disabled as the result of an injury sustained in the performance of his duties or of an occupational disease, he shall be entitled to disability compensation, payable in a lump sum, calculated on the basis of his average monthly insured wage at a rate 50 per cent higher than that shown in the Table of Disability Benefits.

The provisions of the preceding paragraph shall apply *mutatis mutandis* to an insured person who, after receiving full occupational injury compensation, has not recovered and cannot, in the opinion of the designated hospital, make a recovery in the future.

...

Article 67

In determining disability benefits, the insurer may, when it deems it necessary, designate another hospital or physician to conduct a re-examination.

Article 68

If an insured person is unable to continue work after receipt of disability benefits, his insurance shall immediately cease to be valid.

Section 6. Insurance Benefits in respect of Old Age

Article 69

An insured person who has reached the age of sixty years and who, upon retirement, has been insured through premium payment or exemption therefrom in accordance with law, or a combination of both, shall be paid an old-age retirement grant in a lump sum equal to one month's wage, computed on the basis of his average monthly wage, for each full year of the period during which he was insured.

Article 70

An insured person who has reached the age of sixty years and who, upon retirement, has been insured through premium payment or exemption therefrom in accordance with law, or a combination of both, for a period of fifteen years or more,

shall be paid an old-age retirement grant in accordance with the provisions of the preceding article and shall, in addition, be paid a sum equal to two months' wages, computed on the basis of his average monthly insured wage, for each full year. However, the total amount of the old-age retirement grant as prescribed under the preceding article and such additional payment shall in no case exceed forty-five months' wages, computed on the basis of his average monthly insured wage.

Article 71

If an insured person, upon reaching the age of sixty years, is in good health and is willing to continue work, he shall, upon retirement, be paid an additional old-age retirement grant equal to one month's wage, computed on the basis of his average monthly insured wage, for each full year of continued work, to a maximum of five years.

Article 72

If an insured person is a mine worker who has been working in the mine pit for a total period of five full years, he may retire upon reaching the age of fifty-five years and may apply for an old-age retirement grant in accordance with the provisions of this Statute.

Section 7. Insurance Benefits in respect of Death

Article 73

Benefits in respect of death may be claimed in the event of the death of an insured person, or of one of his parents or children, or his spouse.

Article 74

In the event of the death of an insured person's parent, spouse or child, a funeral benefit may be claimed in accordance with the following provisions:

1. Two months' wages, computed on the basis of his average monthly insured wage, upon the death of a parent or spouse;
2. One and a half months' wages, computed on the basis of his average monthly insured wage, upon the death of a child who has reached the age of ten years;
3. One month's wage, computed on the basis of his monthly average insured wage, upon the death of a child under ten years of age.

Article 75

In the event of the death of an insured person, funeral expenses equal to three months' wages, computed on the basis of his average monthly insured wage, shall be granted. When the insured person is survived by his parents, children or spouse, or by grandparents, grandchildren, brother or sister who depended on him for support, a surviving family benefit shall be payable in accordance with the following provisions:

1. If the insured person has been insured for a period of less than one year through premium

payment or exemption therefrom in accordance with law, or a combination of both, a lump-sum benefit equal to ten months' wages, computed on the basis of his average monthly insured wage, shall be payable to his surviving family;

2. If the insured person has been insured for a period of one year or more but less than two years through premium payment or exemption therefrom in accordance with law, or a combination of both, a lump-sum benefit equal to seventeen months' wages, computed on the basis of his average monthly insured wage, shall be payable to his surviving family;

3. If the insured person has been insured for a period of two years or more through premium payment or exemption therefrom in accordance with law, or a combination of both, a lump-sum benefit equal to twenty-seven months' wages, computed on the basis of his average monthly insured wage, shall be payable to his surviving family.

Article 76

If the death of an insured person results from an occupational injury or disease and if he is survived by his grandparents, parents, spouse, children, grandchildren, brother or sister, a surviving family benefit equal to thirty-seven months' wages shall be granted in addition to funeral expenses in a lump sum equal to three months' wages, computed on the basis of his average monthly insured wage, regardless of the length of the period during which he was insured.

Article 77

The order of precedence for entitlement to a surviving family benefit as provided in the preceding two articles shall be as follows:

1. Spouse and children;
2. Parents;
3. Grandchildren;
4. Grandparents;
5. Brothers and sisters.

Chapter VI

INSURANCE FUND AND ADMINISTRATIVE EXPENSES

Article 78

The labour insurance fund shall be allocated in a lump sum by the government in an amount not less than the total of insurance premiums for two months.

Article 79

Labour insurance funds and reserves to cover liabilities of whatever kind may, with the approval of the Labour Insurance Control Commission, be utilized for the following purposes:

1. Investment in government bonds, treasury bills and corporate bonds;
2. Investment in real estate;

3. Deposits with national banks or banks designated by the provincial (municipal) government. The amount of the funds and reserves as mentioned in the preceding paragraph shall be made public yearly.

...

Chapter VII

PENAL PROVISIONS

Article 81

Any person who receives insurance benefits through fraud or other improper act, or makes a false certification or files a false return or statement, shall, in addition to being subject to the provisions of article 33 of this Statute, be punishable under the Criminal Code or required to pay damages under the Civil Code.

Article 82

A worker who fails to participate in labour insurance and attend to insurance formalities in accordance with the provisions of this Statute shall be liable to a fine of 30 to 100 *yuan*, depending upon the seriousness of the case.

Article 83

An employer who or organization which fails to carry out the labour insurance procedures in accordance with the provisions of articles 11 and 12 of this Statute or understates the number of insured persons, in addition to being liable to the premiums due calculated from the second day of

employment of the insured persons concerned, is also liable to the disposition fee for arrears in accordance with the provisions of article 23 of the present Statute. Failure to pay the premiums due and the disposition fee for arrears shall render the employer or organization concerned subject to a fine of 200 to 3,000 *yuan*.

...

Chapter VIII

SUPPLEMENTARY PROVISIONS

Article 85

The premium rate for unemployment insurance shall be 2 to 3 per cent of the monthly insured wage of the insured person. The area in which this insurance is to be applicable and the time and procedures for its implementation shall be determined by the Executive Yuan by ordinance.

Article 86

Regulations for the enforcement of this Statute shall be prescribed by the Ministry of the Interior and submitted to the Executive Yuan for approval.

Article 87

The area to which this Statute is to be applicable shall be determined by the Executive Yuan by ordinance.

Article 88

This Statute shall enter into force upon promulgation.

COLOMBIA

ACT No. 135 ON SOCIAL LAND REFORM OF 13 DECEMBER 1961 AS SUPPLEMENTED AND AMENDED BY ACT No. 1 OF 26 JANUARY 1968 ¹

Chapter I

PURPOSE OF THIS ACT

1. This Act is based on the principle of the common good and stems from the need to extend the natural right to property to ever broader sectors of the rural population of Colombia. The continued existence and enjoyment of that right must, however, accord with the interests of society at large. The purpose of this Act is to:

(1) Reform the social land structure of the country, eliminating the inequitable concentration of rural landholdings and preventing uneconomic partition; reestablish viable farms in areas where small landholdings predominate and distribute land to persons who have none, with preference to those directly responsible for working the land and engaging in such work themselves;

(2) Promote proper economic exploitation of uncultivated or in efficiently worked land on the basis of programmes providing for the ordered distribution of land and its rational utilization;

(3) Increase over-all agricultural and livestock production alongside the development of the other sectors of the economy: increase the productivity of farms by the application of suitable techniques and ensure that land is used in the manner best suited to its situation and characteristics;

(4) Create conditions such that small tenant farmers and sharecroppers are given more adequate guarantees, and ensure that both they and

agricultural workers have greater opportunity to become landowners;

(5) Raise the living levels of the rural population by the measures referred to above and also through the coordination and development of technical assistance, agricultural credit, housing, market organization, health and social security, facilities for the storage and preservation of agricultural produce and cooperatives development;

(6) Ensure the preservation, protection, improvement and proper utilization of natural resources;

(7) Promote, support and coordinate such organizations as have as their object the economic, social and cultural betterment of the rural population (*Act No. 1 of 1968, Art. 2*).

The purposes of this Act, as enumerated in this Article, shall serve as a guide for its regulation, interpretation and practical application.

Chapter II

COLOMBIAN LAND REFORM INSTITUTE

2. The Colombian Land Reform Institute is hereby established as a public agency with legal personality, administrative autonomy and property of its own.

The Institute shall fulfil such functions as are entrusted to it under this Act, and is established for an indefinite period with its head office at Bogotá.

3. It shall be the responsibility of the Colombian Land Reform Institute to:

(a) Administer nationally owned common land on behalf of the State, make grants of such land or establish reserves or encourage settlement on it in accordance with existing regulations and the provisions of this Act.

It shall also be the responsibility of the Institute to act on behalf of the State in taking such legal

¹ Translations into English and French of Act No. 135 of 13 December 1961, as supplemented and amended by Act No. 1 of 26 January 1968, have been published by the United Nations Food and Agriculture Organization as *Food and Agricultural Legislation*, vol. XVII, V/1b, June 1969. For a summary of Act No. 135 of 13 December 1961, see *Yearbook on Human Rights for 1961*, p. 72. References in parentheses to articles of Act No. 1 of 1968 indicate the additions and amendments provided for in that Act and inserted among the pertinent articles of Act No. 135 of 1961.

action as is necessary in the event of unjustified appropriation of common land or failure to fulfil the conditions under which it was granted. It shall furthermore be responsible for taking the proper steps and issuing orders to terminate private rights of ownership in pursuance of Article 6 of Act No. 200 of 1936;

(b) Administer the National Land Fund;

(c) Carry out directly or through other public or private institutions a methodical study of the different areas of the country with a view to obtaining the information required for directing their economic development, particularly with regard to land ownership and utilization, water use, the rehabilitation of areas subject to flood and anti-erosion measures;

(d) Clarify the position as regards the ownership of land so as to determine with the greatest possible accuracy the lands belonging to the State, facilitate the regularization of private titles to land and cooperate in the establishment of tax lists of real property;

(e) Promote and assist in or execute directly the construction of roads required to provide easy access to settlement areas, land partition areas and consolidation areas and also promote the building of by-roads providing agricultural and livestock producing areas with access to the existing road network;

(f) Promote and assist in or execute directly land rehabilitation work, reforestation, drainage and irrigation in settlement areas and land partition and consolidation areas and in other areas where such work is likely to facilitate changes in the structure of rural landholdings and their productivity;

(g) Cooperate in forest conservation work and particularly in the care of national forest lands. Grants and licences for the exploitation of national forest land will continue to be issued by the Ministry of Agriculture;

(h) Make grants of land in settlement areas which the Institute is developing in accordance with the above principles or else of privately owned land which it acquires for the same purpose in accordance with the provisions of this Act; and provide farmers, either directly or with the cooperation of other institutions, with technical assistance and financial aid to bring about their establishment in settlement areas, the proper exploitation of land in those areas and the transport and marketing of produce from it;

(i) Carry out land consolidation work in highly partitioned areas;

(j) Apply to the appropriate agencies to provide the necessary rural services in areas where the Institute is operating; coordinate such services and give economic assistance for their establishment and operation where required;

(k) Encourage the formation of the "rural action units" referred to in this Act and also promote the cooperative movement among land-owners and agricultural workers;

(l) In general, develop activities directly related to the purposes set forth in Article 1 of this Act by the means indicated therein.

...

Chapter VI

REGIONAL DEVELOPMENT CORPORATIONS

19. The economic development of river basins or regions, which by reason of their situation or position in relation to public roads, area and extent of usable land or other factors constitute well-defined economic units may be entrusted to Regional Development Corporations whose territorial jurisdiction does not need to coincide with the boundaries of *Departamentos* or Municipalities.

The Regional Development Corporations shall have such functions as are delegated to them by the Colombian Land Reform Institute; they may also, however, fulfil other functions entrusted to them under the law or by existing government agencies or by the Central Government, or by Departmental or Municipal Governments with the authorization of the Congress, Assemblies or Councils, as the case may be.

20. Regional Development Corporations may be established at the initiative of the Central Government, the Colombian Land Reform Institute, Departmental Assemblies or Municipal Councils.

The establishment of a new Corporation, however, requires in all circumstances the approval of the Managing Board of the Institute and the National Government.

As a general rule, the Institute shall promote the establishment of Regional Development Corporations to encourage the development of settlements in reserve areas and to assist in the land partition and consolidation work referred to in this Act.

...

Chapter VII

TERMINATION OF RIGHTS OF OWNERSHIP OVER UNCULTIVATED LAND

22. All owners of farms of over two thousand (2,000) hectares shall submit to the Institute a certificate in respect of their lands issued by the Official Registrar. This shall be accompanied by a copy of the registered title deed to the land and also a detailed description of the farm. The description shall include all the data and other relevant information required by the Institute as to the situation and area of the farm and the manner of its operation. Owners of smaller areas are also subject to this requirement if on 1 September 1960 their farms were part of holdings of more than 2,000 hectares and if without holding a registered title to the property they were in fact in possession of the land concerned.

If a topographical plan of any farm concerned has been prepared, a copy of this shall also be forwarded.

These requirements must be fulfilled within six (6) months of the date when the Institute puts this provision into effect.

Chapter VIII

NATIONALLY OWNED COMMON LAND

The Institute may require the appropriate land survey offices or offices of the Agustín Codazzi Geographical Institute to provide whatever information they have available with respect to farms of over 2,000 hectares and also submit a description of such farms together with aerial photographs and plans of them.

On the basis of the above information and any other data collected or received, the Institute shall proceed with a methodical survey of the economic operation of the farms referred to in this Article, . . .

Proviso. The Institute may extend the obligation dealt with in this Article to cover the owners and holders of farms of a smaller area as and when it is in a position to carry out the required surveys in respect of them, . . .

Both the date on which the Colombian Land Reform Institute shall give effect to this provision and the date on which owners of areas smaller than those laid down in the first paragraph of this Article must fulfil the obligations set forth therein shall be fixed by order of the Manager of the Institute and given wide dissemination.

...

25. If the Institute, for reasons of social interest, deems it necessary to take possession of a farm or of part thereof in respect of which an order for termination of ownership has been made, but before any decision has been taken regarding the appeal against the order, it may go forward with the expropriation of the property concerned in accordance with the provisions of this Act . . . In such case, however, the goods and chattels representing the value of the expropriated property shall be held on deposit with the *Banco de la República*, at the disposal of the competent Judge, until such time as a decision is made putting an end to the appeal proceedings.

If the decision of the Court (now Council of State) upholds the expropriation order, the goods and chattels on deposit shall devolve to the Institute. If on the other hand the Court revokes or amends the order, the Judge shall order the handing over of the said goods and chattels to the owner or owners concerned, together with any yield therefrom in a proportion corresponding to the value of the area which under the decision is not considered to be covered by the termination of ownership.

26. Areas cultivated by settlers who have not recognized any link of dependency upon the landowner shall not be taken into account for the purposes of demonstrating the economic operation of a farm. If an order bringing about termination of ownership is upheld, the Institute may allocate to such settlers such portions of the land as the regulations governing common land at time of their settlement thereon may entitle them.

27. For all legal purposes, areas which at the time of the termination order were operated in an economic manner in accordance with the provisions of . . . the present Act shall not be subject to the rules regarding termination of ownership.

...

29. As from the date of the entry into force of this Act no grants of common land may be made except to private individuals and for areas not exceeding four hundred and fifty (450) hectares, except as otherwise stipulated herein.

Any person applying for common land must show that he is actively working at least two thirds of the area the grant of which he is requesting.

...

30. The Colombian Land Reform Institute is hereby authorized to extend the limits of the area which may be granted to private individuals in respect of the following types of land:

(a) Land in areas far distant from active economic centres, access to which is difficult, and for so long as such conditions subsist;

(b) Natural pasture land where the type of soil, climatic conditions or periodic flooding make it economically unfeasible to sow artificial pasture.

...

36. Married males of eighteen (18) years or over may receive grants of common land or family farms in settlement or partition areas and may thereafter assume all the obligations in that connexion without special legal authorization.

37. The owner of land granted to him as common land may receive no further grants if the first grant exceeds the limits specified in this Act. The same rule shall apply to the owner of land the title to which results from the grant of common land to any other person during the previous five years.

Any person who has received a grant of common land and has subsequently alienated it may receive no further grant until five (5) years have elapsed from the date of the earlier grant.

...

Chapter IX

SETTLEMENT AREAS

43. The Colombian Land Reform Institute shall proceed with the establishment of settlement areas on common land which it sets aside for that purpose in accordance with the provisions of this Act. Prior to the establishment of such settlement areas, the most complete survey possible shall be made of the climatic conditions, soil, water supply, topography and accessibility of the area concerned so as to establish that it is in fact suited to economic operation, and also to determine the type of activity which should be carried on there.

Settlement areas of the type referred to in this Article shall be established only in areas with proper means of communication or where such means are under construction or are to be constructed in the near future.

...

47. Land sold by the Institute in organized settlement areas may be paid for in Agrarian Bonds in accordance with the provisions below.

48. "Family farms" shall be assigned to workers on condition that they bring at least half of the area into operation within the succeeding five (5) years. Such farms shall be allocated under written contract which shall in addition set forth the following conditions:

(a) The title deed finally granting the land shall be issued only when the beneficiary shows that he has fulfilled to the satisfaction of the Institute the condition relative to economic operation set out in the foregoing paragraph;

(b) The area allocated or any improvements made thereto may not be transferred without the Institute's permission before the deed granting the land has been issued. Furthermore transfer may only be made to such persons as set forth in the third paragraph of Article 45 or to agricultural worker's cooperatives;

(c) The beneficiary agrees to respect the régime established under this Act governing "family farms".

Agricultural workers' cooperatives which are allocated land in organized settlement areas shall also in so far as possible be subject to the same rules.

49. The Institute shall, in accordance with the relevant provisions of this Act, encourage the competent administrative agencies and official institutions to provide technical assistance and economic and social services within settlement areas. The Institute shall give due attention to the coordination of such services and shall where necessary give financial assistance to such agencies and institutions or shall itself establish such services as they are unable to provide.

Chapter X

FAMILY FARMS (*Unidades agrícolas familiares*)

50. Both in its settlements work and in partition and consolidation work the Institute shall seek to give preference to the establishment of "family farms".

A "family farm" shall be understood to be one that conforms to the following conditions:

(a) The area of the farm shall, in relation to the characteristics of the region, types of soil, waters, geographical situation, relief and possible type of production, be sufficient if worked with reasonable efficiency to provide a normal family with income adequate for its sustenance, the payment of debts deriving from the purchase of the land and in case of need its development, and the progressive improvement of housing, work equipment and general level of living;

(b) The said area shall normally require for its reasonably efficient exploitation no more than the labour of the owner and his family. It is, however, understood, that this latter condition shall not be incompatible with the employment of casual labour at certain agricultural seasons if the type of

farming so requires nor with the mutual assistance which neighbouring farmers frequently afford each other in carrying out specific types of work.

Chapter XI

ACQUISITION OF PRIVATELY OWNED LAND

54. The Colombian Land Reform Institute is hereby authorized to acquire privately owned land and improvements, as well as such land or improvements as are the endowed property of public law bodies, in pursuance of the aims set forth in paragraphs 1, 2, and 4 of Article 1 of this Act, with a view to combating soil erosion, carrying out reforestation, facilitating irrigation and marsh reclamation work, improving transit and transport facilities, founding local agricultural communities and enlarging populated areas with less than twenty-five thousand (25,000) inhabitants at the request of the respective town council.

If the owners of land which it is deemed necessary to acquire fail to sell or transfer their land voluntarily, the Institute may compulsorily acquire such land in accordance with the provisions of the succeeding Articles. The acquisition of such land and improvements is hereby declared to be of social interest and public utility in accordance with Article 30 of the Constitution. (*Act No. 1 of 1968, Art. 12.*)

...

57. In matters pertaining to the acquisition of privately owned land, the Institute shall furthermore observe the following rules:

(1) It shall give priority to those areas where concentration of land holdings is particularly high or where there is total or partial unemployment affecting a large rural population. It shall also give priority to other areas, including those suffering from active erosion, inequitable labour relationships or noticeably lower levels of living among the rural population than in other areas of the country;

(2) The Institute shall acquire only such land as is suitable for small-scale crop-farming or stock-breeding. Land shall be considered suitable in this respect if it is irrigable or if without irrigation it normally has sufficient rainfall to grow crops or pasture to serve as a basis for the regular upkeep and profitable working of "family farms".

The Institute may, however, acquire adjacent areas which do not have such characteristics to use them as communal pasture land where this seems suitable.

...

60. Land expropriation shall be carried out in such a way as to preserve in so far as possible the unity of the area remaining to the owner and as to distribute equally between the expropriated and non-expropriated portions of usable land of similar quality and conditions. The division of the available water supply shall be regulated by the Institute in accordance with existing legislation.

...

62. Land acquired by the Institute as a result of voluntary sale or expropriation shall be paid in the following manner:

(1) For uncultivated land, in class B Agrarian Bonds issued in pursuance of this Act;

(2) For improperly farmed land, in cash. An amount equivalent to 20 percent of the price shall be paid on the date of the transaction without, however, exceeding a maximum of one hundred thousand (100,000) Colombian pesos. The remainder shall be payable in twelve successive annual instalments of an equal value, the first of which shall fall due one year after the date of the transaction;

(3) For land not accounted for under the two preceding paragraphs, in cash. An amount equivalent to 20 percent of the price shall be paid on the date of the transaction without, however, exceeding a maximum of three hundred thousand (300,000) Colombian pesos. The remainder shall be payable in five successive annual instalments of an equal value, the first of which shall fall due one year after the date of the transaction.

Chapter XII

PREPARATION OF LAND FOR CULTIVATION— IRRIGATION DISTRICTS

68. In carrying out its responsibilities under Article 3 (f) of this Act, the Colombian Land Reform Institute shall give special attention to the study, promotion and completion of flood defence works, water course regulation, irrigation and land reclamation to ensure that the most productive use is made of the greatest possible area and at the same time to bring about a change in rural land-holding structures.

Chapter XIII

AGRARIAN BONDS — FINANCING OF AGENCIES TO WHICH RESPONSIBILITY IS DELEGATED

74. The Government is hereby authorized to issue Agrarian Bonds in the quantity and manner and of the type specified in this and the succeeding Articles.

An issue shall be made to the value of two thousand million (2,000 million) Colombian pesos of Class A Bonds and of up to six hundred million (600 million) Colombian pesos of Class B Bonds.

Class A Bonds shall be issued in successive annual series of two hundred million (200 million) Colombian pesos each and the first issue shall be made within sixty (60) days from the date on which the Colombian Land Reform Institute starts operation. The second issue shall be ordered by the Government in accordance with requests to the effect by the Managing Board of the Institute and after approval by the Ministry of Agriculture and shall go forward in successive series of not less than five million (5 million) Colombian pesos each.

Once the Bonds in each series have been issued, the Government shall deposit them in the *Banco de la República* making them payable to the order of the Institute, and from that moment forward they shall be deemed part of the Institute's property. (*Act No. 1 of 1968, Art. 23.*)

75. Agrarian Bonds shall be of the following types:

Class A carrying 7 percent interest *per annum*, to be amortized over fifteen years.

Class B carrying 2 percent interest *per annum*, to be amortized over twenty-five years.

Chapter XIV

LAND PARTITION

80. Save when the Managing Board of the Institute, with the approval of the Ministry of Agriculture and with consideration of the special conditions prevailing on a given piece of land, lays down special regulations, properties acquired by the Institute through purchase or expropriation may as a general rule only be used for the following purposes:

(a) To establish family farms and cooperative farms;

(b) To carry out land consolidation work;

(c) To establish the public services required for the area concerned and also demonstration and experimental farms, agricultural machinery stations, schools, agricultural industries, storage facilities, premises for agricultural cooperatives, rural action units and communal pasture grounds;

(d) To extend municipal urban areas.

Before proceeding with the sale of any properties it has acquired, the Institute shall make such reserves of land as it considers essential for the purposes of subparagraphs (c) and (d) above. It may also make reserves of the areas required for rural villages wherein lots shall be sold, preference being given to small-scale plot holders in the area.

Proviso. The special regulations referred to in the first paragraph hereof may contemplate allocation to persons holding professional or expert qualifications in agricultural science of land equivalent in size to a "family farm" and as much again, with the obligation for the beneficiary to establish there pilot farms for experimental and demonstration purposes. The said regulations shall lay down conditions of payment by such beneficiaries and shall make the properties concerned subject to the rules governing preferential purchase rights by the Institute, which include the obligation for the beneficiary to work the holding himself and the termination of the contract *mortis causa* as established by the Act in respect of "family farms". (*Act No. 1 of 1968, Art. 24.*)

81. Family farms established in partition areas may be sold only to poor or relatively poor persons and shall in general be subject to the provisions of Chapter X of this Act.

The Institute shall lay down regulations for each partition area exactly in accordance with the provisions of the foregoing paragraph and furthermore shall provide as follows:

(1) The purchaser shall be prohibited from transferring the plot, except by testamentary transfer, without permission of the Institute. Transfers may only be authorized in favour of persons who would be qualified for original purchase in accordance with the first paragraph hereof.

(2) The purchaser shall be entitled to pay the capital amount of the debt in Agrarian Bonds in accordance with Article 78.

(3) Tenant farmers, scharecroppers and employees of the areas where family farms are established, agricultural workers in the same area who have no land of their own and also the heirs, surviving spouse or permanent companion of the deceased grantees shall have preferential entitlement to the acquisition of family farms.

(4) Contracts for grants of land must include a clause permitting the Institute to terminate the said contract without recourse to the Courts in the event of the grantee's failure to observe the provisions of this Act, of the Regulations hereunder or of the contract under which the grant was made, or in the event of the death of the owner.

The resolution terminating the contract shall entitle the Institute to require the immediate handing over of the plot. The Institute shall reimburse all instalment payments made by the debtor toward the capital value of the debt and shall also pay for any improvements made at a price to be determined by agreement with the interested party or else as determined by experts, and shall further set the amount of interest paid against the usufruct of the plot that the debtor has enjoyed.

In cases of termination of contract due to the death of the owner, the Institute shall pay the commercial value of the plot in question by means of a deposit made with the presiding judge in favour of the heirs and shall in making the grant of the "family farm unit" give preference to the heir, surviving spouse or permanent companion who satisfies the conditions governing such grant which are laid down in this Act and are referred to in this article.

Appeal may only be made against an order under this paragraph by means of *recurso de reposición*. The debtor shall, however, be entitled to having the resolution nullified if within fifteen days of its issue he pays the full amount due to the Institute.

(5) Plot holders shall be obliged to belong to whatever life insurance system the Institute may determine so that the debt burdening the plot may be paid off even if the beneficiary should die prior to completion of full payment. (*Act No. 1 of 1968, Art. 25.*)

Chapter XV

VOLUNTARY LAND PARTITION

86. The Colombian Land Reform Institute may, as and when it considers suitable, partition land

on behalf of third parties in accordance with the regulations which it lays down for that purpose with the approval of the Government. The regulations shall contain measures guaranteeing the establishment of farm units suited to the type of agriculture or stockbreeding which can be developed in the land that is to be partitioned. The type of payment, time limits and interest rates on sums outstanding shall be subject to approval by the Institute.

Chapter XVI

SMALL HOLDINGS (*Minifundios*) AND LAND CONSOLIDATION AREAS

87. Save for the exceptions specified below, farms of three hectares or less shall for all legal purposes be considered to be of a type not allowing of physical subdivision.

The partitioning of a unit which would result in the establishment of properties of an area smaller than that specified above is hereby forbidden.

As a result any acts or contracts contravening the prohibition laid down in the foregoing paragraph are null and void.

88. Exceptions shall be made to the provision contained in the foregoing Article in the following cases:

(a) Donations made by any owner of a larger unit for rural housing and small agricultural plots attached thereto;

(b) Acts or contracts in pursuance of which properties smaller than those specified are established for a purpose other than farming;

(c) Acts or contracts establishing properties where special conditions give reason for considering them despite their small area as "family farms" in accordance with the definition contained in Article 50;

(d) Decisions declaring acquisition of ownership by virtue of possession from before the date of this Act and decisions recognizing any other right which came into being prior to this Act.

The existence of any of the circumstances giving rise to exceptional conditions in accordance with this Article may not be contested in relation to a contract if the relevant official document contains reference thereto, provided that:

(1) In the case set forth in paragraph (b) above, the land concerned has in fact been used for the purpose laid down in the contract.

(2) In the case set forth in paragraph (c) above, the official document finalizes approval given by the Colombian Land Reform Institute or any agencies to which it has delegated responsibility sanctioning the contract or the original general partition plan.

Chapter XVII

RURAL SERVICES

95. In carrying out the functions entrusted to it under Article 3 (f) of this Act, the Colombian Land Reform Institute shall promote and coordinate technical, economic and social assistance services in land settlement, partition and consolidation areas and in spontaneously settled areas. For this purpose it shall, wherever necessary, give financial and organizational assistance and provide personnel.

Exceptionally the Institute shall organize such services directly so long as the agencies whose responsibility it is are unable to do so in a satisfactory manner.

Assistance services shall in so far as possible be coordinated through the system of "rural action units" referred to below.

96. The Institute may also itself establish certain services in the areas referred to in the foregoing article with a view to improving farming methods and rural welfare. Such services may include:

(a) Services to facilitate the use of agricultural machinery and draught animals;

(b) Services for the processing, packaging and transport of agricultural and livestock products;

(c) Silo and storage services;

(d) Commissariat services;

(e) Services to facilitate the improvement of rural housing.

The Institute may also promote or establish small-scale industries that give supplementary employment to rural families and establish demonstration and training farms with school facilities attached thereto.

...

CONGO (BRAZZAVILLE)

ACT OF 5 AUGUST 1967 ESTABLISHING THE NATIONAL COUNCIL OF THE REVOLUTION ¹

TITLE I

ESTABLISHMENT AND DEFINITION

Article 1. Pending the creation of new national institutions a National Council of the Revolution (NCR) shall be established.

Article 2. The NCR shall be the supreme organ of the Revolution and shall be composed of forty-one members. In this capacity, it shall conceive, direct, control and co-ordinate the activities of the Party and the State.

TITLE II

ORGANIZATION

Article 3. The NCR shall elect from amongst its members: a Directory, an executive body composed of twelve members; one or more Functional Commissions.

...

Article 5. The NCR shall be responsible for security, national defence and propaganda and shall deal with them in Functional Commissions.

TITLE III

FUNCTIONS

Article 6. The President of the Republic shall appoint and dismiss the Prime Minister and members of the Government on the recommendation of the NCR.

Article 7. The NCR shall draw up the fundamental instrument governing the organization and functioning of the State.

...

¹ *Journal Officiel de la République du Congo*, No. 16, 15 August 1968.

FUNDAMENTAL ACT OF 14 AUGUST 1968 ²

PREAMBLE

Article 1. The Fundamental Act shall establish the organization of and basis for the duly constituted authorities of the country until such time as a new Constitution is proclaimed. The provisions of the Constitution of 8 December 1963 which are not in conformity with this Act are hereby repealed. ³

Article 2. The following titles of the Constitution of 8 December 1963 shall continue to apply: Title II, with the exception of the last two sentences of article 12; Title VIII, with the exception of article 61; and Title IX.

TITLE I

THE NATIONAL COUNCIL OF THE REVOLUTION

Article 3. The NCR shall continue to guarantee the continuity of power of the State and the revolutionary institutions until the new institutions are established.

Article 4. The NCR shall direct, guide and control government operations.

TITLE II

THE PRESIDENT OF THE REPUBLIC

Article 5. The President of the Republic shall be Head of State. He shall embody national unity. He shall ensure observance of decisions and action taken by the NCR and the Government and of international treaties and agreements.

Article 6. The President of the Republic shall appoint the Prime Minister on the recommendation of the NCR.

Article 7. The President of the Republic shall appoint the members of the Government on the recommendation of the Prime Minister and with the prior approval of the NCR. The members of the Government shall be responsible to the Prime Minister.

Article 8. Acts of the President of the Republic shall be countersigned by the Prime Minister.

² *Ibid.*

³ For extracts from the Constitution of 8 December 1963, see *Yearbook on Human Rights for 1964*, pp. 75-77.

DECREE No. 68-207 OF 1 AUGUST 1968 CONCERNING DISSOLUTION OF THE NATIONAL ASSEMBLY ⁴

Article 1. The National Assembly elected on 8 October 1963 is hereby dissolved.

Article 2. Pending the election of a new National Assembly, the President of the Republic shall legislate by ordinance.

⁴ *Ibid.*

CONGO (DEMOCRATIC REPUBLIC OF)

ORDER No. 03/68 OF 29 JANUARY 1968, TO LAY DOWN THE RIGHTS AND OBLIGATIONS OF EMPLOYERS AND WORKERS WHO ARE PARTIES TO A COLLECTIVE LABOUR DISPUTE ¹

Summary

Section 1 of the Order lays down the rights and obligations of workers and employers who are parties to a collective labour dispute, as defined in section 213 of Legislative Ordinance No. 67/310 of 9 August 1967, to establish a Labour Code. ²

Under section 2, workers and employers who are parties to a collective labour dispute shall be obliged to submit the dispute to the agreed conciliation or arbitration procedure if such exists by virtue of a collective agreement binding the parties, and in default of a collective agreement, to the statutory conciliation or mediation procedure as prescribed in sections 215 to 223 of the Labour Code.

Section 3 provides that after exhausting one or other of the procedures referred to in section 2, the workers who decide to resort to a collective stoppage of work, or the employer who wishes to resort to lockout action, shall notify the other parties by giving six working days' prior notice, the period of notice to run from the date of receipt of the notice.

As stated in section 5, the collective stoppage of work or lockout shall become effective only if the essential services for the public are maintained as well as those concerning the safeguarding of the plant, stocks and raw materials or finished products.

The text of the Order in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series*, 1968—Congo (Kin.) 1.

¹ *Moniteur Congolais*, No. 5, of 1 March 1968.

² See *Legislative Series*, 1967 - Congo (Kin.) 1. For extracts from the Labour Code, see *Yearbook on Human Rights for 1967*, pp.77-78.

ORDER No. 68/13 OF 17 MAY 1968, TO LAY DOWN CONDITIONS OF WORK FOR WOMEN AND CHILDREN

Summary

Under section 1 of the Order, it is unlawful for any employer to employ women and children in work which exceeds their strength, exposes them to considerable occupational hazards, or which of its nature or on account of the conditions in which it is carried out, is liable adversely to affect their morals.

Part II of the Order, entitled "Employment of Women", contains provisions on hours of work, night work, work prohibited for women, employment of pregnant women and premises reserved for women.

Part III, dealing with the employment of children, provides, *inter alia*, that children between 14 and 16 years of age may be employed in light and healthy work; that children 16 years of age or over but under 18 years of age shall not be required to work for more than eight hours a day; that no child under 18 years of age shall be required to work on Sunday; that night work is prohibited for any child up to 18 years of age; and that work which may exceed children's strength, is dangerous or unhealthy and is of an immoral nature, are prohibited for children.

The text of the Order in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series*, 1968—Congo (Kin.) 2.

COSTA RICA

NOTE ¹

CONSTITUTIONAL AMENDMENTS

By Act No. 4123 of 31 May 1968, article 33 of the Constitution was amended to read as follows: "All persons are equal before the law and there shall be no discrimination whatsoever which is contrary to human dignity."

EXECUTIVE DECREES

No. 8 of 22 February 1968. The President of the Republic and the Minister for Foreign Affairs decree:

Article 1. The year 1968 is proclaimed International Year for Human Rights, and 21 March 1968 is proclaimed International Day for the Elimination of Racial Discrimination.

Article 2. Public primary and secondary schools shall in the course of 1968 give instruction on topics appropriate to each age group with a view to providing children and young people with a more sharply defined idea of the inherent rights of the human person, irrespective of race, religion, nationality, sex or social position, and of the importance of respect for such rights for the peaceful co-existence of mankind, and shall also endeavour to encourage their pupils to adopt a positive attitude towards respect for those rights.

Article 3. The High Ecclesiastical Authorities, the University of Costa Rica, private educational institutions, the national press and the radio and television stations are hereby requested to give

their full support during the course of the year to the efforts to foster greater awareness in the community of the Christian and democratic concept of respect for the inalienable rights of the human person.

Article 4. The Costa Rican Bar Association (*Colegio de Abogados*) is requested to examine, through its own committees, the legislation and administrative regulations now in force and to compare them with the principles set forth in the Universal Declaration of Human Rights and in other pertinent United Nations declarations and documents, with a view to establishing whether it might be necessary to adopt amendments or new laws in order to bring national legislation into complete harmony with those lofty principles.

Article 5. On 21 March 1968, full instruction shall be given to the pupils of primary and secondary schools in the Republic concerning the dignity and rights of the human person, the Christian principles that provide the basis for Costa Rican education, and the need for all mankind to be treated in accordance with the Universal Declaration of Human Rights.

INTERNATIONAL AGREEMENTS

By Act No. 4229, of 11 December 1968, Costa Rica ratified the International Covenants on Human Rights adopted by the United Nations General Assembly in resolution 2200 (XXI) of 16 December 1966, namely the International Covenant on Economic, Social and Cultural Rights, and the Optional Protocol to the International Covenant on Civil and Political Rights.

¹ Note furnished by the Government of Costa Rica.

CYPRUS

NOTE ¹

CATERING EMPLOYEES (CONDITIONS OF SERVICE) LAW AND REGULATIONS OF 1968

The Catering Employees (Conditions of Service) Law and Regulations came into operation on 26 July 1968. The Law and Regulations gave effect and legal force to a collective agreement reached between the parties concerned with the assistance of the Ministry of Labour. The main provisions of the Law and Regulations are given below:

(a) The Law provides for a 10 per cent service charge to be added on all payments made by customers except for taxes, cigarettes and telephone fees.

(b) It introduces the institution of the Professional Booklets which include all the relevant information about the qualifications and past service of the employee in the industry.

(c) It provides for a 9-hours work day, for 9 to 13 days annual paid leave and 10 to 18 days sick leave.

The administration and interpretation of the Regulations are entrusted to a tri-partite Conditions of Service Committee under the chairmanship of the Director-General of the Ministry of Labour or his deputy.

The main reason for the enactment of this Law and Regulations is that the catering employees are finding it difficult to protect their conditions of employment largely because of the scattered nature and small size of catering establishments in the island.

¹ Note furnished by the Government of Cyprus.

CZECHOSLOVAKIA

NOTE ¹

1. *Ordinances of ministries and central organs, published in the Collection of Laws Nos. 4/1968, 10/1968, 11/1968, 20/1968, 23/1968, 25/1968, 26/1968, 27/1968, 33/1968, 37/1968, 40/1968 and 48/1968, providing information on the list of places of work prohibited to women, pregnant women and mothers until the ninth month after delivery, and to young people*

These regulations issued by ministries and central organs to be in force in certain branches (health services, building industry, transport, etc.) contain lists of places of work and performances which are prohibited to the above persons in view of their special state of health or physical condition.

2. *Decision of the President of the Republic of 9 May 1968, published in No. 55/1968 of the Collection of Laws, concerning amnesty*

Availing himself of the right provided him by the Constitution, the President of the Republic by this decision has somewhat relieved the sentence of persons who were guilty of crimes against the laws of the Republic, either by pardoning the punishment or by commuting the sentence.

3. *Ordinance of the Ministry of Labour and Social Affairs of 15 May 1968, published in No. 63/1968 of the Collection of Laws, concerning the principles of shortening weekly working hours and introducing operation and labour régimes of a 5-day working week*

The ordinance provides for a shortening of the working hours to 40, 41 and a quarter and 42 and a half hours a week, depending on the kind of work. The ordinance further regulates questions of labour law and sickness insurance which are connected with the shortening of the working hours.

4. *Constitutional Act of 24 June 1968, published in No. 77/1968 of the Collection of Laws,*

concerning the preparation of a federative system of the Czechoslovak Socialist Republic

The Act proceeds from the right of the Czech and Slovak nations to self-determination and mentions as its purpose the formation of a federative system in the Czechoslovak Socialist Republic on the basis of an agreement between the constitutional political representations of both nations. The Act stipulates the method to be applied in adopting new regulations in state and legal relations, regulates the position of provisional organs which are working on the preparation of the federative system of the Czechoslovak Socialist Republic and determines the ways of establishing the competence of such organs.

5. *Regulation of the Ministry of Education of 18 April 1968, published in No. 80/1968 of the Collection of Laws, cancelling the principles regarding the dislocation of young people and their admission to study*

The measures secure better conditions for acquiring higher education and provide possibilities to all who are capable and talented.

6. *Act of 25 June 1968, published in No. 82/1968 of the Collection of Laws, concerning rehabilitation in court*

This Act provides for a speedy re-examination of cases involving people who have been unlawfully condemned as a result of violations of legality in criminal proceedings. The purpose of the Act is not only to provide social rehabilitation to persons unjustly condemned and to give them commensurate material indemnity, but also to draw conclusions from the detected illegalities in respect of persons who had their share in such illegalities. The purpose of this Act is to eliminate some inadequate severity in applying repression.

7. *Act of 27 June 1968, published in No. 88/1968 of the Collection of Laws, concerning the prolongation of maternity leave, maternity allowances and children's allowances paid from sickness insurance funds*

The Act provides for a prolongation of maternity leave and specifies the financial allowances to

¹ Note furnished by the Government of the Czechoslovak Socialist Republic.

be granted within the scope of sickness insurance on the grounds of pregnancy, delivery or maternity. The Act regulates the payments of children's allowances and the fundamental forms of social care of families with dependent children. These allowances are earmarked exclusively for care of such dependent children.

8. *Act of the Slovak National Council of 27 June 1968, published in No. 97/1968 of the Collection of Laws, concerning "Matica slovenská"*

The Act regulates the fundamental objectives, statute and organization of the national cultural institution "Matica slovenská", which associates, on the basis of voluntary membership, all those creating and patronizing the Slovak national culture, promotes that culture by way of documentary and research activities and imparts knowledge of the homeland both at home and abroad.

9. *Act of 13 September 1968, published in No. 126/1968 of the Collection of Laws, concerning some temporary measures aimed at the consolidation of public order*

The Act stipulates measures, the purpose of which is to create conditions for normalizing the situation in the country after 20 August 1968, to safeguard the security and protection of persons and to consolidate public order. These measures relate to public assemblies, demonstrations and processions and social organizations. The Act stipulates measures that may be taken, lists conditions under which it is permitted to take such measures and specifies bodies entitled to do so.

10. *Act of 13 September 1968, published in No. 127/1968 of the Collection of Laws, concerning some temporary measures in the field of the Press and the other mass information media*

The purpose of this Act is to secure that the Press and the other information media do not infringe upon important interests of the internal and foreign policies of the State. The Act provides for sanctions that may be taken against publishers in case reports and information appearing in the press infringe upon such interests. The Act expressly stipulates that it does not affect the freedom to publish artistic and scientific achievements.

11. *Act of 13 September 1968, published in No. 128/1968 of the Collection of Laws, concerning the National Front*

According to this Act, the National Front associates political parties and organizations performing the function of political parties. The Act characterizes the National Front as a political expression of the union of nations and nationalities, social strata and common-interest groups. The Act proceeds from humanistic and democratic principles of socialism and the pluralistic concept of the political system.

12. *Ordinance of the Ministry of Education of 23 October 1968, published in No. 140/1968 of the Collection of Laws, concerning working relief and economic security of those who study while being employed*

The Ordinance provides for working and financial relief in respect of workers who by studying

wish to acquire a certain education, a higher education or a professional qualification. Such workers are released from work to an extent as to enable them to study and are given wages in compensation of the time they are absent from work, study allowance and discount transportation fares. The Act thus contributes to the maximum possible application of the right to education which may be acquired, without any material detriment, also by those who have already joined the working process.

13. *Constitutional Act of 27 October 1968, published in No. 143/1968 of the Collection of Laws, establishing the Czechoslovak Federation*

This constitutional Act stipulates the main principles on which the Czechoslovak Federation is established. The basic provisions of this Act are contained in its Chapter I, which reads as follows:

Article 1

(1) The Czechoslovak Socialist Republic is a federative State of two equal brotherly nations, the Czechs and the Slovaks.

(2) The basis of the Czechoslovak Socialist Republic is the voluntary union of equal national States of the Czech and Slovak nations, relying on the right to self-determination of each of them.

(3) The Czechoslovak Federation is an expression of the will of the two sovereign nations, the Czechs and the Slovaks, to live in a common federative State.

(4) The Czechoslovak Socialist Republic consists of the Czech Socialist Republic and the Slovak Socialist Republic. Both Republics have an equal position in the Czechoslovak Socialist Republic.

(5) Both Republics respect each other's sovereignty and the sovereignty of the Czechoslovak Socialist Republic; equally, the Czechoslovak Socialist Republic respects the sovereignty of national States.

Article 2

(1) The Czechoslovak Socialist Republic as well as the Czech Socialist Republic and the Slovak Socialist Republic are established on the principles of socialist democracy. Their political system is identical in all essential matters.

(2) The State power is exercised by the working people through its representative bodies which are: the Federal Assembly, the Czech National Council, the Slovak National Council and the National Committees.

(3) Political rights of citizens and guarantees for their exercise are equal all over the territory of the Czechoslovak Socialist Republic.

Article 3

(1) The territory of the Czechoslovak Socialist Republic consists of the territory of the Czech Socialist Republic and the territory of the Slovak Socialist Republic.

(2) The borders of the Czechoslovak Socialist Republic and the borders of the Czech Socialist Republic and the Slovak Socialist Republic may

be changed only by a constitutional law of the Federal Assembly.

(3) The borders of each of the two Republics may be changed only upon agreement of the respective National Council. The National Council gives its approval by a constitutional law.

Article 4

(1) The economy of the Czechoslovak Socialist Republic is an integration of the two national economies, Czech and Slovak. It is developed on the basis of the socialist economic system.

(2) The Czech and the Slovak nations enjoy economic sovereignty. The Czech Socialist Republic and the Slovak Socialist Republic handle the produced national incomes with the exception of those parts whose administration has been entrusted by them to the Czechoslovak Socialist Republic for safeguarding its social requirements and interests. The economy of the Czechoslovak Socialist Republic is developing in mutual co-operation and with the assistance of both nations.

(3) The economy of the Czechoslovak Socialist Republic is developing systematically in conditions of a uniform socialist market based on one currency, free movement of labour, free flow of monetary funds, on a unified system of management and on uniform principles of economic policy.

(4) The role of federal organs is first of all to secure the best possible orientation of the economic development, influence the relations emerging in the distribution of the social product and the national income, to develop economic contacts with other countries, to constitute uniform conditions for the operation of the economic system and for the development of economic democracy and to support progressive forms of the integration of enterprises between the two Republics. A significant task of the Czechoslovak Socialist Republic is the levelling up of economic and social differences between the two Republics, particularly by creating equal conditions and possibilities for the formation and utilization of the national income.

Article 5

(1) Each citizen of each of the two Republics is at the same time a citizen of the Czechoslovak Socialist Republic.

(2) Each citizen of either Republic shall enjoy equal rights and equal obligations in the territory of the other Republic, as any citizen of that Republic.

(3) The principle of acquiring or losing citizenship of the Republic are stipulated in a Federal Assembly Act.

Article 6

(1) The Czech and the Slovak language are used with equal authenticity in declarations of law and other generally binding legal regulations.

(2) In the proceedings of all State organs of the Czechoslovak Socialist Republic and the two Republics, in proceedings before them and in the other contacts they have with citizens, both languages are used with equal authenticity.

The Act further regulated the division of the sphere of operation between the Federation and the Republics, the statute of the Federal Assembly, the President of the Czechoslovak Socialist Republic, the State organs of the Czech Socialist Republic and the Slovak Socialist Republic respectively.

14. *Constitutional Act of 27 October 1968, published in No. 144/1968 of the Collection of Laws, concerning the Statute of Nationalities in the Czechoslovak Socialist Republic*

The Act safeguards participation in State power to persons of Hungarian, German, Polish and Ukrainian nationalities and provides them with guarantees for their further development. The Act guarantees the representation of these nationalities in representative bodies in proportion to their numbers. Citizens of these nationalities are guaranteed the right to education in their own language, the right to all-round cultural development, the right to be associated in national, cultural and social organizations, the right to freedom of the press and to be informed in their language and the right to use their language in contact with authorities. Each citizen decides his nationality freely, and allegiance to any nationality cannot be to the detriment of the citizen's assertion in the political economic and social life. The Act prohibits any forms of pressure that are aimed at national alienation.

15. *Act of 19 December 1968, published in No. 165/1968 of the Collection of Laws, governing the principles of acquisition and loss of citizenship.*

The Act regulates citizenship in accordance with the federative system of the State. According to the Act, each citizen of the Czech Socialist Republic and each citizen of the Slovak Socialist Republic is a national of the Czechoslovak Socialist Republic. Citizenship of the Czechoslovak Socialist Republic is acquired through the acquisition of the citizenship of either Republic (Czech Socialist Republic or Slovak Socialist Republic). Similarly, citizenship of the Czechoslovak Socialist Republic is lost through the loss of citizenship of either Republic.

The citizenship of a child is governed by the citizenship of his parents. Should one parent be a citizen of the Czech Socialist Republic and the other a citizen of the Slovak Socialist Republic, the circumstance decisive for the child's citizenship is the territory of the Republic in which the child was born. Citizenship is not changed through marriage; however, each spouse may choose the citizenship of that Republic of which the other spouse is a citizen. The acquisition of citizenship of one Republic amounts to the loss of citizenship of the other.

16. *Act of 20 December 1968, published in No. 173/1968 of the Collection of Laws, amending and complementing Act No. 59/1965 of the Collection of Laws concerning the service of sentence of imprisonment*

The Act regulates the activities of the Board of Corrective Education attached to the Administration and Guard Service of corrective educational institutions and institutions of custody. In perform-

ing their duties, members of the Board are obliged to observe the Constitution, laws and other legal regulations. The Act enjoins on them to observe demands of human and civil dignity. Pursuant to this Act, it is the fundamental duty of the Board

to secure that corrective educational activities perform their social function as well as possible and that they create prerequisites for permanent correction of the condemned and for their normal integration in the life of society.

DAHOMÉY

ORDINANCE No. 5 P.R./M.A.I.S./D.A.I./A. OF 30 JANUARY 1968 CONCERNING A SPECIAL REVISION OF THE ELECTORAL ROLLS ¹

TITLE I

CONDITIONS FOR REGISTRATION ON AN ELECTORAL ROLL

Article 1. All Dahomean nationals of either sex who have attained the age of twenty-one by 31 March 1968, are in possession of their civil and political rights and are not affected by any statutory disability shall be entitled to vote.

Article 2. Registration on an electoral roll shall be compulsory. Regulations for the application of this article shall, where necessary, be laid down by circulars from the Minister of Internal Affairs and Security.

Article 3. No person may be registered on more than one electoral roll.

Article 4. The electoral roll shall include the names of:

1. All voters who have their real domicile in the administrative district concerned and have been counted there in a census;

2. Persons whose names have, in the election year, appeared for the fifth consecutive time on one of the direct taxation rolls or on the civic tax roll and who, if they are not resident in the administrative district concerned, have declared that they wish to exercise their electoral rights there. Members of the families of such voters who are themselves liable to assessment for the civic tax, even if their names do not appear on the civic tax roll, and inhabitants who for age or health reasons may no longer be liable to that tax, shall also be registered under this sub-paragraph;

3. Persons who are obliged by their status as public officials to reside in the administrative district concerned;

4. Persons who did not fulfil the age and residence requirements indicated above at the time of the last census but will fulfil them on or before 31 March 1968.

TITLE II

REVISION OF THE ELECTORAL ROLLS

Article 5. The preparatory work for the actual revision shall be done by the administrative authority, using the information provided by the latest censuses and documents in its possession.

...

Article 6. From 4 March to 11 March 1968 inclusive, any voter may request the removal from or registration on the electoral roll of a person whose name was duly entered or omitted.

...

Article 7. The electoral roll shall be revised in each administrative district by a Supervisory Commission.

...

Article 10. The Supervisory Commission shall have exclusive and final competence to revise the electoral roll.

..

TITLE III

PENAL AND OTHER PROVISIONS

Article 14. The penalty of imprisonment for a term of one month to one year and a fine of 12,000 to 120,000 francs shall be imposed on:

Any person who has caused himself to be registered on an electoral roll under false names or a false description, who has concealed a statutory disability when causing himself to be regis-

¹ *Journal officiel de la République du Dahomey*, No. 7, of 1 April 1968.

tered, or who has requested or secured registration on two or more rolls;

Any person convicted of fraud in the issue, or presentation of a certificate attesting that his name has been entered on or removed from an electoral roll;

Any person who, by means of misrepresentation or forged certificates, has caused or attempted to cause himself to be registered improperly on an electoral roll or has used such means to cause or attempt to cause a citizen to be registered or removed improperly.

Article 15. The same penalties shall be imposed on accessories to the offences specified in article 14.

Article 16. The penalties specified in article 14 may be doubled if the offender is an administrative or judicial official, a government or public agent or an agent of a Supervisory Commission.

Article 17. In all cases, offenders may also be deprived of their civic rights for a period of not less than two and not more than five years.

Article 18. All previous legislation concerning the enjoyment and exercise of civic rights which does not conflict with the provisions of this Ordinance shall remain in force.

CONSTITUTION OF THE REPUBLIC OF DAHOMÉY ²

WE, THE PEOPLE OF DAHOMÉY,

...

Proclaim our adherence to the principles of democracy and human rights, as set out in the Declaration of the Rights of Man and the Citizen of 1789, the Universal Declaration of 1948, and the Charter of the United Nations, and as guaranteed by this Constitution;

Affirm our adherence to the cause of African unity and to co-operation with all the peoples of the world in peace, justice, liberty, equality and independence.

In witness whereof,

WE, THE PEOPLE OF DAHOMÉY,

Solemnly adopt this Constitution, to which we swear loyalty and fidelity.

TITLE I

THE STATE AND SOVEREIGNTY

Article 1. The State of Dahomey is an independent, sovereign Republic. The official language is French.

...

Article 2. The Republic of Dahomey is one and indivisible, secular and democratic. Its principle is government of the people, by the people and for the people.

² Adopted by the People of Dahomey in the referendum of 31 March 1968, promulgated by Ordinance No. 20 P.R. of 8 April 1968 and published in the *Journal officiel de la République du Dahomey*, No. 9, of 15 April 1968.

Article 3. National sovereignty shall be vested in the people.

No section of the people, no community, no political party, no trade union organization and no individual may assume the exercise of sovereignty.

It shall be exercised in conformity with this Constitution, which is the fundamental law of the State. All laws and all acts contrary to its provisions shall be null and void. Consequently, all citizens have the right to appeal to the Supreme Court against unconstitutional laws and acts.

Article 4. The people shall exercise sovereignty through their elected representatives and by way of referendum. The conditions in which recourse may be had to a referendum shall be determined by law.

The Supreme Court shall ensure the proper conduct of referenda and announce their results.

Article 5. The suffrage shall be universal, equal and secret.

All Dahomean nationals of both sexes who are of full age and in full possession of their civil and political rights shall be entitled to vote under the conditions established by law.

TITLE II

THE RIGHTS AND DUTIES OF THE CITIZEN

Article 6. The human person is sacred.

The State has the obligation to respect and to protect it. The State shall guarantee its full development. For this purpose it shall guarantee its citizens equal access to education, vocational training and culture.

Primary education shall be compulsory. It shall be free of charge in the public primary schools.

Article 7. Everyone has the right to life, liberty and security of person.

Article 8. No one shall be arrested, charged, detained, interned or exiled except by virtue of a law promulgated prior to the acts of which he is accused.

Article 9. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 10. Since the right to appeal against a judgement is one of the essential guarantees of the citizen against arbitrary action and an indispensable means of upholding legality, no one may be deprived of the right to appeal to the Supreme Court against sentences involving deprivation of liberty or restraint of property rights.

Article 11. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

No one has the right to prevent a detained or an interned person from being examined by a doctor.

No one may be detained in a prison except in pursuance of the provisions of a criminal law in force.

Article 12. In cases where the law authorizes internment or banishment as an administrative measure, no citizen subjected to these measures may be detained in a prison.

Article 13. Any person arrested pursuant to an administrative measure of internment or banishment may apply to the Supreme Court, through the President of the Court of first instance of the place of his arrest or detention, to have an investigation made of the legality of and factual grounds for the measure imposed on him. The Court's decision shall be made within eight days.

Article 14. The home shall be inviolable.

The home may be entered or searched under the procedures and conditions laid down by law.

Article 15. The secrecy of correspondence shall be guaranteed by law.

Article 16. Everyone has the right to own property.

No one may be deprived of his property except for reasons of public interest and subject to prior payment of fair compensation.

Article 17. Everyone shall have the right to freedom of thought, conscience, religion, opinion and expression, subject to public policy, as established by law and regulations.

Freedom of the press shall be guaranteed subject to the same conditions.

Article 18. The Republic shall guarantee, under the conditions laid down by law, freedom of associating and of assembly, and freedom to hold processions and to demonstrate.

Article 19. The Republic shall ensure equality before the law for all, without distinction as to origin, race, sex, religion or political opinion. It shall respect all creeds.

Any particularist propaganda of a racial, regional or ethnic nature and any manifestation of racial discrimination shall be punished by law.

Article 20. The Republic of Dahomey recognizes the right of all citizens to work, and shall endeavour to create conditions which will make this right effective and ensure to the worker fair remuneration for his services or his production.

Article 21. Every worker may defend his rights and his interests through trade union action.

Trade union freedoms and the right to strike shall be exercised under the conditions determined by law.

Article 22. Defence of the nation and of the territory of the Republic is a sacred duty of every Dahomean citizen.

Article 23. It is the duty of all citizens of the Republic of Dahomey to work for the common good, to fulfil their civic and professional obligations honestly, to be punctilious in paying their taxes and to obey the Constitution and the laws of the Republic in all things.

TITLE III

THE PRESIDENT OF THE REPUBLIC

Article 25. The President of the Republic shall be elected by direct universal suffrage for a term of five years. He may be re-elected.

The election of the President of the Republic shall be by uninominal ballot.

No one may be a candidate unless he is of Dahomean nationality and has attained the age of thirty-five years by the date for the submission of candidatures.

The President of the Republic shall be elected by an absolute majority of the votes cast.

TITLE IV

THE LEGISLATIVE POWER

I. THE NATIONAL ASSEMBLY

Article 44. The Parliament shall be composed of a single assembly, known as the National As-

sembly, the members of which shall be known as deputies. Besides their legislative function, the deputies shall foster the civic, social and economic life of the nation. They shall behave in all circumstances as worthy representatives of the people.

Article 45. The deputies to the National Assembly shall be elected by direct universal suffrage.

The term of office of the legislature shall be five years.

The number of members of the National Assembly, qualifications for election, rules concerning disqualification and incompatibility of offices, and the procedure for filling vacant seats shall be established by law.

The Supreme Court shall give a final ruling on the validity of elections of deputies.

...
TITLE V

THE JUDICIAL POWER

I. THE JUDICIARY

Article 78. The Judiciary shall be independent of the Executive and the Legislature.

Article 79. Justice shall be administered in the national territory in the name of the Dahomean people.

In the performance of their functions, judges shall be subject only to the authority of the law.

Article 80. The President of the Republic shall guarantee the independence of the Judiciary.

He shall be assisted by the Superior Council of the Judiciary.

...
TITLE X

AMENDMENT

Article 102. The initiative with regard to amendment of the Constitution shall be taken by the President of the Republic, following a decision of the Council of Ministers, and by the members of the National Assembly.

In order to receive consideration, a proposed amendment must be approved by a three-fourths majority of the members of the National Assembly.

The amendment shall be considered finally adopted only after it has been approved in a referendum, unless it has been approved by a four-fifths majority of the members of the Assembly.

No procedure for amendment may be initiated or continued when the integrity of the national territory is threatened.

The republican form of government shall not be the subject of an amendment.

...
ORDINANCE No. 26 P.R. OF 16 APRIL 1968 ON THE DATE OF ENTRY INTO FORCE OF THE CONSTITUTION OF 8 APRIL 1968 ³

Article 1. The Constitution of 8 April 1968 shall enter into force after the institution of the future constitutional form of government.

³ *Journal officiel de la République du Dahomey*, No. 10, special issue of 17 April 1968.

ORDINANCE No. 10. P.R./M.A.I.S./D.A.I./A. OF 29 FEBRUARY 1968 ON THE DATE OF THE CONSTITUTIONAL REFERENDUM ⁴

Article 1. The electoral body shall be convened on Sunday, 31 March 1968, for the purpose of adopting or rejecting the draft Constitution which is to be submitted to it by the Provisional Government of the Republic.

⁴ *Ibid.*

ORDINANCE No. 17 P.R./M.A.I.S./D.A.I./A. OF 14 MARCH 1968 ESTABLISHING REGULATIONS FOR THE CONDUCT OF THE CONSTITUTIONAL REFERENDUM ⁵

TITLE I

PROPAGANDA

Article 1. Only individuals shall engage in propaganda advocating or opposing the adoption of the Constitution. Such propaganda shall be carried on during the period from midnight on Saturday, 23 March 1968, to midnight on Saturday, 30 March 1968.

Article 2. Meetings shall not be held on public thoroughfares and shall not continue after 11 p.m.; notice of a meeting shall be given to the chief of the administrative district concerned at least eight hours in advance.

Article 3. The signatory of such notice shall be responsible for maintaining order, preventing any breach of the law and ensuring that the character of the meeting is at all times that described in the notice and that no speech is made which is contrary to public policy or which contains an incitement to an act constituting a crime or an offence (*délit*).

He shall be responsible for violations of the provisions of articles 2 and 3 of this Ordinance.

Article 6. Article 463 of the Criminal Code shall apply to the offences covered by this Ordinance. The statutory limitation on proceedings instituted by the public authorities and on civil action shall be six months.

Article 7. The provisions of the Act of 30 June 1960 on the freedom of the press, as amended by the Act of 20 February 1961, shall apply to propaganda.

Article 8. No person shall distribute or cause to be distributed on polling day printed announce-

ments, circulars or other propaganda material, subject to the penalties specified in article 33.

Article 9. Throughout the period referred to in article 1 of this Ordinance, special sites shall be set aside by the competent authority in each administrative district for the display of electoral posters.

At each such site equal space shall be allocated to those advocating and those opposing the adoption of the draft Constitution which is the subject of the referendum.

No posters relating to the referendum may be displayed, even in the form of stamped posters, outside the said sites or at sites reserved for those holding a contrary opinion.

Article 10. The sites shall be allocated in the order of receipt of the applications which shall be submitted in the chief town of the administrative district not later than eight days before polling day.

...

TITLE III

VOTING OPERATIONS

Article 14. Voting shall begin at 8 a.m. and end at 6 p.m. on the day specified in the ordinance convening the electoral body.

Nevertheless, in order to facilitate the conduct of voting operations, certain polling stations may, by order of a Prefect, be authorized to open earlier.

Article 15. While the polls remain open, the electoral body shall concern itself only with the referendum for which it was convened. It shall not engage in any controversy or discussion.

...

Article 20. The vote shall be secret.

...

⁵ *Ibid.*

ORDINANCE No. 27 P.R./M.A.I.S./D.A.I./A. OF 16 APRIL 1968 ESTABLISHING GENERAL ELECTORAL RULES FOR ELECTIONS OF THE PRESIDENT OF THE REPUBLIC AND THE MEMBERS OF THE NATIONAL ASSEMBLY ⁶

Article 1. The provisions of this Ordinance concern the general rules applicable to elections of the President of the Republic and the members of the National Assembly.

Article 2. The suffrage shall be universal, equal and secret.

⁶ *Ibid.*

TITLE I

QUALIFICATIONS FOR VOTING

Article 3. All adult Dahomean nationals of either sex who have attained the age of twenty-one years and are in possession of their civil and

political rights shall be entitled to vote subject to the conditions established by law.

Article 4. The following persons may not be registered on an electoral roll:

1. Persons convicted of a serious offence [*crime*];
2. Persons under sentence or suspended sentence of imprisonment for a term of more than one month, with or without a fine, for theft, false pretences or fraudulent conversion, for a less serious offence [*délit*] punishable by the penalties applicable to theft, false pretences or fraudulent conversion, for misappropriation committed by trustees of public funds, for perjury, for false certification as referred to in article 161 of the Criminal Code, for corruption and influence-peddling as referred to in articles 177, 178 and 179 of the Criminal Code, or for sex offences as referred to in articles 330, 331 and 334 *bis* of the Criminal Code;
3. Persons under sentence of imprisonment for a term of more than three months or under suspended sentence of imprisonment for a term of more than six months for a less serious offence [*délit*] other than those enumerated in paragraph 2 above, without prejudice to the provisions of article 6;
4. Persons in contempt of court;
5. Undischarged bankrupts who have been declared bankrupt either by the ordinary courts or by a judgement issued abroad but enforceable in Dahomey;
6. Persons under statutory disability.

Article 5. Similarly, persons who have been deprived of the right to vote and to stand for election by the courts under the laws in force may not be registered on an electoral roll.

Article 6. No obstacle to registration on an electoral roll shall be constituted by:

1. A conviction for a less serious offence [*délit*] of negligence, except where the offender has fled, or of recognized drunkenness;
2. A conviction for any offence—other than an offence under the Companies Act of 24 July 1867—which is classified as a less serious offence [*délit*], in respect of which the imposition of a penalty does not depend on proof of bad faith and which is punishable only by a fine.

TITLE II

ELECTORAL ROLLS

Article 7. Registration on an electoral roll shall be compulsory. Decrees of the President of the Republic, approved by the Council of Ministers, shall, where necessary, establish regulations for the application of this article.

Article 8. No person may be registered on more than one electoral roll.

...

TITLE III

ELECTORAL PROPAGANDA

Article 11. A meeting which is held for the purpose of selecting or hearing candidates for the National Assembly or for the office of President of the Republic and which is open only to voters, candidates and the agent of each candidate shall constitute an electoral meeting.

Article 12. Meetings shall not be held on public thoroughfares and shall be prohibited between 11 p.m. and 7 a.m.; notice thereof shall be given in writing at least eight hours in advance to the head of the administrative district at his office, during the statutory office hours of the administrative services.

Article 13. Each meeting shall have at least three presiding officers. They shall be responsible for maintaining order, preventing any violation of the law, ensuring that the meeting preserves the nature ascribed to it in the notice and prohibiting any speech that is contrary to public policy [*ordre public et bonnes mœurs*] or contains an incitement to any action classified as a serious offence [*crime*] or less serious offence [*délit*].

Unless they are designated by the signatories of the notice, the presiding officers shall be elected by those attending the meeting, at the beginning of the meeting.

The presiding officers and, prior to the appointment of such officers, the signatories of the notice shall be held responsible for violations of the provisions of articles 12 and 13 of this Ordinance.

Article 14. An administrative or court official may be delegated by the administrative authorities of the district to attend the meeting.

He shall select his own place. If he is requested to do so by the presiding officers or if disturbances or acts of violence occur, he shall dissolve the meeting.

Article 15. The distribution of leaflets, circulars and other propaganda documents on election day shall be prohibited, subject to the penalties specified in article 44.

Article 16. The distribution of leaflets, circulars or other propaganda documents by a public official during his working hours shall be prohibited, subject to the penalties specified in article 44.

Article 17. Throughout the electoral period, special sites shall be set aside in each administrative district by the competent authority for the display of electoral posters.

At each site equal space shall be allocated to each list of candidates.

No election material may be displayed, even by stamped poster, outside the said sites or at sites reserved for the other candidates.

Article 18. The sites shall be allocated in the order of receipt of the applications, which shall be submitted in the chief town of the administrative district not later than eight days before election day.

...

ORDINANCE No. 28 P.R./M.A.I.S./D.A.I./A. OF 16 APRIL 1968 ESTABLISHING SPECIAL ELECTORAL RULES FOR THE ELECTION OF THE MEMBERS OF THE NATIONAL ASSEMBLY ⁷

TITLE I

GENERAL

Article 1. The deputies to the National Assembly shall be elected by direct universal suffrage by a majority vote on a single uninominal ballot.

Each sub-prefecture or urban district shall constitute an electoral district.

The term of office of the legislature shall be five years. The Revolutionary Military Committee shall give a final ruling on the validity of elections of deputies.

Article 2. The number of seats in the National Assembly shall be forty.

The number of deputies to be elected for each future legislature shall in each case be established by decree, after consultation with the Council of Ministers, according to criteria based on population figures and the territorial units involved.

Article 3. Each candidate shall be assisted by an alternate candidate.

...

Article 5. When a seat becomes vacant as a result of death, resignation or any cause other than invalidation of an election, the alternate candidate shall be invited by the President of the National Assembly to perform the functions of the holder of the seat. Such substitution, for whatever cause, shall be irrevocable.

Article 6. A deputy who is invited to assume ministerial office shall automatically forfeit his parliamentary functions. He shall be replaced in the Assembly by his alternate for the term of office of the legislature.

...

TITLE II

QUALIFICATIONS FOR ELECTION
AND DISQUALIFICATIONS

Article 10. All voters shall have the right to be elected, subject to the provisions of articles 11 and 12 below.

Article 11. No person may be a candidate unless he is at least twenty-five years of age in the election year and has such a command of written and spoken French as to enable him to follow the proceedings of the National Assembly and to speak in French in discussions.

Article 12. Convicted persons shall be disqualified for election if their conviction permanently bars their registration on the electoral roll.

Persons whose conviction temporarily bars their registration on the electoral roll shall be disqualified for election for a period as long again as that for which they may not be registered on an electoral roll.

The following persons shall also be disqualified for election:

1. Persons deprived, by judicial order under the laws in force, of their right to be elected;
2. Persons convicted of corrupt electioneering practices;
3. Persons under court guardianship.

Article 13. The registration as a candidate of a person who is disqualified for election by virtue of the preceding articles shall be unlawful.

In the event of a disputed registration, the candidate shall refer the matter to the Revolutionary Military Committee, which shall give its ruling within two days.

A person who is found to be disqualified for election after the announcement of his election or who during his term of office becomes disqualified on the grounds specified in this Ordinance shall *ipso facto* forfeit his status as a member of the National Assembly.

Such forfeiture shall be declared by the Revolutionary Military Committee, at the request of the President of the National Assembly or of the President of the Republic.

Article 15. The provisions of this title shall apply to alternate candidates.

...

TITLE V

MISCELLANEOUS PROVISIONS

Article 35. The electoral campaign shall open at midnight on the eighth day before election day. It shall close at midnight on the day preceding election day.

...

⁷ *Ibid.*

ORDINANCE No. 29 P.R./M.A.I.S./D.A.I./A. OF 16 APRIL 1968 ESTABLISHING SPECIAL RULES FOR THE ELECTION OF THE PRESIDENT OF THE REPUBLIC ⁸

Article 1. The President of the Republic shall be elected for a term of five years by direct universal suffrage. He shall be eligible for re-election.

The election of the President of the Republic shall be by uninominal ballot.

The President of the Republic shall be elected by an absolute majority of votes cast. If an absolute majority is not obtained on the first ballot a second ballot shall be held within eight days for the purpose of obtaining a relative majority. Nevertheless, the Revolutionary Military Committee shall rule on the representative character of this relative majority. The only candidates for election on the second ballot shall be the two candidates who received the largest number of votes on the first ballot. If one or both of these two candidates withdraw, the remaining candidates

shall offer themselves in the order in which they appeared in the results of the first ballot.

The election shall be proclaimed by decree of the Council of Ministers.

...

Article 3. No person may be a candidate unless he is of Dahomean nationality and has attained the age of thirty-five years by the date for the submission of candidatures.

...

Article 6. Former holders of the offices of President of the Republic, Vice-President of the Republic, Head of Government and President of the National Assembly shall not be eligible for the office of President of the Republic.

Former ministers who held office under previous constitutional forms of government shall similarly be ineligible for the office of President of the Republic.

...

⁸ *Ibid.*

DECREE No. 89 P.R./M.A.I.S./D.A.I./A OF 23 MARCH 1968, PROHIBITING THE HOLDING OF MARKETS ON 31 MARCH 1968 ⁹

Sole article. The holding of all markets in the territory of the Republic shall be prohibited on Sunday, 31 March 1968, the day appointed for voting in the constitutional referendum.

⁹ *Journal officiel de la République du Dahomey*, No. 12, of 15 May 1968.

ORDINANCE No. 30 P.R./M.A.I.S./D.A.I./A. OF 18 APRIL 1968 ESTABLISHING THE PERIOD DURING WHICH PROPAGANDA FOR THE PRESIDENTIAL ELECTION MAY BE CARRIED ON ¹⁰

Article 1. Propaganda for the presidential election on 5 May 1968 shall be permitted during the period from midnight on Saturday, 20 April 1968, to midnight on Saturday, 4 May 1968.

Article 2. Candidates for the presidential election are required to comply with the provisions relating to electoral propaganda contained in title III of Ordinance No. 27 P.R./M.A.I.S./D.A.I./A. of 16 April 1968 establishing general electoral rules for elections of the President of the Republic and the members of the National Assembly.

¹⁰ *Journal officiel de la République du Dahomey*, No. 13, of 1 June 1968.

DECREE No 120 P.R./M.A.I.S./D.A.I./A. OF 18 APRIL 1968 RELATING TO THE CROSSING OF FRONTIERS; THE MOVEMENT OF ARMS AND MUNITIONS, AND THE HOLDING OF MARKETS IN THE PERIOD BEFORE, DURING AND AFTER THE PRESIDENTIAL ELECTION ¹¹

Chapter I

CLOSING OF FRONTIERS

Article 1. The frontiers of the territory of the Republic of Dahomey shall be closed from midnight on 3 May 1968 to 7 a.m. on 6 May 1968 on the occasion of the presidential election.

Article 2. During this period, persons travelling from or to other countries by sea or air shall, as an exceptional measure, be authorized to disembark or embark.

Article 3. During this period, foreign nationals holding valid passports, with valid visas, issued by the competent authorities shall be permitted to travel in transit through the territory of the Republic provided that they do not remain in the territory.

Article 4. During this period, the use of vehicles not registered in Dahomey shall be strictly prohibited except as provided for in article 3.

Vehicles used illegally shall be impounded, and the owners thereof shall be liable to a fine of 25,000 to 100,000 francs.

Article 5. During the same period, all aliens in Dahomey shall be required to produce official identity documents.

Persons referred to in the preceding paragraph who fail to produce official identity documents shall be held at the disposal of the administrative, police and *gendarmerie* authorities until 7 a.m. on 6 May 1968 and shall be liable to the penalties applicable to the movement of persons not carrying identity documents.

...

Chapter III

HOLDING OF MARKETS

Article 9. The holding of markets shall be prohibited on Sunday, 5 May 1968, throughout the territory of the Republic.

¹¹ *Ibid.*, No. 14, of 15 June 1968.

ECUADOR

ELECTORAL ACT ¹

TITLE I

SUFFRAGE

Sole Chapter

GENERAL PROVISIONS

Art. 1. Suffrage is the right, duty and obligation of Ecuadorian citizens, who shall by this means participate actively in the political life of the State.

Art. 2. The freedom and secrecy of the vote, which is a personal act and is compulsory for all male and female citizens, is guaranteed. Proportional representation of minorities is also guaranteed when more than one person is to be elected, if the elections are popular and direct.

Art. 3. All Ecuadorian citizens who are not disqualified or debarred by law are electors.

Citizenship shall be proved by the identity and citizenship card.

Art. 4. Ecuadorians over eighteen years of age who are able to read and write shall be required to obtain the identity and citizenship card, conferring entitlement to take part in elections and plebiscites.

Art. 5. The following shall not be entitled to vote:

(a) Persons who are not registered on the electoral rolls of the parish where they have their personal domicile;

(b) Members of the forces of public order on active duty, except in the case of indirect elections in which they are required by law to participate;

(c) Persons who have been suspended from the exercise of their political rights, for the duration of such suspension.

Art. 6. The status of elector shall give entitlement to:

(a) Elect persons to public office;

(b) Vote in plebiscites.

Art. 7. There shall be direct and indirect elections.

Direct elections shall be conducted by those citizens who are registered on the electoral rolls; indirect elections shall be conducted by the groups, agencies and persons specified by law.

Plebiscites shall always be held by direct suffrage.

Art. 8. Candidates in direct and indirect elections shall meet the requirements established by the Constitution and the law; at the time of the election, they shall be at least:

Forty years of age, for the offices of President and Vice-President of the Republic;

Thirty-five years of age, for the office of senator;

Twenty-five years of age, for the office of deputy;

Thirty years of age, for the offices of provincial prefect and mayor;

Twenty-one years of age for the offices of provincial councillor, municipal councillor or member of a parish board.

...

Chapter VI

VOTING BY ECUADORIANS LIVING ABROAD

Art. 46. Ecuadorian citizens living abroad may vote for the President and Vice-President of the Republic, on the day established by law for that purpose, at embassies, legations and consulates. Votes shall be accepted at consulates only if the Consul is of Ecuadorian nationality.

Such citizens shall first register with the competent official, not later than eight days before the election, by presenting their identity and citizen-

¹ *Registro Oficial*, No. 284, of 2 January 1968.

ship cards. The list of voters shall be compiled from these registrations.

Art. 47. The diplomatic or consular official shall appoint Ecuadorian citizens living in the place in question to serve on the Electoral Boards.

Each Electoral Board shall consist of two members and two alternates.

The Electoral Boards shall function at the offices of the embassies, legations or consulates, performing their duties in the voting and counting of the votes in accordance with this Act and the relevant regulations.

Art. 48. After the voting has ended, the votes have been counted and the records have been signed, the members of the Electoral Boards shall hand over the electoral records and documents to the appropriate diplomatic or consular official, who shall transmit them forthwith to the Supreme Electoral Tribunal by registered mail stamped and sealed for inclusion in the final count.

Documents which do not arrive in time for the final count by the Supreme Electoral Tribunal shall not be taken into account.

...

TITLE III

INDIRECT ELECTIONS

Chapter I

FUNCTIONAL SENATORS

Section One.—General Provisions

Art. 87. Elections for functional senators shall be held every four years and shall be announced on the same day as direct popular elections are announced.

All the functional senators shall have been elected no later than ten days before the first Sunday in June every four years.

Art. 88. The following functional senators shall be elected:

One for public education;

One for private education;

One for the mass communications media and the scientific and cultural academies and societies;

Two for agriculture;

Two for commerce;

Two for industry;

Four for the workers. For the purposes of the election, office and manual workers, both urban and rural, and craftsmen shall be considered as workers;

One for the armed forces;

One for the National Civil Police.

In cases where there are two functional senators, one shall represent the activities of the *Sierra* (uplands) and the *Oriente* (eastern region) and the other shall represent the activities of the *Costa*

(coastal region) and the Colón Archipelago; in cases where there are four functional senators, two shall represent the activities of the *Sierra* and the *Oriente* and two shall represent the activities of the *Costa* and the Colón Archipelago.

...

Chapter II

REPRESENTATIVES AND OFFICIALS ELECTED BY THE NATIONAL CONGRESS AND BY OTHER ORGANS

Art. 114. The Congress in joint session, the Senate and the Chamber of Deputies, organs of the State and public and semi-public institutions shall elect or appoint the representatives and officials specified in the Constitution and the laws of the Republic, in accordance with the relevant legal provisions.

...

Art. 116. The rules governing the election of representatives and officials by the Congress in joint session, the Senate, the Chamber of Deputies, the Permanent Legislative Commission, the Supreme Court of Justice, the Tribunals for Contentious Administrative Matters, the Tribunal of Constitutional Guarantees, the Supreme Electoral Tribunal and the Provincial Electoral Tribunals shall be considered as electoral laws even if they form part of special law.

...

TITLE IV

PLEBISCITES

Art. 120. When the President of the Republic or the Senate decide to hold a plebiscite in the cases specified in the Constitution, they shall seek the opinion of the Tribunal of Constitutional Guarantees.

If the opinion is favourable, the President of the Republic or the Senate, as the case may be, shall announce the plebiscite by issuing a resolution, which shall be published in the *Registro Oficial* and in the newspapers with the widest circulation in the country, together with the opinion of the Tribunal of Constitutional Guarantees.

Art. 121. In the case provided for in article 184, paragraph 10 (b), of the Constitution, the President of the Republic shall be obliged, within fifteen days of the receipt of the proposed amendments to the Constitution and without having to seek the opinion of the Tribunal of Constitutional Guarantees, to issue on his own responsibility the resolution announcing a plebiscite, which shall be published in the *Registro Oficial* and in the newspapers with the widest circulation in the country.

Art. 122. The resolution announcing the plebiscite shall specify:

(a) The issue or question being submitted to the citizens for their decision; and

(b) The date on which the plebiscite is to be held.

Art. 123. Plebiscites shall be held only on questions or issues contemplated in the Constitution.

Not more than one issue shall be submitted to plebiscites at the same time and, in the case of constitutional amendments, the plebiscite shall refer to the part or parts on which the President of the Republic and the National Congress hold different views.

..

TITLE VI

ELECTORAL PROPAGANDA

Chapter I

MEETINGS AND OTHER MEANS OF PROPAGANDA

Art. 153. Political parties shall have the right to conduct political and electoral propaganda through the mass communications media and meetings in public and private places, subject to the law and the municipal ordinances.

Art. 154. Political parties may form such clubs or committees as they may deem necessary for their activities.

Art. 155. Permits for electoral meetings in public places, receptions for candidates, demonstrations or processions shall be subject to the following rules:

(a) The *intendentes* in the provincial capitals and the *jefes políticos* in the cantons shall issue the appropriate permits without restriction and within twenty-four hours, in the order in which application is made.

(b) Applications shall be submitted on plain paper, over the signature of the authorized representative of the party or sponsoring group, at least two days before the date of the meeting. The authority shall note on the application and on the copy, which shall be returned to the applicant, the date and time at which it was submitted. If the authority rejects the application, an appeal may be brought before the Provincial Electoral Tribunal.

(c) Different political parties may not hold public meetings, demonstrations or processions in the same town on the same day. This prohibition does not apply to club or committee inauguration ceremonies.

(d) The competent police authority shall prohibit the sale of liquor and take the necessary measures to preserve order, twenty-four hours before a reception for candidates involving a rally or public procession.

Art. 156. The police authorities shall guarantee the orderly and free conduct of political activities and shall arrest any person or group of persons disturbing an authorized public meeting.

Art. 157. All political and electoral propaganda, except that conducted through the mass communications media, shall cease forty-eight hours before the election day.

Art. 158. On election day, no political or electoral propaganda of any kind shall be conducted, except for announcements in the press.

Radio and television stations shall broadcast only reports on the progress of the elections, with no electoral propaganda.

Only members of the Electoral Tribunals, members of the Electoral Boards, candidates and delegates of political parties may enter the polling stations wearing emblems.

The polling station shall be considered to be the area within a radius of fifty meters from the place where the Electoral Board performs its duties.

Only vehicles used by members of the Electoral Tribunals and with the permission of the Provincial Tribunals, those used by candidates, leaders of political parties and representatives of the mass communications media shall be authorized to display emblems.

Art. 159. The organs of mass communication shall charge political parties the same rates as those established for commercial advertising for the dissemination of their manifestos, communiqués and propaganda.

Art. 160. Political parties shall be entitled to use national or municipal theatres or halls without charge for ceremonies at which candidates are announced and for their regular general assemblies.

Art. 161. The State and municipal broadcasting stations, as the case may be, shall, at the request of the persons concerned, broadcast or rebroadcast without charge the ceremonies at which candidates for the presidency and vice-presidency of the Republic are announced, as well as the opening and closing meetings of the parties' general assemblies.

The authorities shall not require stations broadcasting such ceremonies to hook up in order to broadcast official ceremonies simultaneously.

Art. 162. The Electoral Tribunals shall use the services of the official radio and television stations without charge for the purpose of reporting on electoral events; such stations shall also broadcast without charge, on one single occasion, the speeches in which the presidential candidates present their platforms.

Art. 163. If an organ of mass communication other than the official organ of a political party accepts electoral propaganda from a party or political group, it shall not refuse to accept propaganda from any other political party or group, provided that such propaganda is within the law.

Art. 164. Religious sentiments shall not be invoked or impugned for the purpose of supporting or opposing candidates in the elections covered by this Act.

Religious, clergymen and ministers of any faith shall be prohibited from intervening in party politics and particularly from engaging in electoral propaganda.

Art. 165. The President of the Republic may not leave the city of Quito during the thirty days preceding the presidential election, unless he has the permission of the Tribunal of Constitutional Guarantees and has serious reasons for doing so.

The President of the Republic shall be guilty of violating official neutrality if he expresses an opinion favourable or unfavourable to a candidate or to the sponsoring organization, unless he has been insulted, in which case he shall be entitled to defend himself, provided that he exercises the restraint befitting his high office.

TITLE VII

SAFEGUARDS AND PENALTIES

Chapter I

SAFEGUARDS

Art. 166. Except in case of international conflict, the military reserves shall not be called up and citizens shall not be assembled for military instruction during the eight days preceding and following the election.

Art. 167. On election day and during the eight preceding days, citizens shall not be required to perform any personal public service other than the duties of their office, compulsion shall not be used to collect national and municipal taxes and no legal proceedings for collection shall be ordered or instituted against citizens.

Art. 168. The immediate superiors who caused the violation to be committed or who failed to prevent it while having the power to do so shall be held directly responsible for any violation of the electoral safeguards by the forces of public order.

Such superiors shall be liable to the penalties established by law, without prejudice to any fine which may be imposed on them by the Provincial Electoral Tribunal.

Art. 169. No public official or employee may order or perform the arrest of an elector on election day, unless he has committed an infraction punishable by imprisonment or a violation of the right to vote.

Art. 170. No authority of any kind may intervene directly or indirectly in the functioning of the electoral Tribunals or Boards. Members of the forces of public order may do so only on the orders of the president of those electoral bodies.

Art. 171. If any person attempts to interfere arbitrarily with the work of the Electoral Tribunals or Boards, the president of the body concerned shall order him to leave and, if necessary, have him expelled from the polling station or from

the premises where the Tribunal is performing its duties.

Art. 172. Members of the Electoral Tribunals and Boards shall not be subpoenaed, required to appear in court or arrested by any authority, for the duration of their immunity, except in cases of *flagrante delicto*.

They shall disregard any summons served upon them in violation of the provision in the preceding paragraph.

Art. 173. Members of Electoral Tribunals and specially appointed delegates of parties and political groupings shall be free to enter and leave police stations, prisons and places of detention in order to verify whether persons are being detained in violation of this Act.

Art. 174. Any citizen may report to any member of a Provincial Electoral Tribunal threats or acts of violence committed against a citizen on election day or confiscation or destruction of essential electoral documents by the authorities or members of the forces of public order.

The Tribunal shall impose penalties on the offender in accordance with this Act and, if appropriate, shall refer the matter to the competent judge so that he may institute the appropriate proceedings.

Art. 175. At the request of the Electoral Tribunals and Boards, the competent authorities shall place at their disposal the necessary units of the forces of public order to prevent any disturbances that might inhibit the freedom of the voters or the functioning of the said bodies.

...

TITLE VIII

POLITICAL PARTIES

Art. 204. The State guarantees to Ecuadorian citizens, except for members of the forces of public order and religious, clergymen and ministers of any faith, the right to participate in political parties.

Only political parties recognized by the Supreme Electoral Tribunal may present lists of candidates when more than one person is to be elected.

Art. 205. Any act preventing or hindering a citizen from participating in the political life of the State shall be punishable, except as otherwise provided in the Constitution and the law.

Art. 206. For electoral purposes, political parties shall be registered in the register of parties to be kept by the Supreme Electoral Tribunal. In all other respects, they shall abide by the laws governing the organization and functioning of political parties.

...

ACT No. 035-CL ON JURISDICTION IN CONTENTIOUS ADMINISTRATIVE MATTERS ²*Chapter I*

EXERCISE OF JURISDICTION IN CONTENTIOUS ADMINISTRATIVE MATTERS

Article 1. Appeals in contentious administrative matters may be submitted by natural or juridical persons against regulations, acts or rulings of the Public Administration or of semi-public juridical persons, if such regulations, acts or rulings are final and violate a right or direct interest of the appellant.

Article 2. Appeals in contentious administrative matters may also be submitted against administrative rulings violating particular rights established or recognized by a law, if such rulings were given as the result of some general provision which infringes the law creating those rights.

Article 3. There are two kinds of appeal in contentious administrative matters: appeals of full jurisdiction or subjective appeals and appeals for annulment or objective appeals.

Appeals of full jurisdiction or subjective appeals protect a subjective right of the appellant which has allegedly been denied, disregarded or not honoured, in whole or in part, by the administrative act in question.

Appeals for annulment, objective appeals or appeals against an excess of authority ensure the enforcement of objective legal provisions of an administrative nature and may be submitted by any person with a direct interest in bringing the action, who may request the Tribunal to nullify the act contested on the grounds that it is juridically defective.

Article 4. For the purposes of this Act:

1. The term "Public Administration" shall mean:

- (a) The administration of the State at all levels.
- (b) The entities forming the local administration under the sectional system.
- (c) Public institutions established as such and governed by special laws.

2. The term "semi-public juridical person" shall mean those established and governed as such by law, whatever their designation, including juridical persons under private law serving a social or public purpose.

Article 5. Administrative rulings are final when there is no possibility of remedy through administrative action, whether they are definitive or interlocutory, if the latter directly or indirectly settle the substantive issue in such a manner as to terminate administrative action or prevent its continuation.

The administration exercises restricted powers when it has to adjust its acts to the provisions of a law, regulation or any other administrative injunction.

The appellant's right shall be presumed to have been established if it is recognized by the provision which has allegedly been violated.

Article 6. The following shall not be considered as contentious administrative matters:

(a) Questions which, by the nature of the acts which gave rise to them or of the issue involved, fall within the discretionary power of the administration.

(b) Civil or penal questions which pertain to ordinary jurisdiction and those which, by their nature, fall within other jurisdictions.

(c) Questions raised in connexion with the political acts of the Government, such as those concerning the defence of the national territory, international relations, the internal security of the State and the organization of the forces of public order, without prejudice to any indemnity payable which shall be decided under the procedure for contentious administrative matters.

(d) Rulings given by electoral bodies.

(e) Rulings issued by virtue of a law which expressly excludes them from the sphere of application of contentious proceedings.

Article 7. The principal matters to which the discretionary power applies are:

(a) General provisions concerning public health and hygiene, without prejudice to any indemnity to which they may give rise.

(b) Rulings on concessions for which applications are submitted to the administration, except those concerning concessions which are regulated by law.

(c) Decisions refusing or regulating payment of a bonus or fee not predetermined by a law or regulation to public officials who render special services.

Chapter II

ORGANIZATION AND FUNCTIONING OF THE TRIBUNAL FOR CONTENTIOUS ADMINISTRATIVE MATTERS

...

Article 10. The Tribunal for Contentious Administrative Matters shall have the following powers and duties:

(a) To hear, as court of sole instance, appeals submitted by natural or juridical persons against regulations, acts and rulings of the Public Administration or of semi-public persons and to decide whether they are illegal or unenforceable.

² *Ibid.*, No. 338, of 18 March 1968.

(b) To hear and decide on appeals against rulings of the Claims Board established under the Civil Service and Administrative Career Act.

(c) To hear and decide, as court of sole instance, cases concerning violations of the Act governing the administrative career not covered by the preceding sub-paragraph.

(d) To enact provisions concerning the internal organization of the Tribunal.

(e) To appoint and dismiss, according to the law, the Secretary and other employees of the Tribunal.

(f) To grant judges, officials and employees of the Tribunal longer periods of leave than those provided for in article 14 (c).

(g) To exercise any other powers and perform any other duties established by the law and the regulations.

...

ORGANIC LAW No. 047-CL CONCERNING THE TRIBUNAL OF CONSTITUTIONAL GUARANTEES ³

Chapter I

CONSTITUTION

Art. 1. The Tribunal of Constitutional Guarantees, with the membership established by the Political Constitution of the State, shall have its seat in the city of Quito and shall have jurisdiction throughout the national territory; nevertheless, whenever the circumstances so require and the majority of its members so decide, it may meet anywhere else in the national territory.

Art. 2. Members of the Tribunal of Constitutional Guarantees elected by the Senate and by the Chamber of Deputies who become disqualified on one of the grounds established by the Constitution shall cease to be members of the Tribunal of Guarantees. In that case, the Tribunal shall proceed to call upon the alternate concerned.

The senator and the deputies elected to the Tribunal of Constitutional Guarantees shall also serve for two years; if, however, their term of office in the legislature expires before they have completed two years of service, they shall continue to serve on the Tribunal until they are legally replaced.

Art. 3. Members of the Tribunal of Constitutional Guarantees shall not be held responsible for the opinions which they express in the Tribunal but they shall be answerable to the National Congress when by their vote they help to sanction acts contrary to the Constitution.

During their term of office, they may not be the subject of criminal proceedings, prosecution or deprivation of personal liberty without the authorization of the Tribunal, for which a two-thirds majority vote shall be required.

...

Chapter II

POWERS AND DUTIES

Art. 6. In addition to those established in the Constitution and the laws, the Tribunal of Constitutional Guarantees shall have the following powers and duties:

1. To hear, as a court of last instance, appeals concerning rulings on excuses and qualifications issued by provincial and cantonal councils, as well as appeals by public and semi-public institutions concerning the members of their governing bodies.

2. To call upon alternate councillors to perform their duties, when a provincial or cantonal council does not have the legal quorum because some of its members have been disqualified or excused.

If there are no alternates, the Tribunal shall appoint councillors to make up the requisite number from among the candidates presented on the relevant electoral lists, who shall serve until the end of the term for which the original members were elected.

3. To hear appeals against rulings of cantonal councils refusing to create an urban or rural parish.

Such an appeal shall be submitted, within thirty days from the date on which the ruling was issued, by at least one hundred citizens resident in the canton.

If the Tribunal decides that a parish should be created, the report of the provincial council shall not be required.

4. To decide, as a court of last instance, on appeals submitted by provincial prefects, municipal mayors and presidents of cantonal councils, concerning their dismissal.

Such appeals shall be submitted within eight days from the date on which notice was given of the ruling. The Tribunal shall reach a decision on the matter within the next thirty days.

³ *Ibid.*, No. 403, of 20 June 1968.

5. To authorize the transfer or mortgaging of government-owned immovable property, when Congress is in recess.

6. To authorize the erection of monuments. In no case shall monuments be erected to living persons.

7. To draw up its budget annually, together with rules for its enactment and implementation.

8. To draw up the Regulations and amendments

thereto, which shall be adopted after two separate debates on different days.

Amendments shall not come into force until the following meeting.

Any doubtful points regarding the application or interpretation of the provisions of the Regulations shall be decided by the Tribunal at one single meeting.

The Regulations and amendments thereto shall be published in the *Registro Oficial*.

...

EL SALVADOR

DECREE No. 556 OF 12 JANUARY 1968 ¹

Article 1. There shall be added to the Electoral Act an article 203, reading as follows:

“*Article 203.* If the registration of any candidate is contested on the ground that the candidate owes taxes either to the Ministry of Finance or to the Municipal Authorities, the Council shall advise the political party concerned to submit the appropriate certificate of freedom from tax liability within five days of receipt of the notification. If the certificate is not submitted within that period, the registration shall be declared to be void.

“For the purposes of the preceding paragraph, political parties may make the payment to the Treasury of the Ministry of Finance, and the receipt therefor shall be deemed to be freedom from tax liability.”

Article 2. There shall be added to the said Electoral Law an article 204, reading as follows:

“*Article 204.* Duly registered political parties may use any form of political publicity during their campaign, and at the end of the period allowed for the registration of candidates, the exercise of that right shall be restricted to those parties that have duly submitted their application for the registration of their respective candidates.”

¹ *Diario Oficial*, No. 17, of 25 January 1968.

EQUATORIAL GUINEA

CONSTITUTION OF THE REPUBLIC OF EQUATORIAL GUINEA ¹

PREAMBLE

The people of Equatorial Guinea, in exercise of their right of self-determination and aware of their responsibility before history, having decided to create a State bound by law, in which individual and collective freedoms are effectively guaranteed and can be effectively exercised, and having resolved to join the community of independent States, to seek membership in the United Nations and to maintain close solidarity with the peoples of Africa in accordance with the principles set forth in the Charter of the Organization of African Unity, adopt the following Constitution:

TITLE I

CONCERNING THE STATE AND THE CITIZENS

Article 1. The Republic of Equatorial Guinea, consisting of the provinces of Río Muni and Fernando Póo, is a sovereign and indivisible, democratic and social State.

...

Article 2. National sovereignty shall be vested in the Guinean people, who shall exercise it in the form and within the limits laid down in the Constitution. Their representatives shall be elected by universal suffrage.

National sovereignty may also be exercised directly by referendum.

Article 3. The Republic of Equatorial Guinea shall promote the political, economic and social development of its people and shall guarantee the equality before the law and the legal security of

all its citizens, without distinction as to origin, race, sex or religion.

The State shall recognize and guarantee the human rights and freedoms set forth in the Universal Declaration of Human Rights and shall proclaim that the freedoms of conscience and religion, association, assembly, speech, residence and domicile, and the right to property, education and decent working conditions are to be respected.

The State shall likewise promote the development of trade unions and co-operatives and shall defend the rights of workers.

Article 4. Any act of racial, moral or religious discrimination and any act which endangers the internal or external security of the State, its territorial integrity, the constitutional guarantees of the provinces or the individual or collective rights recognized in this Constitution shall be punishable by law.

Article 5. All nationals of Equatorial Guinea who are of age shall have the right to vote and to be elected as prescribed by law.

Article 6. The regulations concerning nationality shall be laid down in an Institutional Act.

Article 7. The official language of the State shall be Spanish. The use of traditional languages shall be respected.

...

TITLE II

CONCERNING THE HEAD OF STATE

Article 9. The President of Equatorial Guinea shall be elected by direct and secret universal suffrage in a single national college.

The presidential candidate who obtains an absolute majority of the votes cast shall be elected. If one of the candidates obtains a majority, a new election shall be held between the two who have received the largest number of votes. A new

¹ The text of this Constitution is taken from *Revista de Política Internacional* (Madrid), No. 99, September-October 1968. Equatorial Guinea became an independent State on 12 October 1968.

election shall also be held in the event of a tie vote.

The President shall take office within ten days of the announcement of the election results.

The term of office of the President of the Republic shall be five years.

...

TITLE III

CONCERNING THE ASSEMBLY OF THE REPUBLIC

Article 16. The Assembly of the Republic shall consist of thirty-five deputies elected every five years by universal, direct and secret suffrage.

All deputies shall represent the Guinean people and shall serve the nation and the common interest.

Article 17. The election of deputies and the electoral process in general shall be governed by the following provisions:

(1) The elections provided for in this Constitution shall be ordered and held before the relevant terms of office expire and within the time-limits laid down in the Electoral Act. They shall be ordered by the President in a decree adopted by the Council of Ministers.

(2) Río Muni and Fernando Póo shall each constitute one electoral district. The island of Annobón, and the islands of Corisco, Elobey Grande et Elobey Chico, shall constitute two separate electoral districts.

(3) The district of Fernando Póo shall elect twelve deputies to the Assembly of the Republic.

The district of Río Muni shall elect nineteen deputies.

The island of Annobón shall elect two deputies.

The district consisting of the islands of Corisco, Elobey Grande and Elobey Chico shall also elect two deputies.

The deputies elected by each of these districts shall be natives of the corresponding province.

(4) In order to facilitate the representation of minorities, the electoral system shall ensure proportionality between the votes cast and the posts to be filled.

(5) In the districts of Fernando Póo and Río Muni, the electoral system shall be that of proportional representation by list with no cross-voting. In each district, the residual votes shall be apportioned according to the system of highest residue. In the Annobón district, and in the Corisco-Elobey Grande - Elobey Chico district, the electoral system shall be that of simple majority by lists and there shall be no cross-voting.

(6) An Electoral Commission shall be responsible for receiving and accepting nominations of candidates, ensuring compliance with the law and centralizing the election results.

...

TITLE IV

CONCERNING RELATIONS BETWEEN THE GOVERNMENT AND THE ASSEMBLY OF THE REPUBLIC

...

Article 40. The Assembly of the Republic may censure a Minister or Ministers of the Government. The motion of censure must be submitted by at least five members of the Assembly and shall be voted upon within forty-eight hours. Its adoption shall require the affirmative vote of two-thirds plus one of the members.

The motion of censure shall be communicated to the President for such action as he deems appropriate. If after six months from the date of the first motion of censure the same member or members of the Government is or are again censured by a three-fourth's majority of the Assembly, a request for replacement of the Ministers in question shall simultaneously be submitted to the President of the Republic.

TITLE V

CONCERNING THE COUNCIL OF THE REPUBLIC

Article 41. The Council of the Republic shall be composed of six members, whose term of office shall be four years, and one of whom shall serve as President of the Council. One-half the membership shall be freely elected by each of the Provincial Councils from among persons who are natives of the respective provinces and are not members of either the Provincial Council or the Assembly of the Republic.

The President of the Council shall be elected by the Councillors. If they fail to reach agreement on a president within seven days of the election of the Council, the two Councillors who have obtained the largest number of votes for the presidency shall alternate in that office for one year, at a time, beginning with the elder of the two.

Decisions shall be adopted by majority vote. If a majority is not obtained after three successive votes, it shall be understood, in cases where an affirmative decision requires a clear majority, that such a decision has not been reached. In other cases, the tie shall be broken by the casting vote of the President.

...

TITLE VIII

ADMINISTRATION OF JUSTICE

Article 50. The administration of justice shall rest with the Supreme Court and with such judicial bodies as may be prescribed in an Institutional

Act. The judiciary shall be organized in accordance with the principles of legality, irremovability and responsibility.

...

TITLE IX

CONCERNING INTERNATIONAL RELATIONS

Article 54. Equatorial Guinea shall conform in its international relations to the purposes and principles of the Charter of the United Nations and the Charter of the Organization of African Unity.

...

TITLE X

CONCERNING CONSTITUTIONAL REFORM

Article 58. Acts of constitutional reform shall require approval in the Assembly of the Republic by a majority of two-thirds plus one of the votes of all its members.

The reform of articles 1, 13, 14, 17, 22, 24, 30, 38, 39, 41, 42, 44 and 58 shall require a referendum resulting in an affirmative vote in both provinces, in addition to approval of the Assembly in the aforesaid manner.

TRANSITIONAL PROVISIONS

1. Irrespective of the provisions which may in due course be established in the Nationality Act, persons of African descent who were born in Equatorial Guinea and their children, even if born outside Equatorial Guinea, shall be deemed to be Guinean nationals, provided that, in either case, they possess Spanish nationality by virtue of their birth.

2. Legislation in force in Guinea at the time of independence, which does not conflict with the express provisions of this Constitution, shall remain in force until such time as it may be abrogated or amended by the competent Guinean institutions.

3. Technical aid and assistance agreements which the Government of Guinea may conclude in the future shall facilitate the progressive Africanization of all personnel in the national administration.

...

FEDERAL REPUBLIC OF GERMANY

THE PROTECTION OF HUMAN RIGHTS IN 1968—A SURVEY OF LEGISLATION, JUDICIAL DECISIONS AND INTERNATIONAL AGREEMENTS ¹

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ABBREVIATIONS

<i>Bayer.Verw.Bl</i>	<i>Bayerische Verwaltungsblätter</i> (Bavarian Journal of Administration)	<i>DÖV</i>	<i>Die Öffentliche Verwaltung</i> (Public Administration)
<i>BGBI</i>	<i>Bundesgesetzblatt</i> (Official Gazette of the Federal Republic), parts I and II	<i>DVBl</i>	<i>Deutsches Verwaltungsblatt</i> (German Journal of Administration)
<i>BGHST</i>	<i>Entscheidungen des Bundesgerichtshofs in Strafsachen</i> (Decisions of the Federal Court of Justice in criminal cases, officially compiled)	<i>FamRZ</i>	<i>Zeitschrift für das gesamte Familienrecht</i>
<i>BVerfGE</i>	<i>Entscheidungen des Bundesverfassungsgerichts</i> (Decisions of the Federal Constitutional Court, officially compiled)	<i>GBI</i>	<i>Gesetzblatt</i> (Official gazette [of Länder])
		<i>GVBl</i>	<i>Gesetz- und Verordnungsblatt</i> (Journal of legislative provisions, regulations, etc. [of Länder])
		<i>JZ</i>	<i>Juristenzeitung</i>
		<i>MDR</i>	<i>Monatsschrift für Deutsches Recht</i>
		<i>NJW</i>	<i>Neue Juristische Wochenschrift</i>

¹ Report prepared by Eckart Klein, *Wissenschaftlicher Assistent* at the Max Planck Institute for Foreign Public Law and International Law, Heidelberg.

INTRODUCTION

The author of this report has had no occasion to depart from the sequence marked out by the United Nations Universal Declaration of Human Rights itself, which has proved serviceable over a period of years. However, in view of the importance acquired in the interim by the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 and the International Covenant on Civil and Political Rights of the same date, it seemed appropriate not only to include references to the relevant articles or the two Covenants in the section headings but also to draw the reader's attention to them from time to time in the body of this account of German judicial decisions and legislative enactments, as the occasion arose—for instance, where there was an obvious parallel between the pronouncements.

It should also be noted that the significant transformation of the situation in respect of constitutional law in the Federal Republic of Germany resulting from the Seventeenth Act supplementing the Basic Law, of 24 June 1968, has made it necessary to refer in detail to the constitutional amendments whenever they might prove relevant to the protection of human rights.

For the rest, as in the past, only those judicial decisions which go beyond previous rulings by the courts, or at least contain a more detailed exposition, have been included in the report.

1. PROTECTION OF HUMAN DIGNITY

(Universal Declaration of Human Rights, preamble and article 1; International Covenants on Human Rights preambles)

In a significant decision of 20 March 1968 (NJW 1968, p. 1773), the Federal Court of Justice gave a ruling on the relationship between the right of personality based on the dignity of man (articles 1 and 2 of the Basic Law) and the right to the free expression of opinion and to artistic freedom (article 5 of the Basic Law). The occasion for this ruling was an action brought by the adopted son of Gustaf Gründgen, the celebrated actor-manager who had died in 1963 and whose character was alleged to have been depicted in a grossly distorted and denigrating manner in Klaus Mann's novel *Mephisto - Roman einer Karriere*. The First Civil Division of the Federal Court of Justice, which heard the case, began its decision by holding that the general right of personality continued to have effect after the death of the individual to whom it had originally belonged; although with the death of the individual concerned the right of personality became subject to a great many qualifications, it must nevertheless be taken as a premise that a decedent not only bequeathed transferable material assets but was also survived by immaterial possessions which were damageable and which continued to merit protection after his death. Human dignity and the free development of the personality could not be adequately guaranteed, as prescribed by the Basic Law, unless a man could live his life in the expectation that even after he was dead, the image of that life would be pro-

ected, at least against gross and denigrating distortions.

The court went on to say that over against the general right of personality which had its basis in human rights there was, of course, as an equally fundamental value judgement of the Constitution, the right to the free expression of opinion (article 5, paragraph 1, of the Basic Law). Although limits were set on the latter right by the right to personal honour (cf. article 5, paragraph 2, of the Basic Law), the artistic freedom guaranteed in article 5, paragraph 3, of the Basic Law was not subject to any express limitation. That could not mean, however, that artistic activity could be carried on without any bounds; there too, an inherent limit was set by the right of personality. In the portrayal of Gründgen—who, despite the use of a fictitious name, was identifiable—as a cynically ruthless opportunist, the image of his life had been distorted by gratuitous embroiderings in so fundamentally adverse a manner that even article 5, paragraph 3, of the Basic Law could not be stretched to justify such an invasion of his sphere of personality. The Federal Court of Justice therefore granted an injunction against the defendant publishing-house prohibiting any further distribution of the novel.

A commemorative publication issued by the Federal Minister of the Interior included photographs of a number of persons. The persons concerned complained that the photographs, which showed them with strained expressions on their faces, violated their general right of personality under articles 1 and 2 of the Basic Law, from which it followed that an individual also had the right to his own picture. The Administrative Court at Cologne, in its decision of 6 June 1968 (DVBl 1969, p. 121), granted the petition for the issue of an interim order prohibiting distribution of the publication. The court observed that the right to one's own picture was not, of course, unrestrictedly guaranteed. Nevertheless, inasmuch as the case before it involved relations between the individual and the State, any encroachment on the sphere of personality could be justified only within the strict bounds set by article 2, paragraph 1, and article 19, paragraph 2, of the Basic Law, since encroachments by the State on basic rights were admissible only as provided in the Constitution, and not in reliance on any defences that could be set up under private law. However, the court did not have occasion to rule on the question where the constitutional bounds were to be drawn, because in the case before it no defence could be set up even under private law.

Certain other cases involving protection of the right of personality are referred to in section 7 below.

2. THE PRINCIPLE OF EQUAL TREATMENT

(Universal Declaration, articles 2 and 7; Covenant on Economic, Social and Cultural Rights, articles 2 and 3; Covenant on Civil and Political Rights, articles 2, 3 and 26)

The attitude of the courts to the principle of equality (article 3, paragraph 1, of the Basic Law)

has for years been firmly established. Thus, there hardly remain any new aspects of this principle to be explored; nevertheless any decision, especially by the higher courts, helps to underscore its fundamental importance. From the wealth of judicial rulings which were inevitably concerned—in many cases only peripherally—with article 3 of the Basic Law, the following may accordingly be singled out:

In order to determine what law was applicable in a case relating to the estate of a deceased person, it was necessary to review the action of the Third Reich whereby the testator, as a Jew, had been deprived of his nationality in accordance with the Eleventh Ordinance pursuant to the Reich Nationality Act, of 25 November 1941 (*Reichsgesetzblatt I*, p. 772). The decision of the probate court, which had proceeded on the assumption that the deprivation of nationality was operative, was quashed on submission of a constitutional complaint. The Federal Constitutional Court ruled, in its judgement of 14 February 1968 (*BVerfGE* 23, p. 98), that national socialist laws and regulations could be declared invalid if they were so manifestly contrary to fundamental principles of justice that any judge who applied them or recognized their legal effect would be dispensing injustice instead of justice. One such fundamental principle of law was the prohibition of arbitrariness, which had found its expression as positive law in article 3, paragraph 1, and also to some extent in article 3, paragraph 3, of the Basic Law. By laying down purely racial criteria that were clearly aimed at the Jews who had succeeded in escaping from national socialist persecution, the Eleventh Ordinance pursuant to the Reich Nationality Act had carried injustice to so intolerable a length that it must be considered void *ab initio*. That was so despite the fact that the Ordinance had been applied for years and its consequences had even been expressly consented to by some of the persons affected.

The revenue collected under the Equalization of Burdens Act is used partly to provide compensation for injuries resulting from the war and partly to alleviate social hardships for the sections of the population especially affected by the war and by currency reform, including, in particular, the social and economic integration of persons expelled from their homelands; in short, it is used to bring about greater social justice. An alien who objected to being assessed for the equalization of burdens tax eventually lodged a constitutional complaint, on the ground, *inter alia*, that this violated article 3 of the Basic Law. The Federal Constitutional Court rejected the argument in its judgement of 14 May 1968 (*NJW* 1968, p. 1667). The court ruled that it was in conformity with both constitutional and international law that aliens should normally be assessed for taxes in respect of their property situated within the country; there was no general rule of international law prohibiting the assessment of aliens for a tax such as the capital levy under the Equalization of Burdens Act. In that respect, there was no distinction between aliens and Germans that would have necessitated differential treatment.

A problem that arose in determining whether the League of Socialist German Students (SDS),

which in recent years has been increasingly involved in the disturbances at colleges and universities, could continue to receive financial support under the federal youth programme was whether article 9, paragraph 1, of the Youth Welfare Act was compatible with article 3, paragraph 1, of the Basic Law. In accordance with article 9, paragraph 1, of the Act, grants under the youth assistance scheme may be made only to administering organizations which offer assurances that their activities will be conducive to the purposes of the Basic Law and that the funds will be used properly, objectively and economically. The Higher Administrative Court at Münster, applying this provision by analogy, ruled in its decision of 21 August 1968 (*DÖV* 1969, p. 70) that the funds applied for by the League of Socialist German Students should be denied. The fact that article 9, paragraph 1, of the Youth Welfare Act made it a condition for the granting of youth assistance that the administering organization's activities should be conducive to the purposes of the Basic Law meant that, where the activities in question consisted of the propagation of political opinions, the expression of those opinions must be conducive to the purposes of the Basic Law. Denial of support for the expression of opinions, which did not fulfil that condition was not a violation of the prohibition of arbitrary unequal treatment, since it was a legitimate function of the State to acquaint young people with the purposes of the libertarian democratic Constitution, thus promoting their awareness as citizens and inducing them to regard those purposes as their own and to defend them if the need arose.

In its decision of 23 December 1968 (*Bayer. Verw. Bl.*, 1969, p. 96), the Bavarian Constitutional Court ruled that the provisions of an ordinance of a Bavarian municipality prohibiting the holding of dances open to the general public during Advent and Lent—thus going further than *Land* law on the subject—did not violate the prohibition of arbitrariness. The court noted that the population of the municipality concerned were of the Catholic faith. The ban on dances was in keeping with the views of the Catholic Church on the religious significance of the Advent and Lenten seasons; consequently, the municipal ordinance-maker had not been guided by unobjective considerations.

3. PROTECTION AGAINST ARBITRARY DEPRIVATION OF LIBERTY

(*Universal Declaration, articles 3, 4 and 9; Covenant on Civil and Political Rights, articles 8, 9 and 11*)

In addition to article 2 of the Basic Law, article 104 provides special legal safeguards in the event of deprivation of liberty. Thus, any person temporarily detained on suspicion must, at the latest on the day following the detention, be brought before a judge; the police may, on their own authority, hold no one in custody beyond the end of the day following the arrest (article 104, paragraph 3, first sentence, paragraph 2, third sentence, of the Basic Law). The Seventeenth Act supplementing the Basic Law of 24 June 1968 (*BGBI I*, p. 709)

authorizes the enactment of federal legislation to permit deprivations of liberty in the event of a state of defence for a longer period than is specified in these two sentences of article 104, where conditions during the state of defence so require and provided that the extended time-limit shall not exceed four days; this will only apply, however, if it has not been possible for a judge to act within the period laid down for normal times (article 115c, paragraph 2, of the Basic Law).

The Berlin High Court (*Kammergericht*) had occasion, in its decision of 11 April 1968 (*DVB* 1968, p. 470), to consider the import of article 104, paragraph 2, third sentence, of the Basic Law. The court made a rigorous distinction between a restriction of freedom as referred to in paragraph 1 of that article and a deprivation of liberty as referred to in paragraph 2. It noted that detention of an alien for the purpose of ensuring his deportation—the lawfulness of which was the point at issue in the case before it—constituted deprivation of liberty, since the person to be deported was not only prevented from visiting a specific place but was held in custody by the authorities in a specific, narrowly circumscribed place. The High Court then ruled that article 104, paragraph 2, third sentence, of the Basic Law did not give the police the right in all circumstances to deprive a person of his liberty for up to two days without a judicial order. That provision was, rather, a spelling out of what was laid down in the second sentence of the same paragraph, which provided that in the case of every deprivation of liberty not based on the order of a judge, a judicial decision must be obtained without delay—in other words, as promptly as the circumstances of each case permitted. Consequently, article 104, paragraph 2, third sentence, of the Basic Law did not widen the powers of the police, but restricted them. It followed—since a judge must normally decide on the admissibility of a deprivation of liberty—that the police could obtain the judge's decision without even having to take provisional detention measures, while on the other hand the judge could not evade a decision on the ground that the administrative authorities might possibly carry out the deportation themselves within the time-limit laid down in article 104, paragraph 2, third sentence, of the Basic Law.

The *Land* High Court at Hamburg, upon appeal by a defendant, had to consider in its judgement of 24 January 1968 (*NJW* 1968, p. 1150) whether the committal of a prostitute to a workhouse was compatible with the Basic Law. The accused relied on the judgement of the Federal Constitutional Court of 18 July 1967 (*NJW* 1967, p. 1795), in which the court had ruled that the compulsory committal of an adult to an institution or a home against his will for the sole purpose of his own improvement was unconstitutional (cf. section 3 of the 1967 report). The *Land* High Court took the view that committal to a workhouse under article 42d of the Penal Code was not intended solely for the improvement of the person under sentence, but also performed a preventive function. However, the court expressly declined to rule on whether even those who were incorrigibly anti-social and for whom, accordingly, there was no

prospect of future improvement could be committed to a workhouse.

4. THE RIGHT TO PHYSICAL INTEGRITY

(*Universal Declaration, articles 3 and 5; Covenant on Civil and Political Rights, articles 6 and 7*)

In a case before the Bavarian Constitutional Court, the point at issue was whether certain Bavarian prison service regulations which allowed prison officers, under conditions that were precisely spelt out, to use fire-arms against convicts attempting to escape represented a violation of the fundamental right to life and to physical inviolability. Article 2, paragraph 2, of the Basic Law, in which as in the Bavarian Constitution these rights are set forth, adds that they may be interfered with only on the basis of a law. The Bavarian Constitutional Court ruled, on 26 February 1968 (*DÖV* 1968, p. 283), that there was no violation of the Constitution. While it was true that the prison service regulations were not a law, it was also a fact that they were not addressed to the prisoners but only to the custodial officers, whose attention was thereby simply drawn to an existing situation under the law. It was not the service regulations themselves that constituted the authorization to encroach on the area of fundamental rights of the prisoners. The restriction of that area was, rather, a consequence of the prisoners' status itself, and more specifically of the sentences of imprisonment passed on them by a judge on the basis of the penal law. Because of the special relationship of constraint to which prisoners were subject, any exercise of fundamental rights was protected only to the extent that it was compatible with that special status. Since the fundamental right to freedom of action and freedom of movement was necessarily restricted in the case of prisoners, the execution of prison sentences meant by definition that prisoners were detained against their will. Escapes and prison-breaking must therefore be prevented, and for that purpose—subject to observance of the principle of reasonableness—the use of force, and even of fire-arms, must be permitted, which in turn placed restrictions on the fundamental right to physical inviolability, and in some circumstances even on the right to life. Prisoners attempting to escape must themselves bear the unavoidable risk of being seriously or even mortally wounded.

A person detained pending investigation is also subject to a special relationship of constraint. In a case decided by a *Land* Court at Munich on 29 April 1968 (*NJW* 1968, p. 2303), a person so detained had refused to undergo a minor operation to determine whether he was suffering from a possibly fatal disease, but the competent district court had nevertheless authorized the operation. The *Land* Court allowed the detainee's appeal with the comment that curative medical treatment had nothing directly to do with the purpose of detention pending investigation or with the maintenance of order in the prison; in that respect, the special status of the detainee did not call for any limitation of the right to physical integrity. A voluntary decision must therefore, as in other

cases, be respected in the case of a person detained pending investigation who refused to undergo a surgical operation, even if it would save him from a possibly fatal disease.

5. JUDICIAL AND ADMINISTRATIVE GUARANTEES OF DUE PROCESS

(*Universal Declaration, articles 8 and 10; Covenant on Civil and Political Rights, articles 2 and 14*)

Article 19, paragraph 4, of the Basic Law enables anyone whose rights are infringed by public authority to have recourse to the courts. This means that the individual has in addition to his other, substantive basic rights a basic right to bring legal actions. A judgement of the Federal Administrative Court of 14 June 1968 (*NJW* 1968, p. 2393) makes it clear, however, that article 19, paragraph 4, is not limited to that function. While noting that the provision in question did not itself create substantive rights but presumed the existence of the rights entitled to protection, the court held that the over-all view of relations between the individual and the State which was taken in the Basic Law and which to a substantial degree bore the stamp of article 19, paragraph 4, meant that in case of doubt preference must always be given to whatever interpretation of legislative provisions gave the citizen a lawful entitlement.

The Federal Constitutional Court also concerned itself with article 19, paragraph 4, of the Basic Law, in its judgement of 25 June 1968 (*JZ* 1969, p. 141). The point at issue was whether the fact that no constitutional complaint may be lodged against a "treaty law" of the kind referred to in article 59, paragraph 2, of the Basic Law was a violation of the Basic Law. The court not only ruled that there was no such violation in the specific case before it but also held that there were no grounds for the recourse to the ordinary courts which is guaranteed, in so far as there is no other jurisdiction, in article 19, paragraph 4, because the legislature was not a public authority within the meaning of the provision. In stating its reasons, the court, besides advancing arguments of constitutional history, observed that there could be no sense in depriving the constitutional courts of the power to review a law by prohibiting constitutional complaints while at the same time enabling the ordinary courts to review it. Since it is the long-established view of legal writers and judges that the term "public authority" in article 19, paragraph 4, of the Basic Law does not encompass judicial decisions, the judgement discussed here means that article 19, paragraph 4, enables recourse to be had to the ordinary courts, in so far as there is no other jurisdiction, only against the executive.

The examination system is part of the executive, and the administrative courts find themselves constantly having to deal with suits brought by examinees. The Federal Administrative Court ruled, in a decision of 26 January 1968 (*MDR* 1968, p. 524), that, although considerations of

law and justice required that a candidate should be allowed to bring an action alleging prejudice on the part of his examiner, the mere fact that the examinee was apprehensive of such prejudice was not in itself a sufficient ground for invalidating the result of the examination otherwise than through judicial proceedings.

Like the Federal Finance Court before it (judgement of 2 August 1967, *NJW* 1967, p. 2379; see section 5 of the 1967 report), the Higher Administrative Court at Coblenz, in its decision of 30 May 1968 (*NJW* 1968, p. 1899), disagreed with past rulings of the Federal Administrative Court to the effect that, for overriding reasons of the public interest, a candidate who had failed an examination must be denied access to the plain text of his examination papers. The Higher Administrative Court held that in view, in particular, of article 19, paragraph 4, of the Basic Law a candidate who failed an examination had a legal entitlement to inspect the uncorrected text of his papers and a definitive statement of reasons for the final markings.

Except in the area of examination results, however, the Federal Administrative Court agrees that the right to inspect documents exists. In its judgement of 23 August 1968 (*DÖV* 1968, p. 836), it expressly associated this right with the entitlement to a lawful hearing (article 103, paragraph 1, of the Basic Law) and accordingly concluded that a court decision must be based only on facts and evidence on which the parties had had an opportunity to comment; that applied equally to all branches of the judicial system.

No comparable constitutional guarantee exists as concerns a lawful hearing in administrative proceedings; however, the Federal Constitutional Court long ago (*BVerfGE* 8, p. 332) characterized as a traditional principle of the law relating to the public service the rule that hearings of public servants on complaints and allegations of a factual nature are to be informal. The Federal Administrative Court has now ruled, in its judgement of 30 January 1968 (*DVBl* 1968, p. 430), that the right to a hearing is satisfied if the public servant is at least adequately acquainted with the facts of the case and has had an opportunity to express his views in writing on the proposed administrative decision.

In a case in which the competent finance court took the tax records that were before it into account in reaching its decision, the taxpayer was allowed by the finance court to inspect the records. The taxpayer, in his subsequent appeal, argued that the fact that he had not been informed, before the decision was rendered, which parts of the records the finance court intended to take into account was a violation of the right to a lawful hearing. The Federal Finance Court, in its judgement of 10 January 1968 (*NJW* 1968, p. 1848) rejected this argument and held that, so far as the facts contained in the records were concerned, being allowed to inspect the records constituted a lawful hearing. To require a court to announce exactly which facts it was likely to take into account would mean requiring it to anticipate its subsequent evaluation of the evidence, and that was something no court was obliged to do.

In the view of the *Land* High Court at Hamburg, as expressed in its judgement of 11 October 1968 (*MDR* 1969, p. 142), the fundamental right to a lawful hearing in proceedings before a court or before a competent authority covers even quite acrimonious and rhetorical statements of a kind that are not customary in other circumstances. Consequently, a court order to withdraw, or to desist from, derogatory statements uttered on such occasions is to be counted among the contraventions of this fundamental right. However, the *Land* High Court set a limit to the right to a lawful hearing at the point where a person's conduct amounted to an abuse of that right—as, for instance, when such a statement was communicated to totally uninvolved circles or when damaging facts that were manifestly irrelevant to the current proceedings were introduced.

The guarantee of the lawful judge (article 101, paragraph 1, second sentence, of the Basic Law) is, like the fundamental right to a lawful hearing, indispensable in a State based on the rule of law. The laws, regulations for the organization of the courts and plans for the distribution of court business normally make it easy to determine who is the lawful judge, but difficulties arise when there is an obligation to refer cases to another court—for instance, in accordance with article 100, paragraph 2, of the Basic Law, to the Federal Constitutional Court—but the preconditions for such obligatory reference are unclear and in dispute. The Federal Constitutional Court, in the judgement of 14 May 1968 to which reference has already been made in section 2 of this report (*NJW* 1968, p. 1667), addressed itself to this problem in connexion with article 100, paragraph 2, of the Basic Law. It found that failure to carry out the obligation to refer a case to it was normally a violation of the fundamental right to one's lawful judge. Contrary to a widely-held view, the court stated that the pre-conditions for such reference, where the question involved was whether a rule of international law was of general application and therefore created direct obligations and rights for the individual, were fulfilled whenever the trial court, in seeking to determine whether and to what extent a rule of international law applied, discovered that substantial doubts existed—in other words, not only when the court itself had doubts. In the particular case in question, the trial court had not taken that approach, and the Federal Constitutional Court should therefore, strictly speaking, have found that the principle of the lawful judge had been violated. However, in the light of the fact that the interpretation of article 100, paragraph 2, of the Basic Law had been widely disputed in the past and eminent writers had taken the opposite view, the court found no such violation. It ruled that a person was deprived of his lawful judge through acts, omissions or decisions of a court only when the acts, omissions or decisions had an arbitrary basis, and there was no question of that in the present case. The court indicated, however, that, following the clarification of that point which had now been given, a different judgement should be reached on future cases of a similar nature.

The question of the legal status of acts of clemency repeatedly engages the attention of the

courts. The Bavarian Constitutional Court had already ruled (cf. *Yearbook on Human Rights for 1966*, p. 126, section 4) that, although there could be no abstract legal right to clemency, the bounds of arbitrariness must be observed in the exercise of it; otherwise, legal remedies, including in the last instance a constitutional complaint, were admissible. The Bavarian Constitutional Court, which had elaborated these principles in connexion with the denial of a petition for clemency, extended them by its decision of 16 January 1968 (*NJW* 1968, p. 587) to cases where clemency already granted upon petition was revoked.

6. DUE PROCESS IN CRIMINAL PROCEEDINGS

(*Universal Declaration, articles 10 and 11; Covenant on Civil and Political Rights, articles 14 and 15*)

One of the most important principles of law and justice in criminal proceedings is *nulla poena, nullum crimen sine lege*. The Federal Constitutional Court has repeatedly ruled that enabling penal statutes which have to be substantiated through regulations are compatible with article 103, paragraph 2, of the Basic Law, in which this principle is set forth. It adhered to this view in its judgement of 7 May 1968 (*BVerfGE* 23, p. 265), the provision involved on this occasion being article 366 (10) of the Penal Code, which makes any breach of police regulations for the maintenance of order and safety on public roads and highways a punishable offence. However, the Federal Constitutional Court held that the particular police regulation that had been applied in the case before it did violate article 103 of the Basic Law because, by reason of the purpose to which it was directed, namely, to facilitate prompt police action against anti-constitutional posters, it exceeded the scope of its enabling measure. Thus, in the absence of a regulation particularizing the enabling statute, there was a clear constitutional violation.

Although the principle *in dubio pro reo* applies without any limitation in substantive penal law, its applicability in procedural law was for a long time in doubt. The Federal Court of Justice had already ruled in 1963 (*BGHST* 18, p. 274) that, while no uniform solution for all procedural requirements and bars to proceedings was possible, the principle in question must be applied where the bar to proceedings constituted by the statutory time-limit on prosecution was concerned. The Supreme *Land* Court of Bavaria, in its judgement of 30 July 1968 (*NJW* 1968, p. 2118), has established a further precedent by holding that, where it cannot be determined whether the condition of *res judicata* exists, so that there is at least the possibility of a second conviction for the same offence, the accused must be given the benefit of the possibility that he has already been convicted and the newly instituted proceedings must be discontinued.

Another feature of criminal proceedings in a State based on the rule of law is the right of the accused to the "last word". The importance of this was emphasized by the Federal Court of Justice

in its judgements of 15 November 1968 (*NJW* 1969, p. 473), in which it was held that, although a breach of the obligation—expressly laid down in the Code of Criminal Procedure—to inform the accused of his right to the last word did not constitute an absolute ground for appeal, the possibility that that procedural defect has affected the decision could be excluded only in the rarest of cases, with the result that the decision would normally be quashed. However, the Federal Court of Justice agreed that such an exceptional situation did exist in the specific case before it.

One problem that is quite serious but as yet largely unclarified is the use in court of statements to the police—especially by the accused—which were obtained in contravention of the law. For instance, article 136a of the Code of Criminal Procedure prohibits the use in evidence of statements elicited from the accused by deceit, hypnosis or the employment of unlawful compulsion. However, the law is silent on the question of the consequences of any breach of the obligation formally to advise the accused that he is at liberty either to make a statement concerning the accusation or to say nothing on the subject (article 136 of the Code of Criminal Procedure). The Federal Court of Justice has attempted, in two judgements, to lay down guidelines for the handling of the problem. In its decision of 30 April 1968 (*NJW* 1968, p. 1388), the First Criminal Division, after hearing a case, expressly declined to rule on the question whether a violation of article 136 of the Code of Criminal Procedure resulted in a general prohibition of the use in evidence of the statements obtained. The judges indicated, however, that such a prohibition—should it exist—could not go beyond the prohibition expressly laid down in article 136a of the Code. Although under the terms of the latter article any statement obtained by means that were not permitted could not be used in evidence, a statement made later without prohibited pressure could be so used. Consequently, a confession made to the police by the accused after he had been properly advised of his rights could in any event be taken into account for the purpose of the court's decision, even if he had made substantially identical statements in the course of earlier questioning by the police or the State Counsel's Department without having been advised in the required manner. An even firmer stand was taken by the Fourth Criminal Division in its judgement of 31 May 1968 (*MDR* 1968, p. 861). The judges, referring principally to the history of the origins of article 136 of the Code of Criminal Procedure, declared it to be a regulatory provision the violation of which would not normally constitute a ground either for prohibiting the use in evidence of a statement by the accused or for an appeal. Here again, however, the judges declined to rule on the question whether failure to advise the accused of his rights, with the result that he was under a misapprehension as to his obligation to make a statement, would in some circumstances amount to deceit within the meaning of article 136a of the Code and would therefore entail a prohibition of the use of the statement in evidence. The judges held that that could not be assumed in the case before them, if for no other reason than the accused had been asked

whether he wished to make a statement and had replied that he did.

Reference has already been made in section 5 to the importance which the courts attach to the principle of a lawful hearing. Attention may now be drawn to the judgement of the *Land* High Court at Stuttgart of 24 July 1968 (*NJW* 1968, p. 2022), which lays particular stress on this principle in connexion with criminal proceedings. A district-court judge, after announcing his decision orally, had called for a summary in writing of the evidence given at the trial by an expert and had used it in preparing his written statement of the reasons for his decision. The *Land* High Court regarded this as the taking of additional testimony. It noted that the evidence taken into account by the district-court judge had not been known to the parties to the proceedings, at least in that form. There had therefore been a violation of the principle of a lawful hearing (article 103, paragraph 1, of the Basic Law), in accordance with which the courts were prohibited from taking into account facts and evidence on which the parties had not had an opportunity to comment.

One of the points at issue in an action for damages for encroachment on the right of personality, which was decided by the Berlin High Court on 14 May 1968 (*NJW* 1968, p. 1969), was the legal principle set forth in article 6, paragraph (2), of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, namely, that no one may be deemed guilty until guilt is proved according to law. The plaintiff had been the object in 1965 of lurid and sensational press reports alleging that he had kept a brothel in Berlin and used it for espionage purposes, and describing the plaintiff himself as a "brothel spy". However, the criminal-court judgement one year later had included no findings to that effect. The High Court accordingly held that there had been a violation of the right of personality, consisting in the breach of the presumption of innocence. That presumption imposed limits even on freedom of the press. For the sake of completeness, however, it should be added that the plaintiff was not awarded any damages, because the court did not feel that there had been any grave encroachment on the right of personality.

Mention must also be made of the Introductory Act to the Petty Offences Act of 24 May 1968 (*BGBI* I, p. 503), which came into force on 1 October 1968. The relevance of this statute to due process in criminal proceedings lies in the amendment which it introduces to article 467 of the Code of Criminal Procedure (article 2 (25) of the Act). As the law previously stood, although a defendant who was acquitted for lack of evidence was not ordered to pay the costs of the proceedings, he was not as a rule reimbursed for his own necessary expenses. The order regarding costs and expenses had to be pronounced as part of the judgement, and, in the eyes of many people, it branded acquittal for lack of evidence as a "second-class" acquittal. The amended version of article 467 of the Code of Criminal Procedure puts an end to this legal situation, which was at variance with the presumption of innocence, by providing that in future, whenever a defendant is

acquitted or charges are dropped, both the costs of the proceedings and the necessary expenses of the defendant shall be borne by the public exchequer. This principle may be departed from in only a few cases which are enumerated exhaustively, and usually where the defendant himself is at fault.

7. PROTECTION AGAINST INTERFERENCE WITH PRIVACY

(*Universal Declaration, articles 6 and 12; Covenant on Civil and Political Rights, articles 16 and 17*)

The possibility of quite considerable interference with privacy through extensive surveillance of the postal services and of telephone communications was created by the Seventeenth Act supplementing the Basic Law of 24 June 1968 (*BGBI I*, p. 709), one of whose purposes was to amend article 10 of the Basic Law, and by the Act restricting secrecy of the mail, of the postal services and of telecommunications of 13 August 1968 (*BGBI I*, p. 949), which was adopted on the basis of the first-mentioned Act. The power to restrict secrecy of the mail, of the postal services and of telecommunications, which under the occupation statutes has hitherto been reserved to the Allies, may now be exercised by the competent German authorities for reasons pertaining to the defence of the State and of the Constitution or for the purpose of averting any threat to the security of the troops of non-German States parties to the North Atlantic Treaty stationed in the Federal Republic of Germany. The authorities are allowed to open and inspect items to which secrecy of the mail and of the postal services applies, to intercept telex messages and to monitor and sound record telecommunications (article 1, paragraph 1, of the Act of 13 August 1968). This applies both where there are factual grounds for suspicion of a political offence (treason, espionage, offences against national security and the like) and where the collection of factual information is necessary for the timely detection of a threat of armed attack on the Federal Republic of Germany (article 1, paragraphs 2 and 3, of the Act). Provision is made for parliamentary supervision, to be exercised by a five-member board composed of deputies to the Bundestag together with a three-member commission appointed by the board; the commission will decide on the permissibility and necessity of restriction measures, either *ex officio* or on the basis of complaints (article 1, paragraph 9, of the Act). This supervision by an authority and a subsidiary authority appointed by the parliament is, under the terms of article 10, paragraph 2, second sentence, of the Basic Law, expressly substituted for recourse to the courts, which is not available either against an order imposing restriction measures or against the measures themselves (article 1, paragraph 9 (5), of the Act); in an endeavour to give further constitutional backing to this, a new clause was also added to article 19, paragraph 4, of the Basic Law. Accordingly, article 1, paragraph 5 (5), of the Act of 13 August 1968, on the basis of article 10, paragraph 2, second sentence, of the Basic Law, provides that the person

concerned shall not be informed of the restriction measures.

Protection of the right of personality was the subject of a judgement rendered by the State Court of Hesse on 3 July 1968 (*NJW* 1968, p. 1923). The court had to decide whether the denial of a permit for the interment on residential property of an urn containing the ashes of a relative was a violation of fundamental rights. The court began by rejecting the argument that the prohibition infringed the petitioners' fundamental rights to freedom of religion and conscience. While it was true that that right was not restricted to an attitude of mind but also encompassed the visible manifestation of the freedom in question, the interment of an urn could not be classed as either a positive or a negative religious or philosophical creed. On the other hand, the court regarded the conduct complained of as a violation of the fundamental right of general freedom of action which was a necessary derivative of human dignity, the latter being among the governing principles of the Constitution; there was an encroachment on the sphere of solicitude for the dead, which must be considered to be bound up with the dignity of man, if relatives were prohibited from taking an individual decision on the manner and place of burial, bearing in mind the last wishes of the deceased. The Basic Law was not, of course, violated by a statutory provision which assumed that interments would normally take place in public cemeteries and prescribed a precautionary control procedure for cases where the normal rule was departed from by making the exercise of the right subject to an official permit. Provision must be made for such permits in exceptional cases, however, and there was a violation of the fundamental right in question if the normal case was cited in order to deny the existence of an exceptional case.

Lastly, the Federal Administrative Court held, in its judgement of 30 August 1968 (*Der Betrieb* 1969, p. 387), that article 2 of the Basic Law afforded constitutional protection to freedom of competition, since freedom to develop one's personality included the fundamental right not to be saddled by the Government with any disadvantage that was not grounded in the constitutional order.

The occasion of this ruling was the plaintiff's assertion that the competitive situation had been distorted by arbitrarily inequitable government subsidies.

8. THE RIGHT TO FREEDOM OF MOVEMENT AND THE RIGHT TO LEAVE THE COUNTRY

(*Universal Declaration, article 13; Covenant on Civil and Political Rights, article 12*)

By Act of 9 May 1968 (*BGBI II*, p. 422), the Bundestag approved Protocol No. 4 of 16 September 1963 to the Convention for the Protection of Human Rights and Fundamental Freedoms. The substance of the Protocol is reproduced in section 22 below. Reference should be made in the present context to article 2, paragraph (1), of the Protocol, which guarantees to everyone the right to liberty

of movement, and article 2, paragraph (2), which guarantees to everyone the right to leave any country, including his own. Since the Federal Constitutional Court rendered its judgement of 16 January 1957 (*BVerfGE* 6, p. 32), article 2, paragraph 1, of the Basic Law has been considered to provide constitutional sanction of freedom to leave the country, as a derivative of general freedom of action. Thus, the right to leave the national territory enjoys constitutional protection. This assumption was shared by the Federal Administrative Court in its decision of 29 August 1968 (*DÖV* 1969, p. 74). The court nevertheless agreed with the Federal Constitutional Court in upholding the constitutionality of the denial of a passport under article 7, paragraph 1 (a), of the Passports Act, which provides that the issue of a passport shall be refused if the applicant, as the holder of a passport, endangers the internal and external security or other substantial interests of the Federal Republic of Germany or any of its *Länder*. The court added, however, that the factual basis for such action was amenable to unlimited review by the administrative courts. The fact that often some of the issues involved were of a political nature did not render the administrative act of refusal and the claim to the issue of a passport unamenable to the jurisdiction of the courts. Nothing less than complete amenability to review could do justice to what was normally a legal entitlement of the individual to be given a passport.

Under article 11, paragraph 1, of the Basic Law, Germans enjoy freedom of movement throughout the federal territory. Article 11, paragraph 2, sets out the conditions on which this right may be restricted. The Seventeenth Act supplementing the Basic Law of 24 June 1968 (*BGBl* I, p. 709) widened these conditions. Restrictions, which according to the old wording were permissible only by legislation, may also in future be imposed on the basis of legislation, not only in the cases previously provided for, but where restrictions are necessary in order to avert a threat to the existence or the libertarian democratic basis order of the Federal Republic or any of its *Länder* or to cope with natural disasters or particularly serious accidents.

Article 2, paragraphs (3) and (4), of Protocol No. 4 to the Convention also allows restrictions on freedom of movement and freedom to leave the country. The conditions laid down are for the most part identical with those prescribed in article 11, paragraph 2, of the Basic Law, as amended, but are wider in one respect; under article 2, paragraph (4), of the Protocol, freedom of movement may be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

9. THE RIGHT OF ASYLUM; EXPULSION; EXTRADITION

(*Universal Declaration, article 14; Covenant on Civil and Political Rights, article 13*)

Article 16, paragraph 2, first sentence, of the Basic Law states that no German may be extradited to a foreign country. A German national had

served part of a sentence of imprisonment imposed on him in Switzerland, when the German authorities made an unconditional request to Switzerland for his extradition. Switzerland agreed but, in so doing, requested that he should be handed back after completion of the criminal proceedings in Germany. The Federal Court of Justice, in its decision of 7 February 1968 (*NJW* 1968, p. 1056), ruled that the return of a prisoner to a foreign State was permissible if, although no express assurance on the point had been given by the German authorities, the foreign Government's notification that extradition was approved only on condition that the prisoner would be promptly handed back had reached the German authorities in sufficient time to allow them to refuse such purely temporary extradition. The Federal Court of Justice therefore held that there was no violation of article 16, paragraph 2, first sentence, of the Basic Law. Unlike the case of passage in transit, where the State surrendering the accused person totally relinquished its authority over him, which was acquired by the State of transit and transmitted by the latter to the requesting State, the situation in the case before the court was that Switzerland had not completely relinquished its authority over the German national but, rather, had transferred to the German State only part of its authority. Thus, the Federal Republic of Germany had certainly not acquired unconditional authority over the accused, any more than the handing back of a prisoner placed an outside State in a position of authority which it had not previously occupied. The Federal Court of Justice thus adhered to its earlier finding (*BGHST* 12, pp. 262 and 268) that the handing back of an extradited person on the basis of a duly assumed contractual obligation was not extradition prohibited under article 16, paragraph 2, first sentence, of the Basic Law. The restriction of the Federal Republic of Germany's original unconditional request for extradition had come about contractually when the Federal Republic had made no comment on Switzerland's reply offering only the temporary surrender of the accused; in accordance with the principle of good faith, which applied in international as in municipal law, that constituted acceptance of the offer if an express refusal could have been expected. The foregoing applied in the international field at least where—as in the present case—reciprocity in matters of legal assistance was guaranteed between the States involved.

On the question of the expulsion of nationals and aliens, attention should be drawn to Protocol No. 4 the Convention for the Protection of Human Rights and Fundamental Freedoms, which was ratified by the Federal Republic of Germany during the year under review (*BGBl* II, p. 422), and in particular to articles 3 and 4 of the Protocol. Details are given in section 22 below.

10. THE RIGHT TO A NATIONALITY

(*Universal Declaration, article 15; Covenant on Civil and Political Rights, article 24*)

The point at issue in a case decided by the Federal Administrative Court on 14 February 1968

(DÖV 1968, p. 357) was the naturalization of an alien. Article 8 of the Reich and State Nationality Act of 1913, which is still in force, allows the competent administrative authorities to exercise discretion in deciding whether or not to grant an alien's application for naturalization. The Federal Administrative Court itself has constantly stressed that the discretion thus allowed is very broad, especially where considerations of expediency are concerned. This latest decision was along the same lines. The court stated flatly that an alien had no basic right to naturalization (but cf. article 116, paragraph 2, first sentence, of the Basic Law). Nor did entitlement to asylum under article 16, paragraph 2, second sentence, of the Basic Law entail either an entitlement to naturalization or a limitation of the discretionary powers conferred on the administrative authorities by article 8 of the 1913 Act. The Federal Administrative Court accordingly dismissed the appeal which the alien seeking naturalization had lodged against an order refusing to allow a review of his case.

Reference should also be made to the judgement of the Federal Constitutional Court of 14 February 1968 (BVerfGE 23, p. 98) declaring that the denaturalization of Jews in accordance with the Eleventh Ordinance pursuant to the Reich Nationality Act of 1941 was void *ab initio*. An account of this case was given in section 2 above.

11. PROTECTION OF MARRIAGE AND THE FAMILY

(*Universal Declaration, article 16; Covenant on Economic, Social and Cultural Rights, article 10; Covenant on Civil and Political Rights, articles 23 and 24*)

The Second Ordinance amending the Ordinance concerning maternal welfare for women civil servants was promulgated by the Federal Government on 22 January 1968 (BGBl I, p. 105), but only a minor amendment was involved. The amended text of the Ordinance was published on the same date (BGBl I, p. 106). A number of minor amendments during 1967 to the Maternal Welfare Act made it necessary also to issue an amended text of the Act, which was published by the Federal Minister of Labour and Social Affairs on 18 April 1968 (BGBl I, p. 315).

In recent years, a number of courts referred to the Federal Constitutional Court for a decision on the question whether article 1747, paragraph 3 of the Civil Code was compatible with article 6, paragraphs 2 and 3, of the Basic Law, relating to the rights of parents, and with principles of law and justice. Article 1747 of the Civil Code provides for the co-operation of the parents in case of the adoption of a child below the age of twenty-one; under the terms of this article, the consent of the parents is normally required. Paragraph 3 had been added by the legislator in 1961 because of the increasing number of cases where parents had for years been neglecting their children but for immaterial reasons were preventing contemplated adoptions. The new clause therefore provides that the guardianship court may give consent in lieu of the parents if the latter have constantly and grossly failed in their obligations towards the child or

have forfeited their parental authority and if, in addition, the refusal is malicious and non-adoption would be unduly detrimental to the child.

The Federal Constitutional Court ruled, in its judgement of 29 July 1968 (BVerfGE 24, p. 119), that article 1747, paragraph 3, of the Civil Code was constitutional. The court began by noting that the basis for normally requiring parental consent to adoption was the legally recognized authority and responsibility of parents for the upbringing of their children. That parental right, which was protected by article 6, paragraphs 2 and 3, of the Basic Law, had precedence over the authority of the State with respect to upbringing; accordingly, it also provided parents with a defence against unjustified interference in the matter by the State. Protection was accorded, however, not to an irrevocable legal status deriving solely from biological parenthood but to a task and function which parents, taking the broadest and most responsible view of what was meant by care and upbringing, must accept and carry out. Inherent in, and essentially bound up with, the right to bring up a child was a corresponding obligation.

The failure of parents to perform that duty activated the guardian function of the State, which had its justification in the child's human dignity and his right to develop his personality. Although the precedence normally accorded to parents and the principle of the least possible interference determined the nature and extent of State action, such action could in exceptional cases go so far as to include permanent revocation of the right to bring up the child. Article 1747, paragraph 3, of the Civil Code did justice to that necessity.

Both writers and judges have for long been divided on the question whether a woman who is married but has not yet attained her majority can be ordered to undergo supervised education in accordance with article 64 of the Youth Welfare Act. The Land Court at Darmstadt ruled in 1965 that she could not (NJW 1965, p. 1235; cf. section 11 of the 1965 report), but the Federal Court of Justice has now taken a contrary view (judgement of 21 February 1968, NJW 1968, p. 937). The court held that the principle whereby the right of the State in regard to upbringing was secondary to that of parents (article 6, paragraph 2, of the Basic Law) did not in any way preclude the making of an order for supervised education even where—as, for instance, the present case of the marriage of a minor—the right of custody was no longer vested in the parents (article 1633 of the Civil Code). Nor did article 6, paragraph 1, of the Basic Law, which placed marriage and the family under the special protection of the State, prevent the making of such an order, a condition for which was that the minor must be at least in danger of falling into neglect. The mere existence of that condition already impaired the marriage, whereas it was by no means certain that the union would be adversely affected by supervised education. Article 6, paragraph 1, of the Basic Law was not an abstract principle, detached from the realities of life, which existed for its own sake and, without really protecting marriage, compelled a decision to deny a minor the education she needed.

In a judgement of 24 July 1968 (*NJW* 1968, p. 1771), the Federal Constitutional Court ruled that article 45 of the Bankruptcy Ordinance was void because it was incompatible with article 6, paragraph 1, of the Basic Law. Article 45 of the Ordinance prohibited the secreting of property by the spouse of the bankrupt if the property in question had been purchased with funds of the bankrupt. This provision—contrary to its wording—had the effect in many cases of compelling the spouse to deliver property belonging to him to the receiver even when it had been purchased with his own funds, because the burden of proof that the property had not been purchased with funds of the bankrupt rested on the spouse and it was very often impossible to produce such proof, especially where the couple had been married for many years. The Federal Constitutional Court regarded this as a violation of article 6, paragraph 1, of the Basic Law. The court noted that the basis for the provision which adversely affected the spouse of the bankrupt was the mere existence of the marriage; while it was quite conceivable that underhand transfers of property did occur between spouses, article 45 of the Bankruptcy Ordinance also applied indiscriminately to married couples who were living apart, and it specified no time-limit whatever. That must be regarded as going beyond the protective purpose—which in itself was quite justified—of article 45 of the Ordinance and thus as violating the prohibition of excessive measures.

The *Land* High Court at Hamm ruled, in its decision of 9 May 1968 (*NJW* 1968, p. 2022), that the right to enter into marriage was a fundamental right, although it did not indicate whether that right derived from article 6, paragraph 1, or from article 2, paragraph 1, of the Basic Law. A convict who was serving a sentence of life imprisonment had been refused permission to marry, on the ground that it would not be possible for the couple to live together as man and wife. The court rejected this argument and held that the right to marry was guaranteed to a convict, who was subject to a special relationship of constraint, as to anyone else. Marriage was something more than simply living together as man and wife, which it was true would not be possible in the case before the court; consequently, permission to marry could not be refused solely on the ground that the prisoner was serving a life sentence. Since there were no other grounds for refusal, the prison authorities had an obligation to enable the marriage ceremony to take place in the prison.

One of the ways in which the Federal Court of Justice has given practical effect to the protection of marriage and the family is by consistently ruling that testamentary dispositions whereby a married man attempts to reward a woman for the adulterous relations he maintained with her are contrary to public policy and therefore void. The court has now upheld the same view with respect to a bequest by an unmarried man to a married woman (judgement of 26 February 1968, *NJW* 1968, p. 932). The Berlin High Court, which would like to depart from these precedents and has accordingly referred the question to the Federal Court of Justice for a decision, took in its

judgement of 20 June 1968 (*FamRZ* 1968, p. 670) a position regarding the State protection accorded to marriage which would have less impact on the sphere of personal rights, according to the circumstances. The court ruled that such testamentary provisions could be contrary to public policy only to the extent that they reflected a scandalous disregard for the essence of marriage and the family. That was not the case where only relatives who had no statutory claim to a share of the estate were aggrieved.

Article 172 of the Penal Code makes adultery a punishable offence. In case of a divorce on the ground of adultery, the guilty spouse and the respondent may, upon the petition of the injured spouse, be sentenced to terms of imprisonment not exceeding six months. Recently, in view of the proposed reform of the Penal Code, the controversy as to whether this penal provision is justified has become extremely heated. In its decision of 6 March 1968 (*NJW* 1968, p. 1685), the *Land* Court at Frankenthal endorsed the view that penalizing adultery was not properly within the scope of the criminal law and that it turned the judge into a judge of morals. However, since article 172 of the Penal Code was still on the statute-book, the only way in which that view could be taken into account was in connexion with the assessment of the penalty. The court accordingly reduced the sentence of three months' imprisonment which had been passed on both the guilty parties to a fine of DM 100 each.

In the field of private international law, there often arises the problem of the applicability of a provision of foreign law and its compatibility with the municipal *ordre public* (cf. article 30 of the Introductory Act to the Civil Code). In its judgement of 17 September 1968 (*MDR* 1969, p. 36), the Federal Court of Justice refused to apply to an Italian family resident in the Federal Republic of Germany article 252, paragraph 3, of the Italian Civil Code, which does not permit the legitimation of an adulterine child through the subsequent marriage of the parents as long as there are still legitimate children of the dissolved marriage who have not attained their majority. The court held that article 6, paragraph 5, of the Basic Law, embodying the constitutional mandate for the German legislator to give practical effect to the equalization of illegitimate children with legitimate children, constituted an evaluation which formed part of the basic conceptions underlying the recent development of the law in the Federal Republic of Germany. The Italian provision in question was so incompatible with that evaluation that it could not be applied because it conflicted with the German *ordre public*.

Under German law, a father is responsible for the maintenance of both his legitimate and his illegitimate children (cf. articles 1601 and 1708 of the Civil Code). On the question which obligation takes priority if the father has only limited means, judicial precedents are unclear and conflicting. The *Land* Court of Berlin ruled in its decision of 14 October 1968 (*FamRZ* 1969, p. 36), that the claims of legitimate and illegitimate children were of equal standing. Article 6, paragraph 1, of the Basic Law precluded priority status for illegitimate

children, while article 6, paragraph 5, precluded giving legitimate children precedence over those who were illegitimate.

The highlight of judicial rulings on the scope of article 6, paragraph 5, of the Basic Law during the year under review was the judgement of the *Land* High Court at Frankfurt of 26 September 1968 referring a question to the Federal Constitutional Court for a decision (*FamRZ* 1968, p. 666). The court took the view that the prevailing legal situation, in which an illegitimate child had no statutory right of inheritance after the death of his father, was no longer compatible with the Basic Law. An unconstitutional situation had arisen as a result of the legislator's protracted inactivity in the face of the constitutional mandate laid down in article 6, paragraph 5, of the Basic Law. That provision had undergone a functional change and had become, instead of a mandate for legislation, a direct rule of law having derogatory effect; the *Land* High Court did not, however, express any opinion on when that functional change had occurred. Having found that the legislator's failure to act was unconstitutional, the court ruled that article 100, paragraph 1, of the Basic Law was applicable by analogy and accordingly referred the question which had been raised to the Federal Constitutional Court for a decision.

The highest German court made no pronouncements on this problem during 1968. Early in 1969, however, a constitutional complaint gave it an occasion to make a fundamental ruling (judgement of 29 January 1969, *NJW* 1969, p. 597) on the problem of article 6, paragraph 5, of the Basic Law, an account of which is included in the present report because this ruling supplies a long-overdue clarification of the question involved. The point at issue in the case before the court was whether it was compatible with article 6, paragraph 5, of the Basic Law to deduct from the payments for continued maintenance which an illegitimate child is entitled to claim from his father's heirs under article 1712 of the Civil Code the amount of an orphan's pension granted to him under the social security scheme precisely because of the death of the father.

The Federal Constitutional Court did not endorse, for the present, the more extreme position taken by the *Land* Court at Frankfurt. It pointed out emphatically, however, that article 6, paragraph 5, of the Basic Law had not allowed the legislator unlimited time but, rather, had set a reasonable time-limit within which the legislator must take action to place illegitimate children on an equal footing with legitimate children; material justice demanded a reform of the law relating to illegitimate children. The time-limit would expire with the end of the current legislative session (September 1969). Should the legislator not have enacted new legislation by that date, it would be the duty of the courts to create a legal situation that was compatible with the Constitution. The legal content of article 6, paragraph 5, of the Basic Law was clear, positive and adequate for that purpose and constituted a clear, guiding value judgement, all of which would make it possible for a judge to decide whether existing legislation

should continue in force and whether any deficiencies should be made good.

In the same decision, the Federal Constitutional Court criticized the idea that there was any antinomy between paragraph 1 and paragraph 5 of article 6 of the Basic Law; it therefore rejected the view that legislation in favour of illegitimate children must be measured not only against paragraph 5 but also against paragraph 1 and would be constitutional only if illegitimate children were not placed in a better position than legitimate children. The court held that article 6, paragraph 5, of the Basic Law, being an expression of the general principle of equality, was a genuine norm affording protection to illegitimate children. Consequently, even if the conditions in which legitimate children grew up and the social situation of such children was taken as the model for reforming the law relating to illegitimate children, the constitutional yardstick was to be found only in article 6, paragraph 5, of the Basic Law.

On the basis of the foregoing, the Federal Constitutional Court concluded that the complaint was well-founded; in the case of a legitimate child there was never any thought of deducting the amount of the orphan's pension from his inheritance or from the share of the estate to which he had a statutory claim, and any such deduction from the entitlement under article 1712 of the Civil Code was equally unjustified.

It may be noted that the legislative proceedings on this subject have in the meantime progressed to the point where it can reasonably be anticipated that the legislator will be able to meet the deadline set by the Federal Constitutional Court and will have carried out the constitutional mandate by September 1969.

12. PROTECTION OF PROPERTY

(*Universal Declaration, article 17*)

In a significant decision of 18 December 1968 (*DVBl* 1969, p. 190), the Federal Constitutional Court commented on some basic questions involved in the protection of property. The court was considering constitutional complaints by property-owners who felt that their fundamental right under article 14 of the Basic Law was violated by certain provisions of the Dikes and Embankments Act of the Free Hanseatic City of Hamburg, of 29 April 1964 (*GVBl* I, p. 79), which had its genesis in the experiences of the great flooding disaster of 1962. The most important clause in this connexion is article 2 of the Act, which provided that all grass-lands shown as "dikeland" in the land register would become public property upon the entry into force of the Act. All rights in the parcels concerned would be extinguished accordingly. Article 5 of the Act prescribed compensation for the persons affected.

The Federal Constitutional Court began its judgement by emphasizing that the ownership of property was an elementary basic right closely bound up with the guarantee of personal freedom. Under article 14, paragraph 1, first sentence, of the Basic Law, private property was safeguarded

both as a legal institution and in its concrete form as the possession of the individual owner. The court nevertheless held that that guarantee did not preclude the placing of dike-land properties under public ownership. It noted that the existing legal order allowed not only for civil-law ownership, the characteristics of which were that the property was in private use and could normally be freely disposed of, but also for another type of domain involving the use of the property of others. Taking property out of the private-law régime and placing it entirely in the public domain as public property was not an abridgement of the guarantee enunciated in article 14, paragraph 1, first sentence, of the Basic Law, at least where the property was to be used for a particular public purpose and were, in view of that intended purpose, allowing it to be disposed of privately was absolutely or substantially precluded.

However, there were other considerations to be taken into account before the constitutional complaints could be dismissed. The Federal Constitutional Court also reviewed the question whether the taking of landed property could be effected by legislation itself ("legislative expropriation") or whether a special implementing instrument—based on an expropriation law—should not, rather, have been issued ("administrative expropriation"). While it was true that article 14, paragraph 3, second sentence, of the Basic Law expressly provided for both kinds of expropriation, the Federal Constitutional Court nevertheless took the view that legislative expropriation was permissible only in special situations, since otherwise the legal protection against infringements by public authority which article 19, paragraph 4, of the Basic Law afforded would be unreasonably restricted. This followed from the court's decision of 25 June 1968 (*JZ* 1969, p. 141; cf. section 5 of this report), in which it had ruled that the legislature was not a public authority within the meaning of article 19, paragraph 4, of the Basic Law. In the present case, however, expropriation by the legislator himself was found to be permissible because, after the disastrous floods of 1962, the Hamburg legislator had been confronted with the duty to construct, immediately and effectively, a complete system of dikes and embankments incorporating those which already existed. No objection could be raised to the fact that the legislator had first freed his hands for that task by adopting the Act in question.

One point that has for long been in dispute is how expropriation laws and regulations under article 14, paragraph 3, of the Basic Law stand in relation to article 19, paragraph 1, of the Basic Law, which provides that legislation restricting a basic right must not be applicable solely to an individual case. The Federal Constitutional Court ruled in the case under discussion that article 19, paragraph 1, served to safeguard those basic rights which might, in accordance with a special proviso incorporated in the Basic Law, be restricted by legislation or on the basis of a law. In the case of article 14, paragraph 3, however, what was involved when all the conditions laid down in the paragraph were fulfilled was not the authorization of a general restriction of the basic right as such, but a limitation of its applicability with regard to

certain property that must be clearly defined. That being so, the specification prescribed in article 19, paragraph 1, second sentence, of the Basic Law was also unnecessary in the case of expropriation laws. However, the court expressly declined to rule on the question where an expropriation law directed against an individual person was permissible.

In a judgement of 25 January 1968 (*MDR* 1968, p. 478), the Federal Court of Justice differentiated between the social obligations of property (article 14, paragraph 2, of the Basic Law) and compensable expropriation. The health authorities had confiscated a quantity of hares imported from abroad because other consignments of the same imports were contaminated by salmonella. Subsequently, without making a separate inspection of those confiscated, the authorities finalized the action they had taken. In due course, the Federal Court of Justice ordered the payment of compensation to the person concerned. The court agreed that, as in the present case, the mere suspicion that food-stuffs might be dangerous to health justified official action, and in that respect there was a certain duty to submit to such action as a social obligation of property. However, until such time as the actual existence of a danger had been established, the action could only be provisional and could not itself constitute a definitive settlement of the matter. Yet, in the case before the court, the provisional confiscation had been made final; the encroachment on property rights lay in the fact that the owner had been permanently prevented from disposing of the goods in the intended manner. The ownership of property had been made subject to an obligation to submit to final action only when the existence of a condition contrary to regulations was established. The risk involved in any official intervention in cases of dubious legality could not be saddled on the individual but must be borne by the authorities if, despite the dubiousness of the case, they chose to intervene.

Problems constantly arise in connexion with the construction of underground railways, which has been going on at increasing pace recently in the cities of the Federal Republic of Germany. Often the mere fact that the authorities decide to acquire a property for this purpose adversely affects the position of persons having rights in the property. Nevertheless, the Federal Court of Justice, in its decision of 1 July 1968 (*MDR* 1968, p. 908), rejected the argument that such a decision in itself constituted official encroachment on the legal situation of the tenant of such a property, since no expropriation procedure had as yet been initiated. In the same decision, the court again pointed out that it was the duty of a public body, before carrying out an expropriation measure that was necessary in the public interest, to make a serious attempt to acquire the property by private contract on suitable terms.

Article 14, paragraph 3, of the Basic Law provides that the nature and extent of compensation shall be regulated entirely by the expropriation law itself. With the insertion of article 115c under the terms of the Seventeenth Act supplementing the Basic Law of 24 June 1968 (*BGBI* I, p. 709),

this principle no longer applies without exception. Where circumstances so require during a state of defence, compensation for acts of expropriation may, notwithstanding the provisions of article 14, paragraph 3, of the Basic Law, be regulated in advance by federal legislation relating to the state of defence. Such federal legislation may even be applied, in preparation for its execution, before the beginning of the state of defence (article 115c, paragraph 2 (1) and paragraph 4, of the Basic Law).

13. FREEDOM OF CONSCIENCE AND RELIGION; FREEDOM OF RELIGIOUS PRACTICE

(*Universal Declaration, article 18; Covenant on Civil and Political Rights, article 18*)

Complainants are constantly alleging that the fundamental right to freedom of faith and conscience, which is guaranteed in article 4 of the Basic Law, would be violated by legislation or by administrative measures. The courts again had a number of occasions during the year under review to rule on issues which arose in this connexion.

For instance, the Bavarian Constitutional Court, in its decision of 12 March 1968 (*DÖV* 1968, p. 353), rejected the argument that legislation concerning church tax must allow for cases where a person is a purely formal member of a religious association and is inwardly alienated from it by providing that such members may not be declared liable to church tax. The Constitutional Court stated emphatically that it was precisely a provision of the kind sought that would violate the basic principle of freedom of faith, since the legislator must continue to be barred, when laying down certain rights and obligations, from focusing on the intensity of a person's belief or of his consciousness of and interest in belonging to a Christian religious association. The legislator must take as the sole basis in that connexion church membership in the technical legal sense; citizens who had become members of a given religious association and had not subsequently quitted it must be deemed to be members. In the same judgement, the Bavarian Constitutional Court rejected the argument that the fact that children could by baptism—i.e., under canon law—become members of a Christian church without their consent or against their will and thus, in some circumstances, also become liable to church tax, was not a violation of the basic right in question. So long as a child was unable to form a value judgement in that respect, he was also incapable of the independent exercise of his right to freedom of faith and conscience; thus, it was not possible for that right to be violated. Lastly, the court held that a provision regulating withdrawal from an association which was entitled to levy church tax did not encroach on freedom of faith but, on the contrary, safeguarded it. The basic right in question included the privilege of changing one's religion and of quitting a religious association. It was precisely because that was not possible under the law of some churches—for instance, the Catholic Church—that the State legislator was barred from referring to canon law when dealing with questions of

withdrawal, as he was permitted to do in regulating admission.

A Catholic youth organization arranged a drive for the collection of second-hand articles, which was publicized through announcements from the pulpit in Catholic churches and through the press; the proceeds were to be used for the benefit of young people in rural areas of under-developed countries. A scrap dealer whose business was for a time almost ruined as a result of this obtained a court order prohibiting the youth organization from having the drive publicized from the pulpit, and the organization lodged a constitutional complaint against the order, citing article 4, paragraph 2, of the Basic Law, which guarantees the free practice of religion. The Federal Constitutional Court, in its judgement of 16 October 1968 (*BVerfGE* 24, p. 236), ruled that the order was unconstitutional and quashed it. It held that the term "practice of religion", which was of prime importance to every faith and every religion, must, in view of its historical substance, be very broadly interpreted; that was so because of the absence of any restrictive proviso in the Constitution, because the right in question was not forfeitable (cf. article 18 of the Basic Law) and because of the special constitutional provisions of article 3, paragraph 3, article 33, paragraph 3, and article 140 of the Basic Law. Accordingly, the practice of religion included not only acts of worship but also religious education, humanistic and atheistic ceremonies, and other manifestations of religious and philosophic life. More precisely, however, the charitable collection of gifts in kind by the complainant was one of the traditional forms of those works of charity which, as an expression of active love for one's neighbour, were according to the outlook of the Christian churches an essential duty of the individual and also a basic function of the church as a whole. The court making the order had disregarded that interpretation in holding publicity from the pulpit to be "competition contrary to public policy"; for, if the collection itself enjoyed the special protection of the Constitution precisely because it partook of religious charity, the same applied in equal measure to any supporting action in the setting of normal religious life.

In its decision of 11 June 1968 (*DÖV* 1968, p. 801), the Federal Administrative Court dealt with the question of the legally permissible limits of proselytizing by a police officer. The officer had been forbidden to recruit on behalf of Jehovah's Witnesses among persons of other faiths by calling at their homes while off duty and out of uniform. It is universally accepted that public servants, because of the nature of the official relationship they have entered into, which is characterized by a special closeness to the State and by mutual obligations of duty and loyalty, may be subjected to restrictions in the exercise of constitutionally guaranteed basic rights. The Federal Administrative Court held that such restrictions could be imposed even on a public servant's right to recruit on behalf of his own faith if such recruiting activity might be detrimental to official interests and, consequently, might endanger the welfare of the community. The court found no such danger in the case before it, even though many of those

on whom the officer had called had felt constrained and had reacted differently than in the case of other proselytizers; that reflected an outdated attitude towards authority on the part of the persons in question which, precisely because the Federal Republic of Germany was not a police State, must not be taken as a warrant for restricting public servants in the exercise of their basic rights.

Whereas the Federal Constitutional Court, in its decision of 7 March 1968 (*NJW* 1968, p. 982), had ruled that repeated punishment for repeated failure to comply with an order to report for alternative civilian service violated the principle *ne bis in idem* (article 103, paragraph 3, of the Basic Law) if the repeated refusal was based on a decision of conscience taken by the offender finally and for all time to come (cf. section 13 of the 1967 report), the Federal Administrative Court held, in its judgement of 3 December 1968 (*NJW* 1969, p. 629), that those principles could not be carried over into a review of the constitutionality of repeated disciplinary penalties. In the particular case involved, a serviceman who had applied for recognition as a conscientious objector but had not yet been recognized as such was twice subjected to disciplinary penalties, on each occasion for refusing to obey an order to bear arms. The Federal Administrative Court observed that, in the case of persons who refused to perform alternative service, the recognition of their right to refuse to perform military service as armed combatants (article 4, paragraph 3, of the Basic Law) signified that a serious decision of conscience had been taken. There was no such recognition in the case of servicemen who had only belatedly applied for recognition as conscientious objectors. It followed that the decision of conscience which the serviceman in question claimed to have taken must be disregarded in considering whether the case involved "the same act" within the meaning of article 103, paragraph 3, of the Basic Law. The certainty of the law must then be given precedence over material justice, especially as the serviceman had put himself into so unfavourable a position by failing to submit the application sooner. It must also be borne in mind that in the case of a disciplinary penalty, as opposed to a criminal sentence, the idea of guilt, which was closely bound up with the notion of conscience, did not predominate. Disciplinary law was concerned less with the subjective mental processes of the offender than with his visible demeanour and its effects on discipline as a whole. Each refusal to comply with a specific order was, therefore, a new breach of official duty. The court set certain limits, however, by adding that the prohibition of excessive measures applied in the case of disciplinary law as elsewhere and that a disciplinary penalty must not take on the character of oppressive punishment—a point which must always be given special consideration in the case of offenders who acted for reasons of conscience.

A judgement of the Federal Administrative Court of 31 October 1968 (*Neue Zeitschrift für Wehrrecht* 1969, p. 118) related to the question of the scope of the right of conscientious objection itself. A person who was liable to military service

based his application for recognition as a conscientious objector on the fact that in case of war, including a purely defensive war, he would be obliged as a soldier to fire on enemy soldiers who bore no personal guilt, which would go against his conscience. The situation would be different if an armed attack was carried out by an army composed entirely of volunteers. In that case, the State would have a right of self-defence and he (the applicant) would therefore be able to join in the war of resistance. The Federal Administrative Court found that, on the strength of this argument, the applicant was not a conscientious objector as a matter of general principle but only a conditional objector to circumstances, and the Federal Constitutional Court had ruled (*BVerfGE* 12, pp. 45, 57 *et seq.*) that such a person could not rely on article 4, paragraph 3, of the Basic Law. That must apply in the case of the applicant, who in certain circumstances would have no qualms about firing on people. The applicant's appeal was therefore dismissed by the Federal Administrative Court.

14. FREEDOM OF OPINION; FREEDOM OF INFORMATION

(*Universal Declaration, article 19; Covenant on Civil and Political Rights, article 19*)

One subject which constantly recurs in court decisions is the conflict between the protection of honour and the fundamental right of freedom of opinion and freedom of the press. An account of the judgement of the Federal Court of Justice of 20 March 1968 (*NJW* 1968, p. 1773), which relates to precisely this demarcation between the area of freedom and restrictions on freedom, was given in section 1 above. The Federal Constitutional Court had before it a constitutional complaint against the order of a *Land* High Court prohibiting the complainants from making and publishing in their journal the assertion that the other party to the case was attempting to bring about "eastern conditions" through spying; it was stated—quite accurately—that the other party, with a view to protecting its claims to a fee for each and every private tape recording of musical works, had called for surveillance measures which threatened serious encroachment on the privacy of the individual. It was alleged that, if that demand was realized, there would be an impending danger of an undesirable informer system. In its decision of 6 November 1968 (*NJW* 1969, p. 227), the Federal Constitutional Court quashed the order of the *Land* High Court on the ground that the latter, in applying and interpreting the relevant law, had not taken sufficiently into account the pervasive effect of article 5 of the Basic Law. If the interests involved in this particular case had been weighed against each other, as required by past rulings of the Federal Constitutional Court, the judgement could only have been that the words used by the complainants were covered by article 193 of the Penal Code, under which the protection of legitimate interests constituted a defence against charges of insulting language, read in conjunction with article 5, paragraph 1, of the Basic Law, because they had been uttered as part of a public

argument conducive to the formation of public opinion and had been a fitting reaction to something that had gone before. The contested utterance was not a disproportionate reply to a legally dubious pronouncement. Consequently, the assertion to which exception had been taken had remained within constitutional bounds and should not have been held to justify the granting of an injunction.

The attempted murder of a Berlin student was followed by riotous incidents and demonstrations in nearly all the university towns of the Federal Republic of Germany, including Frankfurt am Main, directed primarily against the publishing-house of Axel Springer, which produces a large proportion of the German daily newspapers and magazines and which was charged by student groups with substantial responsibility for the attempted murder because of allegedly constant incitement against the student left. Some of the excesses that occurred in connexion with the demonstrations, which were considered by the State Counsel's Department to be punishable offences and were prosecuted accordingly, came before the District Court (lay-judge juvenile court) at Frankfurt for judgement. The court found that the charges of riot and breach of the peace against the defendants were not substantiated; in its decision of 30 October 1968 (*JZ* 1969, p. 200), against which an appeal is pending, it ruled that the threat to freedom of opinion and freedom of the Press which emanated from the Springer publishing-house because of its unduly large share of the market for German newspapers justified the use of means for creating public awareness and forming public opinion that were not otherwise either customary or justified.

Student questions were also dealt with in judgements rendered by the Administrative Court at Sigmaringen on 2 February 1968, p. 267) and by the Higher Administrative Court at Münster on 31 May 1968 (*NJW* 1968, p. 1901). Branches of the General Student Committee (AStA) at some universities have for long been claiming, often against the wishes of many of their members, a so-called general political mandate—in other words, the right to speak in the name of the Student Committee on general political questions, and not only on matters of university policy. During the year under review, this controversial problem came before the courts for adjudication on several occasions. The courts are unanimous in rejecting the idea of any such general political mandate, and the Sigmaringen and Münster rulings have been cited because they offer a particularly clear example of the rejection of a claim to it. One of the reasons stated was that the Student Committee could not, as a component body, have greater rights than the aggregate body of the university, which possessed no such authority. Secondly, a general political mandate was incompatible with the compulsory membership of all fully registered students in the Student Committee. Lastly, the contrary argument could not rely the fundamental right to freedom of expression or, indeed, on the fundamental right to freedom of art and science, research and teaching (article 5, paragraph 3, of the Basic Law), because

the latter right related only to autonomous scholarship, with a view to protecting it against assaults from without, and not to the universities and their component bodies as such; the same must apply *mutatis mutandis* in the case of article 5, paragraph 1, of the Basic Law.

15. PROHIBITION OF POLITICAL PARTIES AND ASSOCIATIONS

(*Universal Declaration, articles 20 and 23; Covenant on Economic, Social and Cultural Rights, article 8; Covenant on Civil and Political Rights, articles 21 and 22*)

Article 21, paragraph 1, of the Basic Law presupposes the notion of political parties but does not itself define them. Article 2 of the Act concerning political parties (Parties Act), which came into force in 1967 (*BGBI* 1967 I, p. 773; see also section 15 of the 1967 report), undertakes such a definition by providing that only associations whose aim is to participate in the representation of the people in the Bundestag or at least in a *Land* legislature shall be deemed to be parties; under the terms of article 2, paragraph 2, of the Act, any group which for six years has nominated no candidates of its own for election either to the Bundestag or to a *Land* legislature loses its legal status as a party.

The Federal Constitutional Court had occasion, considering the admissibility or a test case instituted by a political group which met the aforementioned requirements of article 2, paragraph 2, of the Parties Act, to express its views on the question whether the scheme laid down in that provision was compatible with the Basic Law's notion of a party. The court had no hesitation in finding that it was, in its judgement of 17 October 1968 (*BVerfGE* 24, p. 260). It held that article 2, paragraph 2, of the Act spelt out the meaning of the term "party" in a manner that was permissible and was covered by the general mandate to enact legislation contained in article 21, paragraph 3, of the Basic Law. Nor was party freedom impermissibly restricted, since all that was needed in order to meet the requirements of article 2 was the nomination of a candidate in a single constituency, for which, in accordance with article 21, paragraph 2, of the Federal Elections Act, only 200 signatures of registered voters need be obtained.

The fact that the basic approach of the Parties Act is in accord with the Constitution was again confirmed by the Federal Constitutional Court in its judgement of 3 December 1968 (*DÖV* 1969, p. 61). By its decision, however, the court made a few minor revisions in the Act. For instance, it ruled that it would be incompatible with the principle of equality of changes of the parties, taken in conjunction with the principle of universal and equal suffrage (article 38, paragraph 1, of the Basic Law), to make final reimbursement of campaign expenses and payments on account dependent on a party's actually obtaining 2.5 per cent of the vote in the relevant Bundestag election. So high a percentage figure could not be justified

on the ground that elections were meant to create legislatures that were capable of functioning. The only pertinent question was the seriousness of a party's declared intention to share in the formation of the political will of the people by participating in elections and there could be no doubt about a party's seriousness if its candidates received as little as 0.5 per cent of the total vote.

The Seventeenth Act supplementing the Basic Law of 24 June 1968 (*BGBI I*, p. 709) made an addition to article 9, paragraph 3, of the Basic Law. That provision already guaranteed to everyone the right to form associations to safeguard and improve working and economic conditions. The constitutional amendments, the main purpose of which was to create a legal basis for a state of defence or domestic emergency, left this fundamental right untouched; indeed, the newly added third sentence of paragraph 3 of article 9 expressly indicates that the measures provided for in case of a state of defence or domestic emergency under, for instance, article 12a of the Basic Law (cf. section 17 of this report) may not be directed against labour conflicts which are being waged to safeguard and improve the working and economic conditions of associations of the kind referred to in paragraph 3. Thus, even in case of a state of emergency, any prohibition of lawful strikes is incompatible with this provision.

A decision of the Federal Court of 11 November 1968 (*NJW* 1969, p. 861) related to the question of canvassing for members by rival trade unions. The court first ruled that canvassing for members came within the area protected by article 9, paragraph 3, of the Basic Law. Since that provision admitted of the simultaneous formation of more than one trade union advocating the same goals, it followed that all unions had the right to canvass for members. However, each union might exercise that right only in such a manner that the legitimate interests of the others were not adversely affected. The Federal Labour Court held that there was an encroachment on the basic right in question where one trade union represented as its own improvements in wage scales that had been won by the rival union, thus inevitably misleading anyone who was not acquainted with the facts.

In recent times there have been an increasing number of cases where demonstrators who started out as participants in an announced demonstration have split off after the end of the march, or even sooner, forcing their way through police barriers into another street, where they have continued to demonstrate and committed acts of violence. The Supreme *Land* Court of Bavaria ruled, in its decision of 26 November 1968 (*Juristische Rundschau* 1969, p. 65), that such demonstrators, who had clearly dissociated themselves from the locus of the original demonstration and had rendered themselves independent, could not rely either on the protection of article 8 of the Basic Law or on the Assemblies Act of 24 July 1953 (*BGBI I*, p. 684). The court therefore upheld the conviction of the defendants on charges of breach of the peace and unlawful assembly under articles 125 and 116 of the Penal Code.

The *Land* Court at Bremen also expressed its views on the limits of the right to demonstrate, in

its judgement of 17 April 1968 (*NJW* 1968, p. 1889). This was in connexion with the protest actions and disorders, staged mainly by young people of school age, which resulted from the increase in fares on the Bremen tramway system. The court held that an order to a crowd to move on was lawful whenever the official who was competent with respect to both the place and the event, acting responsibly and weighing as best he could the fundamental rights guaranteed in the Constitution (articles 2, 5 and 8 of the Basic Law) against the interests protected by article 116 of the Penal Code (public safety and order), might deem his intervention to be necessary and objectively justified. Subject to that restrictive interpretation, the court regarded article 116 of the Penal Code as constitutional. Consequently, it held that the combination of elements which in accordance with that article constituted a punishable offence formed a limit to freedom to demonstrate and freedom of assembly.

16. THE SUFFRAGE AND THE RIGHT OF SELF-DETERMINATION

(*Universal Declaration, article 21; Covenant on Economic, Social and Cultural Rights, article 1; Covenant on Civil and Political Rights, articles 1 and 25*)

At the federal level, the only development was a minor amendment to article 11 of the Federal Elections Act under article 4 of the Introductory Act to the Petty Offences Act of 24 May 1968 (*BGBI I*, p. 503). The main centre of legislative activity with regard to the suffrage during the period covered by this year's report was Bavaria, where, after numerous amendments, the amended text of the Act concerning elections to the *Landtag*, referendums and plebiscites (*Land Elections Act*) of 14 April 1968 (Bavaria *GVBl* 1968, p. 81) was finally promulgated. The Elections Order concerning elections to the *Landtag*, referendums and plebiscites (*Land Elections Order*) which contains the technical provisions relating to the preparation and conduct of elections, determination of election results, by-elections, repeat elections and referendums (Bavaria *GVBl* 1968, p. 95), was issued on 29 April 1968. Lastly, mention should be made of the Act concerning reimbursement of campaign expenses in respect of elections to the *Landtag*, of 24 May 1968 (Bavaria, *GVBl* 1968, p. 151), under which parties taking part in elections to the *Landtag* are given an allowance towards the necessary costs of conducting a proper campaign, provided that they have nominated candidates of their own and have, according to the final election returns, obtained in all at least 2.5 per cent of the total number of valid votes cast or at least 10 per cent of the valid votes cast in a constituency. The Federal Constitutional Court has in the meantime made a ruling on the reimbursement of campaign expenses in the case of elections to the Bundestag (judgement of 3 December 1968, *DOV* 1969, p. 61), an account of which is given in section 15 above.

The Bavarian Constitution does not specify how the Landtag is to proceed if more than one proposal is presented to it in proper legal form for referendums relating to the same subject. However, article 81, paragraph 2, of the above-mentioned *Land Elections Order* provides that such proposals are to be dealt with jointly by the Landtag and are also to be submitted jointly to the people in a referendum. Article 83, paragraph 4, of the *Land Elections Act*, read in conjunction with article 83, paragraph 3, requires that for each of the parliamentary bills concerned the question put to the people in the referendum must be framed in such a way that it can be answered yes or no. The method of determining the result of such a referendum involving several bills that relate to the same subject but differ from each other in substance is laid down in article 89, paragraph 2, of the *Land Elections Act*; of those bills which have received more affirmative than negative votes, the one which commands the largest number of valid affirmative votes is to be adopted. The NPD group in the Landtag argued that article 89, paragraph 2, of the *Land Elections Act* unconstitutionally impaired the chances of citizens who had given their affirmative votes to one of the bills, because each voter had only one affirmative vote but as many negative votes as there were other bills, the negative votes being given full weight. In its decision of 30 May 1968, the Bavarian Constitutional Court ruled that article 89, paragraph 2, of the Act was compatible with the Bavarian Constitution (Bavaria *GVBl* 1968, p. 228). It observed that the principle of equality was, of course, of particular importance in connexion with the right to vote, and there must be special reasons to justify any differentiations. However, the provision complained of was based on objective considerations; the essential point was that legislation concerning the casting of votes should allow the will of the citizens to be freely determined or, in other words, should grant a genuine choice between possible alternatives. Thus, the Bavarian legislator had been able to proceed from the premise that it would be unreasonable to require a citizen to cast a single vote for or flatly against all the bills. Rather, he must be allowed the possibility of voting for one of the proposals, rejecting the others, or else abstaining from voting. To provide otherwise, so that without any opportunity for differentiation approval of one proposal would necessarily mean the rejection of the others, would amount to indirect compulsion to vote. In the view of the Bavarian Constitutional Court, however, article 89, paragraph 2, of the *Land Elections Act* was deliberately intended to prevent any such compulsion.

17. THE RIGHT TO CHOOSE AND EXERCISE A PROFESSION OR OCCUPATION

(*Universal Declaration, article 23; Covenant on Economic, Social and Cultural Rights, article 6*)

The prohibition of night baking under article 5, paragraph 1, of the Act concerning working hours in bakeries and confectioneries of 29 June 1936 (*Reichsgesetzblatt* 1936 I, p. 521) constitutes re-

gulation of the exercise of an occupation within the meaning of article 12, paragraph 1, of the Basic Law; the Federal Constitutional Court has consistently ruled that such regulation is justified by any objective and rational consideration of the community welfare, in connexion with which criteria of expediency may also be taken into account to a great extent, provided, however, that due regard is had to the principle of reasonableness. The constitutional complaint lodged by the proprietor of a large bakery, who argued that article 5, paragraph 1, of the Act violated article 12 of the Basic Law, was rejected by the Federal Constitutional Court in its judgement of 23 January 1968 (*BVerfGE* 23, p. 50). The court noted that, while it might be possible for a large bakery to protect its own employees by arranging for them to work in shifts, that would at the same time result in keener competition among bakeries generally, which might entail disadvantages for workers in small businesses. In addition to the notion of protecting employees, the criterion of neutrality with regard to competition had recently come more to the fore. The handicap imposed on large bakeries must be set against the protection of small businesses. The legislator was not barred from taking control measures to modify the free play of forces with a view to creating the economic and social order to which the legislator aspired.

The question of legislation imposing economic controls as it relates to freedom to choose an occupation was also to the fore in a case decided by the Federal Constitutional Court on 18 December 1968 (*DÖV* 1969, p. 203). The point at issue was the constitutionality of the provisions of the Flour-mills Act of 27 June 1957, as amended on 1 September 1965 (*BGBI* I, p. 1057), under which a licence was required for the construction or expansion of a flour-mill; as the law stood at that time, a licence was to be issued only if, and to the extent that, the provisioning of the population in the area which the mill was expected to serve would otherwise be jeopardized. The court held that, whereas a ban on the expansion of an existing mill was a permissible regulation of the exercise of an occupation, a ban on construction set a condition for admission to an occupation. The Federal Constitutional Court has decisively ruled (*BVerfGE* 7, p. 377) that such conditions must—because they encroach most seriously on the basic right—meet the highest requirements on the graduated scale of possible restrictions under article 12, paragraph 1, of the Basic Law; specifically, the purpose must be to avert demonstrable, or highly probable, serious threats to a particularly important community interest. The court held that, in the case before it, such a community interest lay in ensuring that the people were supplied with bread and other cereal products. It was true that the Flour-mills Act, being a law which imposed economic controls, encroached on the basic right to the free choice of an occupation, but that was not its actual purpose; its aim was, rather, to reduce milling capacity. It involved an encroachment for control purposes over a limited period of time, in keeping with the over-all inactivation programme. Once that legitimate goal was attained, the provisions in question ceased to have effect,

after which freedom of economic activity would again prevail to the full.

The tremendous and in many cases now unmanageable press of students into the major branches of learning, particularly medicine and the philosophies, has impelled colleges and universities to introduce what is known as a *numerus clausus*; this means that the candidates best qualified on the basis of each year's school-leaving examination (matriculation) are selected. The Bavarian Administrative Court, in its decision of 30 July 1968 (*Bayer-Verw.BI* 1968, p. 408), agreed with the universally held view that such an arrangement was constitutional. The court noted that what it involved was not restriction of admission to studies with an eye to the number of future practitioners of a profession, which under article 12 of the Basic Law would be impermissible, but limitation of admission for factual reasons, in that the available space, technical facilities and staff were being used to capacity. The court stressed, however, that the predicament of school-leavers with regard to their careers required of the universities extraordinary measures and efforts to afford relief. The ceiling on admissions must be based solely on factual considerations; it was impermissible in that connexion to be guided by abstract concepts.

The Seventeenth Act supplementing the Basic Law of 24 June 1968 (*BGBI* I, p. 709) amended the wording of article 12 of the Basic Law and added an article 12a. The reason for this reformulation is that it was clearly desirable to regulate in a separate article, and in greater detail than before, the subject of compulsory military service and the liability of men and women to perform duties in the event of a state of defence. The relevant matter already appearing in article 12 was therefore removed and was redrafted and expanded in article 12a. Article 12, paragraph 1, of the Basic Law, which provides that all Germans have the right freely to choose their trade or profession, place of work and place of vocational training, remained almost unchanged. The only thing new is an addition indicating that the exercise of an occupation or profession may now be regulated, not only by legislation as such, but also on the basis of a law. Thus, a question which in the past caused keen controversy in the courts and in the literature has now been settled by the legislator himself through a constitutional amendment.

Article 12a, paragraph 1, of the Basic Law provides that men aged eighteen years and over may be compelled to serve in the armed forces, the Federal Frontier Guard or a civil defence unit. Paragraph 2 of the article lays down, in terms almost identical with those of the previously existing law, the right of conscientious objection to military service as an armed combatant. Paragraphs 3, 4 and 6 provide for restrictions on the right to the free choice of a trade or profession in the event of a state of defence (cf. the new section Xa of the Basic Law, articles 115a *et seq.*); under the terms of these paragraphs, persons liable to military service may be compelled to perform civilian duties for defence purposes, including protection of the civilian population, and compulsory employment in the public service for the

performance of police duties is likewise permissible. Women between the ages of eighteen and fifty-five may also be compelled to work in the civilian medical or health services or in the non-mobile military hospital system, if the need cannot be met on a voluntary basis, but no provision is made for their employment in field hospitals. As in the past, the recruitment of women for service as armed combatants is strictly prohibited. A ban may be imposed, in the same circumstances, on changing or leaving one's job. However, measures taken under article 12a of the Basic Law may not be directed against strikes which are in accordance with labour law (article 9, paragraph 3, of the Basic Law). Article 12a, paragraph 5, authorizes, *inter alia*, the imposition of obligations under paragraph 3 of the article in cases other than that of a state of defence (e.g., in case of a state of tension (article 80a of the Basic Law)); in addition, persons may be compelled to undergo vocational training to prepare them for the performance of duties under the terms of paragraph 3.

An account of legislation to implement article 12a of the Basic Law is given in section 23 below.

18. THE PROTECTION OF RIGHTS IN LABOUR LEGISLATION

(*Universal Declaration, articles 23, 24 and 25; Covenant on Economic, Social and Cultural Rights, articles 6 and 7*)

The Federal Labour Court, in its judgement of 14 February 1968 (*MDR* 1968, p. 702), declared "actual wage" clauses inoperative. The purpose of such clauses is to ensure that above-scale remuneration paid in the past is not absorbed by a scale increase but that the differential over the previous standard wage is maintained in relation to the new standard wage also. The Federal Labour Court found actual wage clauses to be invalid not only under the law relating to wage agreements but also on constitutional grounds, in that they violated article 3, paragraph 1, of the Basic Law. The prohibition of arbitrariness and of unobjective differentiation applied to the substantive provisions of a wage agreement, as to anything else; yet an actual wage clause provided equitable benefits for workers covered by the wage scale only in a technical sense. In fact, completely different minimum wages were established, without any objective justification, in respect of identical circumstances, because the above-scale portions of remuneration being paid at a completely different level when the wage agreement was concluded were incorporated in the agreement. Technically equal treatment through abstractly general circumlocution was not enough, however, everything depended on the substantive merits of the clause. If its practical application resulted in manifest inequality, there was a clear violation of article 3 of the Basic Law.

The importance of the status of the works council, which in accordance with the Works Organization Act of 11 October 1952 (*BGBI* I, p. 681) has a right of co-operation and co-determination in social, personnel and economic matters

affecting those employed in a factory, was once again stressed in a decision of the Federal Labour Court of 24 September 1968 (*Der Betrieb* 1969, p. 47). Although many writers on labour law take the view that the action of an employer in hiring and transferring a worker as a provisional measure without first notifying and consulting the works council is invalid, the Federal Labour Court did not rule on this point; in any event, the court held, it was a violation of the Works Organization Act which justified the works council's refusing subsequently to concur in the hiring or transfer in accordance with article 61, paragraph 3, of the Act.

The employer's right to dismiss a worker, on the one hand, and the employee's entitlement to a retraining, on the other, were the subject of a decision of the Federal Labour Court of 7 May 1968 (*MDR* 1968, p. 793). A worker who had been hired for an indefinite period and put in charge of operating a particular piece of equipment—although his duties were not confined to that task—was dismissed for operational reasons because the equipment for which he had been responsible was no longer in use. The Federal Labour Court held that the dismissal was invalid. It ruled that, at least in cases where the employer had at the time of the hiring been expecting to replace the equipment which the worker would be operating with other equipment, the worker should be entitled under his labour contract to any training or retraining he might need in order to be put in charge of the new equipment.

The protection accorded to pregnant women workers by the Maternal Welfare Act, as amended on 18 April 1968 (*BGBI* I, p. 315), includes the right not to be given notice of dismissal during pregnancy. Under article 9 of the Act, however, the woman is required to inform her employer that she is pregnant within two weeks after being given notice. The Federal Labour Court ruled, in its judgement of 19 December 1968 (*NJW* 1969, p. 679), that the notice given to a woman who did not meet that time-limit of two weeks was valid even if, owing to an incorrect diagnosis by her doctor, she was not aware that she was pregnant and therefore failed to inform her employer accordingly. The court held that that kind of risk and the hardship which resulted in some cases were personal to the employee and could not be saddled on the employer.

19. STATE CARE FOR PERSONS IN NEED OF ASSISTANCE

(*Universal Declaration, articles 22 and 23; Covenant on Economic, Social and Cultural Rights, articles 11 and 9*)

Mention need only be made under this heading of the Agreements on social security between the Federal Republic of Germany and the Portuguese Republic (*BGBI* 1968 II, p. 473) and between the Federal Republic of Germany and the Kingdom of Greece (*BGBI* 1968 II, p. 513), which are discussed in more detail in section 22 of this report.

20. THE RIGHT TO EDUCATION

(*Universal Declaration, article 26; Covenant on Economic, Social and Cultural Rights, article 13; Covenant on Civil and Political Rights, article 18*)

By Act of 9 May 1968 (*BGBI* II, p. 385), the Bundestag approved the Convention against discrimination in education of 15 December 1960 and the Protocol instituting a Conciliation and Good Offices Commission of 18 December 1962.

Since in the Federal Republic of Germany responsibility for cultural matters rests with the Federal *Länder*, most of the developments in connexion with the question under discussion here, namely, the right to education, occurred in *Land* legislation. Baden-Württemberg enacted the Universities Act of 19 March 1968 (Baden-Württemberg *GBl* 1968, p. 81), which gave rise to keen controversy both before and after its promulgation. The Act deals with the organization of the *Land* universities and lays down the rights and obligations of their members, the fundamentals of disciplinary powers and the concurrent rights of the government, including governmental supervision.

After a number of amendments—the most recent on 16 January 1968 (Baden-Württemberg *GBl* 1968, p. 1)—the amended text of the Private Schools Act of 14 May 1968 was promulgated (Baden-Württemberg *GBl* 1968, p. 223). The Act deals with the establishment of private schools as substitute and supplementary schools and with problems of financial assistance from the Government. Questions relating to the subsidizing of private schools had frequently been the subject of judicial decisions in recent years.

A new Schools Ordinance for Modern Secondary Schools in Bavaria has been in force since 22 May 1968 (Bavaria *GVBl* 1968, p. 189). Schools of this type provide ten-year courses and are intended to train children from the time they leave the principal school up to matriculation standard.

The Act amending article 135 of the Bavarian Constitution (Bavaria *GVBl* 1968, p. 235) dates from 22 July 1968. In anticipation of this radical change in Bavarian constitutional law, mention was made of it in last year's report (section 20 of the 1967 report). The constitutional amendment led to the introduction in Bavaria, as elsewhere, of the Christian interdenominational school as the standard type of public elementary school. The provisions of the Elementary Schools Act which had still been in dispute in 1967 were adjusted to the new legal situation through an amendment to the Act adopted on 13 December 1968 (Bavaria *GVBl* 1968, p. 402); while article 7, paragraph 1, of the Elementary Schools Act reiterates the principle of the Christian interdenominational school as the standard type of elementary school, article 7, paragraph 2, provides that in classes composed of pupils of the same denomination, account is to be taken of the particular tenets of the denomination concerned. Article 8 of the Act specifies that teachers are to be employed without any restrictions, but in the selection of a teacher

regard should be had to the denomination to which the pupils belong.

On the basis of the 1967 constitutional amendment in *Land* Rhineland-Palatinate providing that public elementary schools shall be either Christian interdenominational schools or denominational schools, the *Land* Act concerning lower, principal and special public schools which gives effect in a detailed manner to the constitutional precept, was adopted on 9 May 1968 (Rhineland-Palatinate *GVBl* 1968, p. 73). Article 2 of the Act states that lower schools, principal schools and special schools shall, as required by the Constitution, educate young persons in reverence for God and love for their neighbours, tolerance, attachment to their country and its people, to have a democratic, social and law-abiding outlook and a feeling of responsibility towards the international community.

In North Rhine-Westphalia also, the elementary-school article of the Constitution was amended by Act of 5 March 1968 (North Rhine-Westphalia *GVBl* 1968, p. 36). Article 12, paragraph 3, states that lower schools shall be interdenominational, denominational or philosophic schools. Principal schools, on the other hand, shall be officially established as interdenominational schools, but denominational and philosophic schools may be established upon application of those entitled to bring up children, provided that reasonable guarantees of proper school administration and of attendance at an interdenominational school are afforded.

The net result of the elementary-school reforms under *Land* legislation appears to be that the Christian interdenominational school has prevailed, at least wherever the population is of mixed religious faiths. It is also apparent that this has been a cause of considerable gratification.

21. PROTECTION OF INDUSTRIAL RIGHTS AND COPYRIGHT

(*Universal Declaration, article 27; Covenant on Economic Social and Cultural Rights, article 15*)

In its judgement of 3 April 1968 (*NJW* 1968, p. 1875), the Federal Court of Justice, sitting as the court of review, had to deal with a case in which the widow and sole heir of the artist Wassily Kandinsky, who had died in 1944, sued the proprietor of a publishing-house that had brought out a book including sixty-nine copies of paintings by Kandinsky. The plaintiff asserted that the reproduction of her husband's works infringed her copyright, while the defendant relied on his right of quotation under article 51 (1) of the Act concerning copyright and related rights (Copyright Act) of 9 September 1965 (*BGBI* I, p. 1273), which permits reproduction where individual works are included after their publication and to the extent required by the purpose in hand, in an independent scholarly work for comment on their content. The Federal Court of Justice ruled that a review of whether, in accordance with the intent of the law, restrictions could reasonably be imposed on the copyright proprietor's exclusionary

rights must not be confined to the question whether the inclusion of his creations in an independent scholarly work substantially diminished the possibilities for their scholarly use.

A copyright proprietor also had an abstract interest in deciding for himself whether he wanted any of his creations to be included in a given scholarly work and, if so, which of them. In the case in question, the Federal Court of Justice, after a careful reading of article 51 of the Copyright Act, came to the conclusion that not even the requirements of that article were fulfilled; in particular, there was no comment on the content of the works that were reproduced, and the number of reproductions was not limited to that required by the purpose of the book. The suit having been dismissed in the lower court, the Federal Court of Justice quashed that judgement and referred the case to the appeal court for retrial and decision.

22. INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF HUMAN RIGHTS

(*Universal Declaration, article 28*)

By Act of 9 May 1968, the German Bundestag ratified, without prejudice to the constitutional authority of the Bundesrat, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms of September 1963, which secures certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (*BGBI* II, p. 422). The purpose of Protocol No. 4 is to broaden the personal rights guaranteed to the individual. Article 1 provides that no one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation (cf. article 11 of the Covenant on Civil and Political Rights). Article 2 guarantees to everyone the right to liberty of movement and freedom to choose his residence, and also the right to leave any country, including his own (article 13 of the Universal Declaration; article 12 of the Covenant on Civil and Political Rights). Article 3 provides that no one shall be expelled by the State of which he is a national, and guarantees to everyone the right to enter his own country (article 13, paragraph (2), of the Universal Declaration; article 12, paragraph 4, of the Covenant on Civil and Political Rights). Lastly, article 4 states that collective expulsion of aliens is prohibited (article 13 of the Covenant on Civil and Political Rights). Article 1, paragraph 2, of the Act of 9 May 1968 authorizes the Federal Government to recognize the competence of the Commission on Human Rights and to accept the compulsory jurisdiction of the European Court of Human Rights in respect of articles 1 to 4 of Protocol No. 4, as provided for in article 6, paragraph (2), of the Protocol.

The Protocol itself had already entered into force after the deposit of the fifth instrument of ratification (by Luxembourg, on 2 May 1968), and it came into force for the Federal Republic of Germany on 1 June 1968 (*BGBI* II, p. 1109).

Protocols Nos. 2, 3 and 5 to the Convention for the Protection of Human Rights and Fundamental

Freedoms, unlike Protocol No. 4, requires either ratification or signature without reservation in respect of ratification by *all* the contracting States. These conditions have not yet been fulfilled, but the Bundestag has now approved the Protocols in question, by Act of 10 December 1968 (*BGBI* II, p. 1111). They concern organizational and procedural questions relating to both the Commission and the European Court of Human Rights and therefore involve substantive changes in the original text of the Convention.

The Agreement on social security of 6 November 1964 between the Federal Republic of Germany and the Portuguese Republic, the Additional Agreement of 8 December 1966 implementing and supplementing the Agreement, and the Additional Protocol to the Agreement of the same date, came into force with effect from 1 January 1969 (*BGBI* 1968 II, p. 1270). These instruments had been approved by the competent legislative bodies by Act of 29 May 1968 (*BGBI* 1968 II, p. 473). The Agreement, whose importance to the many so-called migrant workers is apparent, proceeds from the basis principle that nationals of the two States shall enjoy equal treatment under domestic laws relating to social security (cf. article 22 of the Universal Declaration and article 9 of the Covenant on Economic, Social and Cultural Rights) and deals accordingly with questions of insurance protection in cases of sickness and maternity, industrial accidents, old age and death.

An Agreement amending and supplementing the Agreement on social security of 25 April 1961 between the Federal Republic of Germany and the Kingdom of Greece (*BGBI* 1963 II, p. 678) and supplementing the Additional Agreement of 28 March 1962 (*BGBI* 1963 II, p. 1190) was signed at Bonn on 21 March 1967 and has now also been approved by the Bundestag (Act of 30 May 1968, *BGBI* II, p. 513). The new Agreement is based on experience, which has shown that it is difficult to provide family housing for Greek workers employed in the territory of the Federal Republic of Germany, so that they are forced to live apart from their families for lengthy periods of time. The provisions relating to family assistance have therefore been amended or supplemented accordingly.

The Act approving the Agreement of 5 December 1966 between the Federal Republic of Germany and the Spanish State for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Fortune was adopted on 16 January 1968 (*BGBI* 1968 II, p. 9) and the Act approving an Agreement of 10 July 1967 between the Federal Republic of Germany and the Kingdom of Thailand on the same subject on 19 July 1968 (*BGBI* 1968 II, p. 589). Both Agreements have also since entered into force (*BGBI* 1968 II, pp. 140 and 1104).

Lastly, during the year under review the Federal Republic of Germany ratified the agreements concerning the promotion and reciprocal protection of investments concluded in 1966 and 1967 with the Republics of Zambia, the Ivory Coast, Chad and Ghana, the Rwandese Republic and Uganda

(*BGBI* 1968 II, pp. 33, 61, 221, 1251, 1260 and 449).

23. SPECIAL DUTIES TO THE COMMUNITY

(*Universal Declaration, articles 29 and 30; Covenant on Civil and Political Rights, article 4*)

In the past, constitutional provisions applicable in the event of a domestic or external emergency were largely lacking in the Federal Republic of Germany. With the adoption of the Seventeenth Act supplementing the Basic Law of 24 June 1968 (*BGBI* I, p. 709), the essentials of the emergency legislation enacted in recent times have now been incorporated in the Basic Law. This has brought about substantial changes in the situation with regard to constitutional law in the Federal Republic. Wherever the amendments to the Basic Law affect fundamental rights or enable restrictions to be imposed on them, reference has been made to them above (cf. sections 3, 7, 8, 12, 15 and 17).

The new paragraph 4 which has been added to article 20 of the Basic Law deserves special mention, however. It gives all Germans a right of resistance against anyone who attempts to overthrow the constitutional order in the Federal Republic of Germany, where no other relief is possible. Although this provision is meant to strengthen the libertarian democratic basic order, its scope has not been made clear, and it was therefore one of the controversial clauses in the Act.

On the basis of the constitutional amendments of 24 June 1968, the following laws were enacted on 9 July 1968: the Act concerning the expansion of disaster control services (*BGBI* I, p. 776); the Act amending the Act concerning the safeguarding of commercial and banking services (*BGBI* I, p. 780); amended text of the Act published on 3 October 1968 (*BGBI* I, p. 1069); the Act amending the Act concerning the safeguarding of food, agricultural and timber supplies (*BGBI* I, p. 782); amended text of the Act published on 4 October 1968 (*BGBI* I, p. 1075); the Act amending the Act concerning the safeguarding of transport (*BGBI* I, p. 784); amended text of the Act published on 8 October 1968 (*BGBI* I, p. 1082); and the Act to ensure the performance of duties for defence purposes, including protection of the civilian population (*BGBI* I, p. 787).

The last-mentioned Act stresses the preference to be given to voluntary contracts of employment even in times of tension or during a state of defence. It provides for compulsion only if performance of the necessary services cannot be ensured on a voluntary basis (article 1). The measures involved include restricting the right of men between the ages of eighteen and sixty-five and women between the ages of eighteen and fifty-five to leave their jobs, requiring men who are liable to military service to perform civilian duties, and requiring women between the ages of eighteen and fifty-five to work in the civilian medical or health services or in the non-mobile military hospital system (article 2). Article 39 expressly restricts, wherever the purposes of the Act so require, the fundamental rights to physical inviolability (article 2, paragraph 2, first sentence, of the Basic

Law), personal freedom (article 2, paragraph 2, second sentence, of the Basic Law), freedom of movement (article 11, paragraph 1, of the Basic Law) and freedom to choose one's place of work (article 12, paragraph 1, of the Basic Law).

Article 26, paragraph 1, of the Basic Law states that activities tending to disturb, and undertaken with the intention of disturbing, the peaceful relations between nations, especially of preparing the conduct of an aggressive war, are unconstitutional; they are to be subject to punishment (cf. article 20 of the Covenant on Civil and Political

Rights). The German legislator has now carried out this constitutional mandate by enacting the Eight Criminal Law Amendment Act of 25 June 1968 (*BGBI* I, p. 741). Under article 80 of the Penal Code, the penalty for preparing for an aggressive war, where there is a resulting danger of war to the Federal Republic of Germany, is imprisonment for life or for a term of not less than ten years. Article 80a of the Penal Code makes public incitement to aggressive war punishable by imprisonment for a term of not less than three months.

FINLAND

NOTE ¹

I. LEGISLATION

1. RIGHT TO A NATIONALITY

Act No. 401 of 28 June 1968 on Nationality (*Suomen Asetuskokoelma*, hereinafter referred to as *AsK*—Official Statute Gazette of Finland—No. 401/68).

The purpose of this Act, which replaces Act No. 325 of 9 May 1941 on the same subject, is to bring the national legislation into conformity with the Convention on the Nationality of Married Women as well as with the principles of other international instruments aiming at the reduction of statelessness. According to the new Act, the principle of *jus sanguinis* is followed as before, but it has been mixed by certain modifications. Thus, Finnish citizenship is granted:

(a) To any child born in wedlock whose father is a Finnish citizen;

(b) To any child born in wedlock whose mother is a Finnish citizen, provided that the child at his birth does not get a foreign nationality;

(c) To any child born out of wedlock whose mother is a Finnish citizen;

(d) To any other child who is born in Finland, provided that the child at his birth does not get a foreign nationality.

A foundling who is found in Finland is considered to be a Finnish citizen as long as he is not verified to be a foreign national.

When a Finnish man enters into marriage with a foreign woman, and they possibly have a child born before the wedding, the child will become a Finnish citizen, provided that he is still unmarried and has not yet reached the age of eighteen years.

A foreigner may, upon his application, be granted Finnish citizenship if

(a) He has reached the age of eighteen years;

(b) His actual residence and home have been in Finland for the last five years;

(c) He has been leading a respectable life;

(d) His and his family's livelihood is considered to be secure.

If an applicant has previously been a Finnish citizen or if he or she is married to a Finnish citizen or if there are otherwise special reasons, the applicant may be granted Finnish citizenship without fulfilling the conditions mentioned above. If the person in this case is under the age of eighteen years, the application shall be made by his or her guardian.

If a foreigner is granted Finnish citizenship, the legal force of such a decision may be made depending on the fact that the applicant will be relieved from his foreign nationality within a certain time.

A foreigner, who is born in Finland and who without interruption has had his actual residence and home in Finland, shall be granted Finnish citizenship if he, after having reached the age of twenty-one years but before reaching the age of twenty-three years, notifies the Ministry of the Interior in writing about his desire to become a Finnish citizen. If such a person has no nationality or if he loses his foreign nationality at the same time when he is granted Finnish citizenship, he may make such a notice already having reached the age of eighteen years.

If a native Finnish citizen, who until the age of nineteen years without interruption has had his residence and home in Finland, has lost his Finnish citizenship, he shall be granted it again after having been living in Finland for the last two years upon the notice to the Ministry of the Interior about his desire to become again a Finnish citizen, provided that he at the same time will be relieved from the foreign nationality he possibly has.

When a foreigner, upon his application or notice, is granted Finnish citizenship, his children who are under the age of eighteen years and unmarried will become Finnish citizens at the same time if it is not otherwise decided.

¹ Note prepared by Mr. Voitto Saario, Justice of the Supreme Court of Finland, government-appointed correspondent of the *Yearbook on Human Rights*.

A person shall lose his Finnish citizenship if he

(a) Is granted a foreign nationality upon his own application or consent;

(b) Receives a foreign nationality by entering into the service of a foreign State;

(c) Not having reached the age of eighteen years and being unmarried, is granted a foreign nationality on the ground that his parents, under whose custody he is, become foreign nationals;

(d) Not having reached the age of eighteen years and not being married, is granted a foreign nationality on the ground that his parents enter into marriage with each other. However, if his residence and home are in Finland, he shall lose his Finnish citizenship only after having moved from Finland under the age of eighteen years, provided that he then is a foreign national.

A person who has both Finnish and a foreign citizenship may be relieved from his Finnish citizenship upon his application.

The Finnish Government may make a reciprocal agreement with the Governments of Denmark, Iceland, Norway and Sweden in order to facilitate the obtainment of citizenship of any of the contracting States.

More detailed provisions on the implementation of this Act are given by Decree No. 402, of 28 June 1968 (*AsK* No. 402/68).

2. RIGHT TO EDUCATION

Act No. 467, of 26 July 1968, on the Principles of School System (*AsK* No. 467/68).

Compulsory school attendance is relatively old in Finland. Originally, teaching work was one of the activities of the Church. About a hundred years ago, the maintenance of the elementary school, the so-called folk school, was entrusted to the communes which are the basic units of the society having a right to local self-government. Because of political circumstances, it was not possible to regulate the compulsory school attendance legally until Finland achieved its independence. The first School Attendance Act was passed on 15 April 1921. This Act was replaced by the new Folk School Act of 1 July 1957 (See *Yearbook on Human Rights for 1957*, pp. 77, 78). Characteristically to the rapid development in this field, it has already been supplemented by some amendments and, at the moment, the whole school system is under revision, the purpose of which is to integrate the present elementary and junior secondary schools into one system.

According to Act No. 467 mentioned above, the framework of the school system shall be constituted by communal school which will be the fundamental school for all those to whom compulsory education is to be applied. In the fundamental school, there may be connected a kindergarten or similar pregrades, a senior secondary school and vocational schools. In ordinary cases, the fundamental school is supplemented by senior secondary school leading to university level and

vocational schools sustained by the State, communal federations, private organizations or private citizens. The State may also sustain schools equivalent to fundamental school or based on its course when it is necessary for an experiment for the promotion of public education or for the satisfaction of the needs of a linguistic minority or for another special reason.

The fundamental school is calculated to take nine years. The first six years, one grade a year, will form the lower stage, and the last three years, also one grade a year, the upper stage of the fundamental school.

At the lower stage, instruction will be mainly the same for all pupils. At the upper stage, some of the subjects will be common to all pupils, some will be optional. In general, the educational plan of the fundamental school shall contain religion, milieu knowledge, mother tongue, the second national language, one foreign language, history, sociology, civics, mathematics, physics, chemistry, physical exercise, drawing, music, handicraft, household and, in addition, subjects and training essentially adhering to economic life and increasing the qualifications for choosing a trade or profession. In certain circumstances exceptions may be made from the general plan.

When five or more pupils, on the ground of the Religious Freedom Act, are exempted from instruction in religion and they are not receiving corresponding instruction outside the school, they shall be taught the history of religions and morality. When five or more pupils belonging to the same religious denomination are exempted from the religious instruction given to the majority of pupils, instruction in their own religion shall be arranged for them if so required by their parents or guardians.

The regular school education begins at the age of seven. After replacing the old folk school system, the new fundamental school will be compulsory for all children except for those who are receiving equivalent instruction otherwise.

3. PROTECTION OF THE FAMILY

Act No. 774 of 31 December 1968 on State Family Pension (*AsK* No. 774/68).

This Act applies to the families of those who are employed by the State either as a government official or a labourer. It replaces the previous legislation covering this field and brings the pensions to be paid in these cases in harmony with other pension regulations.

According to the new Act, family pension shall be paid

(a) To the widow of a person who himself was entitled to, or was enjoying, government pension, provided that they were married before the deceased had reached the age of sixty-five years and that they had one or more children under the age limit mentioned below, whom they had supported together, or that the widow at the moment of death had reached the age of forty years and their marriage had continued at least for three years.

(b) To those of the children of the deceased who had not yet reached the age of eighteen years;

(c) To those of the children of the deceased who had reached the age of eighteen but not twenty-one years if they, because of an illness or a defect, are unable to do such a work which would be suitable to them taking into consideration their age, skill and other circumstances, provided that the disability had started before reaching the age of eighteen years and that it can be expected to last at least for one year.

In the same position as a child born in wedlock is an adoptive child as well as a child born out of wedlock, provided that the deceased had legally recognized the child or obliged to support him either by an agreement or by a court decision. The same applies to the children or adoptive children of the widow if they have been supported by the deceased and the widow together.

The Act contains detailed provisions as to how the amount of the pension has to be determined. Further provisions on the implementation of the Act are given by Decree No. 775 of 31 December 1968 (*AsK* No. 775/68).

II. INTERNATIONAL AGREEMENTS

1. Decree No. 338 of 7 June 1968 (*AsK* No. 338/68) brings into force the Convention on the Nationality of Married Women done at New York on 20 February 1957.

2. Decree No. 812 of 5 December 1968 (*AsK* No. 812/68) brings into force the Convention Relating to the Status of Refugees, done at Geneva on 28 July 1951.

At the time of accession to this Convention, the Finnish Government had made a general reservation to the effect that the special benefits which have or will be accorded by the Finnish Government to the nationals of Denmark, Iceland, Norway or Sweden shall not be taken into consideration as regards the application to refugees of the principle of the most favourable treatment concerning foreign nationals. In addition, reservations were made concerning article 7, paragraph 2, article 8, article 12, paragraph 1, article 24, paragraphs 1 b and 3, article 25 and article 28.

3. Decree No. 813, of 5 December 1968 (*AsK* No. 813/68), brings into force the Protocol Relating to the Status of Refugees done at New York on 31 January 1967.

When ratifying this Protocol, the Finnish Government made the same reservations as those made in connexion with the accession to the Convention Relating to the Status of Refugees.

4. Decree No. 814 of 5 December 1968 (*AsK* No. 814/68) brings into force the Convention Relating to the Status of Stateless Persons done at New York on 28 September 1954.

At the time of accession to this Convention, the Finnish Government made the reservations corresponding to those made in connexion with the accession to the Convention Relating to the Status of Refugees.

GAMBIA

THE CONSTITUTION (MISCELLANEOUS PROVISIONS) ACT, 1968

Deemed to have come into effect on 7 August 1968 ¹

...

2. Section 33 (1) (c) of the Constitution ² shall from the coming into effect of this Act be construed as if the reference to two members therein was a reference to four members.

...

¹ *Supplement C to the Gambia Gazette*, No. 47, of 9 September 1968. For extracts from the Constitution of the Gambia, see *Yearbook on Human Rights for 1965*, pp. 109-119.

² Article 33. (1) (c) of the Constitution: "The House of Representatives shall consist of a Speaker and the following other members, that is to say—

...

"(c) Until Parliament otherwise provides, two members who shall be known as, nominated members, and who shall be appointed in accordance with the provisions of section 41 of this Constitution."

GHANA

NOTE ¹

I.

In furtherance of the objectives of the principles laid down in the Universal Declaration of Human Rights, the Government of Ghana has made a number of laws and decrees relating to the following principles:

- (1) Free elections on the basis of universal and equal suffrage;
- (2) Formation of trade unions for the protection of the interests of their members;
- (3) The right of the individual; security in the event of sickness, disability, widowhood and old age;
- (4) Special care, aid, assistance and maintenance of mothers and children;
- (5) The right of protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

THE REPRESENTATION OF THE PEOPLE DECREE, 1968

4. (1) There shall be divisional register for each polling division.
- (2) The divisional registers of all polling divisions in a constituency shall together form the register of the constituency.
- (3) The Commissioner
 - (a) May cause the registers of the constituencies to be revised at intervals of not more than one year; and
 - (b) Shall cause the registers of the constituencies to be replaced by new registers at intervals of more than ten years.
- (4) The Commissioner may, by legislative Instrument make Regulations for the revision and replacement of registers.

(5) Whenever the register of a constituency is revised or replaced every person who,

(a) Is resident on the qualifying date in a polling division in the constituency; and

(b) Applies for registration as a voter by making an application in accordance with the provisions of the Registration of Voters Regulations, 1968, or in the case of a revision, a claim to have his name included in the divisional register of that polling division; and

(c) Is qualified in the manner provided by the Public Election (Qualified of Electors) Regulation, 1968, being regulations issued pursuant to the provisions of sub-paragraph (b) of paragraph 5 of the Interim Electoral Commissioner Decree, 1968, and

(d) Is not disqualified by this Decree for registration as a voter,

shall be entitled to have his name included in the divisional register of that polling division.

(6) No person shall save during the period of application, be entitled to have his name included at any one-time in the register of more than one constituency or in more than one constituency or in more than one divisional register any constituency.

(7) Subject to the provisions of the succeeding paragraphs of this paragraph, a person shall for the purpose of this paragraph be deemed to be resident in a polling division on the qualifying date if he has a place of abode or an immovable property in the division on that date.

(8) A person shall not be deemed to be resident in a polling division on the qualifying date if he has been absent from his place of abode for a continuous period of six months ending on the qualifying date, or does not own an immovable property within that polling division.

(9) Any person who is a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness or who is detained in legal custody in any place shall not, by reason thereof, be treated as resident therefor the purpose of this paragraph.

¹ Note furnished by the Government of Ghana.

(10) Any person who is resident in more than one place and who would but for the provisions of subparagraph (6) of this paragraph, be entitled to have his name included in the register of more than one constituency or in more than one divisional register or in a constituency, may select one such constituency and no more, and one polling division, therein, and no more, in respect of which to apply for registration.

5. No person shall be qualified for registration as a voter if he is disqualified from being registered as an elector by virtue of the provisions of the Public Elections (Disqualification of Electors) Regulations, 1968, being regulations made under the provisions of paragraph 5 of the Interim Electoral Commissioner Decree, 1968, or under this Decree or any other law for the time being in force in Ghana.

...

QUALIFICATION OF ELECTIONS ARE PRESCRIBED IN THE PUBLIC ELECTIONS (QUALIFICATIONS OF ELECTORS) REGULATIONS, 1968 (L.I 592)

1. A person shall be qualified to be registered as a voter for the purposes of a public election if,

- (a) He is a citizen of Ghana; and
- (b) He is not less than twenty-one years of age; and
- (c) He is not a person who:
 - (i) has made a declaration of allegiance to a country other than Ghana; or
 - (ii) is adjudged or otherwise declared to be a person of unsound mind under any law for the time being in force in Ghana.

2. A person shall not be qualified to be registered as a voter for the purposes of public election if,

- (a) He has been sentenced to death or imprisonment in Ghana for an offence the punishment for which is death or imprisonment for a term exceeding twelve months, or for any offence to imprisonment for consecutive terms exceeding twelve months; and,
 - (i) has not been granted pardon in respect of any such offence; and
 - (ii) in a case where he is sentenced to a term of imprisonment a period of five years has not elapsed since the date of the expiration of his term of imprisonment;
- (b) He has been convicted in Ghana for an offence involving fraud or dishonesty; and
 - (i) has not been granted a free pardon in respect of any such offence; and
 - (ii) in a case where he is sentenced to a term of imprisonment a period of five years has elapsed since the expiration of his term of imprisonment for any such offence; or
 - (iii) a period of five years has not elapsed since his conviction for any such offence in a case where he was not sentenced to a term of imprisonment;
- (c) He is disqualified from registering as a voter as a result of having been convicted of a corrupt

or an illegal practice relating to any election or is otherwise disqualified from registering as a voter under the provisions of any law for the time being in force;

(d) He has been convicted in any other country for an offence which, if committed in Ghana, would be an extradition crime as defined in Section 29 of the Extradition Act, 1960 (Act 22) and a period of five years has elapsed since his conviction, or in case where he was sentenced to a term of imprisonment, a period of five years has not elapsed since the expiration of his term of imprisonment.

3. A person shall not be entitled to have his name as a registered voter on the register of voters if,

- (a) He ceases to be a citizen of Ghana; or
- (b) He ceases to reside for a continuous period of six months within a polling division to which that register relates or own an immovable property in that polling division; or
- (c) He becomes disqualified from voting under the provisions of any law for the time being in force in Ghana.

...

II.

The principle in the Declaration that everyone has a right to form and to join trade unions for the protection of his interests is followed in the Industrial Relations Act, 1965 (Act 299). This Act revises and consolidates the law relating to Trade Unions collective bargaining and other matters affecting the relations between employees and employers.

The Industrial Relations Act, 1965 deals with the Trade Union Congress, its composition, nature and powers. Detailed provisions are also made for the reference of disputes to arbitration in the event of failure of negotiations. Where arbitration fails to satisfy the parties to a dispute then resort may be had to strike action.

THE INDUSTRIAL RELATIONS ACT, 1965 (ACT 299)

1. (1) The body which immediately before the commencement of this Act was known as the Trade Union Congress shall be continued in existence under the same name subject to the provisions of this Act until dissolved or otherwise constituted in accordance with rules made under Section 2.

(2) The Congress shall be a body corporate with perpetual succession and a common seal and shall have power to acquire land and other property.

(3) Unless and until otherwise decided by the Trade Unions or any appropriate organization of workers, the Congress shall act as the representative of the Trade Union Movement in Ghana.

(4) The Trade Unions specified in the First Schedule to this Act being immediately before the commencement of this Act, members of the Congress, shall continue to be members thereof

without prejudice to the withdrawal therefrom or addition thereto of any Trade Union upon the decision of such Trade Union.

(5) Upon the withdrawal from or addition to the membership of the Congress under subsection (4), the Commissioner shall by legislative instrument amend the First Schedule to this Act to give effect to such withdrawal or addition.

2. The Congress shall have the power to make rules providing for any matters relating to the organization, management or discipline of the Congress or to enable the Congress to carry out any of its functions under this Act.

3. (1) The Congress shall on application by a Trade Union request the Registrar to issue a certificate appointing the Trade Union as the appropriate representative to conduct on behalf of a class of employees specified in the certificate collective bargaining with the employers of such employees and, subject to subsection (4), the Registrar shall be bound to comply with such a request.

(2) An application made under this section shall include:

(a) The description of the class of employees in respect of which the application is made and the estimated number; and

(b) The number of employees of that class who are members of the Trade Union by whom the application is made.

(3) The specification of the class of employees in a certificate issued under this section may be made by reference to the employer of such employees or to the occupation of such employees or in any other manner.

(4) More than one certificate may be issued under this section in respect of the same Trade Union but the Registrar shall not appoint a Trade Union under this section for any class of employees if there is in force a certificate under this section appointing another Trade Union for that class of employees or any part of that class.

(5) A certificate issued under this section shall have effect notwithstanding that some of the employees of the class specified are not members of the Trade Union appointed under the certificate.

(6) A certificate issued under this section shall be published in the *Gazette* and the Registrar shall take such other steps as appear to him to be appropriate to bring the certificate to the notice of the employees concerned and their employer.

(7) At any time after the issue of a certificate under this section the Registrar may at the request of either the Trade Union to which the certificate applies or the appropriate employers' organization and after consultation with the said Trade Union and the said organization withdraw the certificate without prejudice to the right of such a Trade Union to apply for a fresh certificate under this section.

15. (1) Subsection (1) of Section 3 of the Trade Dispute (Arbitration and Enquiry) Ordinance (Cap. 93), which enables either party to a trade dispute to report the dispute to the Commissioner, shall not apply to a trade dispute which may

properly be dealt with by a standing negotiating committee under this Act, but this subsection shall not be read as preventing the Commissioner from referring any trade dispute to arbitration under subsection (2) of Section 3 of that Ordinance with the consent of the parties at any time.

(2) For the purpose of this Act any valid award made on a reference to arbitration to which the representatives on a standing negotiating committee under this Act are parties shall be regarded as a collective agreement under this Act.

21. (1) Where the Minister has, under subsection (1) of Section 18, served notice on the parties to a dispute, either party (that is to say either the Trade Union or the employers representatives) may serve on the Minister and on the other party a notice stating:

(a) That they do not consent to the dispute being referred to and determined by arbitration, and

(b) That, unless the other party consents to arbitration and the Minister, within four weeks of the service of the notice, directs that the dispute be referred to arbitration, they intend to declare a strike on, as the case may be, a lockout in furtherance of the dispute, and at the expiration of the said period of four weeks it shall be lawful for the Trade Union or, as the case may be, the employers to declare a strike or lockout unless before the end of that period the Commissioner has directed that the dispute be referred to arbitration.

(2) Subject to the provisions of subsection (1), any strike or lockout of employees of a class specified in a certificate under Section 3 is harmful, and, in particular, such a strike or lockout is unlawful if its object is in furtherance of a dispute on:

(a) Matters which are wholly or partly governed by a collective agreement under this Act, or

(b) Matters which, under this Act, are not to be dealt with by the permanent negotiating committee.

LABOUR DECREE, 1967 (N.L.C.D. 157)

PART V—EMPLOYMENT OF FEMALES, CHILDREN AND YOUNG PERSONS

Sub-part 1 — Females

41. (1) No person shall employ a female in any mine or underground work or in any industrial undertaking on night work.

Provided that the preceding provisions of this sub-paragraph relating to the prohibition of employment of females on night work shall not apply in any of the following circumstances if the written permission of the Chief Labour Officer or a Labour Officer is first obtained for such employment:

(a) Where in any industrial undertaking there occurs an interruption of work by reason of war, strike, act of God or any other circumstance

which it was impossible to foresee and is not of a recurring character; and

(b) Where the employment has to do with raw materials or materials in the course of treatment which are subject to rapid deterioration and such night work is necessary to preserve such materials from certain loss.

(2) Any person who contravenes the provisions of subparagraph (1) of this paragraph shall be guilty of an offence and shall on summary conviction be liable to a fine not exceeding one hundred new Cedis.

42. (1) The employer of any industrial, commercial or agricultural undertaking shall:

(a) Give leave to any pregnant female worker if she produces a certificate given by a medical officer or a midwife registered under the law for the time being in force relating to the registration of midwives to the effect that her confinement is in the midwife's opinion likely to take place within six weeks after the date of the certificate;

(b) Give at least six weeks' leave to a female worker in such undertaking immediately after her confinement so, however that such period shall be extended to at least eight weeks where the confinement is abnormal or where in the course of the same confinement two or more babies are born;

(c) Permit a female worker in such undertaking, who, before the expiry of any leave referred to in clause (a) or clause (b) of this subparagraph becomes entitled to her annual leave, to take such annual leave immediately after the first-mentioned leave referred to in this clause;

(d) Permit a female worker in such undertaking, who commences to take any leave referred to in clause (a) or clause (b) of this subparagraph at the end of a year's employment but has not taken her annual leave in respect of such employment, to take such annual leave immediately after the first-mentioned leave referred to in this clause;

(e) Not assign or temporarily allocate a pregnant female worker to a post outside her place of residence after completion of the fourth month of pregnancy if such assignment or allocation in the opinion of the medical officer or such midwife will be detrimental to her health;

(f) Not employ one time in such undertaking a pregnant female worker or the mother of a child less than eight months old;

(g) Shall pay a female in such undertaking who is on any leave referred to in clause (a) or clause (b) of this subparagraph remuneration, in respect of such leave, of an amount which is not less than fifty per centum of the remuneration she would have earned had she not been absent;

(h) Shall allow a female mother in such undertaking, if she is nursing a child, half an hour twice a day during her working hours for this purpose.

(2) Every employer who contravenes the preceding provisions of this paragraph shall be guilty of an offence and shall, on summary conviction, be liable to a fine not exceeding one hundred new cedis.

43. Where a female is absent from work in accordance with the provisions of clause (a) of

subparagraph (1) of the last preceding paragraph or remains absent from work for a longer period as a result of illness certified by a medical officer or such midwife arise out of pregnancy or confinement and rendering her unfit for work, no employer, shall until her absence has exceeded such maximum period as may be directed by the Chief Labour Officer, give her notice of dismissal during her absence or give her notice of dismissal at such a time that the notice would expire during her absence.

Sub-part 2 — Children and young persons

44. (1) No person shall employ a child except where the employment is with the child's own family and involves light work of an agricultural or domestic character only.

(2) Any person who contravenes the provisions of subparagraph (1) of this paragraph shall be guilty of an offence and shall, on summary conviction, be liable to a fine not exceeding one hundred new cedis.

45. (1) No employer shall employ a young person:

(a) In any industrial undertaking on night work; or

(b) In any mine or underground work: Provided that the preceding provisions of this paragraph shall not apply to young persons between the apparent ages of sixteen and eighteen years in any of the following circumstances if the written permission of the Chief Labour Officer or a Labour Officer is first obtained for such employment:

(i) in a case of emergency which could not have been controlled or foreseen, is not of a periodical character and interferes with the normal operation of such undertaking, mine, or work, and

(ii) in case of serious emergency, when the public interest demands its.

(2) Any persons who contravenes the provisions of sub-paragraph (1) of this paragraph shall be guilty of an offence and shall, on summary conviction, be liable to a fine not exceeding one hundred new cedis.

46. (1) Every employer in an industrial undertaking shall keep a register of all young persons employed by him and of the dates of their births, if known, or it notknown, of their apparent ages

(2) Any person who contravenes the provisions of subparagraph (1) of this paragraph shall be guilty of an offence and shall, on summary conviction, be liable to a fine not exceeding thirty new cedis.

PART IX—FORCED LABOUR

62. (1) No person shall exact or cause to be exacted, or permit to be exacted for his benefit, forced labour from any other person.

(2) Any person who contravenes the provisions of subparagraph (1) shall be guilty of an offence and shall, on summary conviction, be liable to a fine not exceeding two hundred new cedis or to imprisonment not exceeding one year or to both.

63. Any person who, being in charge of any population, puts constraint upon the population of any members thereof to work for any private person or undertaking shall be guilty of an offence and shall, on summary conviction, be liable to a fine not exceeding two hundred new cedis.

...

III.

The principle in the Declaration that everyone has the right to security in the event of sickness, disability, widowhood and old age is embodied in the Social Security Act, 1965 and the Workmen's Compensation (Amendment) Act, 1965. The Social Security Act, 1965 (Act 279) which is designed to make financial provision for workers in Ghana when their gainful employment is interrupted by the contingencies of retirement due to old age, permanent incapacity for work due to physical or mental infirmity or death. It applies to all persons who have employed five or more workers and to all their workers except pensionable employees of the Government.

It provides in the first instance for a compulsory contribution to a provident fund to which both the workers and their employers are required to contribute and from which benefits are paid in the event of retirement.

THE SOCIAL SECURITY ACT, 1965 (ACT 279)

1. There is hereby established a Fund to be called the Social Security Fund into which shall be paid all contributions and other moneys, and out of which may be paid such benefits and other sums, as may be paid such benefits and other sums, as may be required under this Act to be paid thereunto or thereout, as the case may be.

...

4. Subject to the other provisions herein, this Act, from the appointed date, shall apply to every employer of an establishment employing not less than five workers, and to every worker employed therein, so however, that in the case of an establishment in existence on the day immediately preceding such date, this Act shall apply to every employer of an establishment who has for a continuous period of ninety days during a period of twelve months immediately before that date employed not less than five workers and to every worker employed therein.

...

SOCIAL SECURITY ACT, 1965 (AMENDMENT) DECREE, 1966

...

8. (1) Subject to the other provisions of this Act, every employer of an establishment shall deduct from the pay of every worker in such establishment immediately after the contribution period a worker's pay for such period, irrespective of whether or not such pay is actually paid to the worker.

(2) Subject to the other provisions of this Act, every employer of an establishment shall pay for

each month in respect of each worker in such establishment, an employer's contribution of an amount equal to twelve and a half per centum of such worker's pay during such months.

(3) The contributions referred to in the preceding subsections shall, within the prescribed period after the end of each month, be remitted to the fund or to a prescribed person.

(4) A self-employed person shall contribute twelve and a half per centum of his income for the month from his profession or occupation.

(5) Notwithstanding any agreement or understanding to the contrary, an employer shall not be entitled:

(a) To deduct or otherwise recover his own contribution from the worker's pay; or

(b) To deduct the member's contribution for an earlier contribution period from the pay in respect of a later period:

Provided that the employer shall be entitled to make such deduction

(i) if his failure to make the deduction was due to a false declaration made in writing by the worker at the time of his employment that he was not already a member of the fund; or

(ii) if such failure to deduct the contribution was the result of an accidental mistake or clerical error, in which case the deductions shall be made according to the written instructions of an inspector.

(6) Where an employer deducts contributions from the pay of workers under this Act, the contributions shall be deemed to be held by such employer in trust for the purposes of the Act until they are remitted to the fund or a prescribed person in accordance with its provisions.

(7) No contributions due and paid under this Act shall be refunded to the employer, even if the worker is not entitled to any thereof.

...

PART VI—BENEFITS

25. (1) Subject to the other provisions of the Act and regulations, the following benefits shall be payable under this Act:

(a) A superannuation benefit when a member of the fund retires or is retired after attaining the age of superannuation:

Provided that on or after the date on which a member of the fund attains the age, on the attainment of which he is entitled under this Act to give a voluntary notice of retirement, that member shall, notwithstanding that he does not give notice to retire, be entitled to be paid his superannuation benefit which has accrued up to the said age upon application made by him in that behalf to the Chief Administrator and if any such member continued to work after his superannuation benefit has been paid to him under this proviso he and his employer shall continue to make their respective contributions to the fund in accordance with the provisions of this Act, until that member finally retires or is retired, when he shall be entitled to be paid the balance (if any) of his superannuation benefit outstanding on the date of such retirement.

(b) An invalidity benefit, when a member of the fund is rendered by a permanent physical or mental disability to be incapable for any normal gainful employment; and

(c) A survivor's benefit, payable:

- (i) on the member's death, to the person, or persons in whose favour a valid nomination exists in the Chief Administrator's office in such amount or proportion as may be specified in the instrument of nomination; and
- (ii) in the absence of a valid nomination to such members of the family, and in such proportions, as may be prescribed;

(d) An emigration benefit payable to a member of the fund who satisfied the Chief Administrator that he is emigrating or has emigrated permanently from Ghana;

(e) A sickness benefit of such amount as may be prescribed by regulations under this Act shall be paid to a member out of his own contribution on his application during his sickness if:

- (i) the sickness has kept him absent from work for at least three months;
- (ii) the sickness is certified by such medical practitioner as may be approved by the Commissioner in that behalf;
- (iii) the member has completed two years of membership of the fund; and
- (iv) the member is not in receipt of any emoluments from his employer during such sickness; and
- (v) such other benefits as may be prescribed.

(2) The amount of benefit payable under paragraphs (a) to (d) of subsection (1) shall be the balance of the member's account in the fund with accrued interest and shall be paid in accordance with the provisions of this Act and the regulations.

The Social Security Fund Regulations, 1965 are made Section 29 of the Social Security Act, 1965 (Act 279) to provide for the administration of the Act by an Advisory Board, the Registration of employers and workers under the Act, the payment of contributions under the fund, applications for the various benefits under the fund and the financial and accounting system to be operated in respect of the fund.

The Workmen's Compensation Act, 1963 (Act 174) which consolidates the law relating to workmen for injuries suffered in the course of their employment, in addition extends the scope of the law and makes substantial improvement on the legislation relating to workmen's compensation.

The Workmen's Compensation Act, 1963 (Amendment) Decree 1966 (N.L.C.D. 86) amend section 15 of the Workmen's Compensation Act, 1963 (Act 174) to provide for the protection of the rights of injured workmen who are illiterate and of other injured workmen in respect of agreements as to the amount of the compensation to be paid by their employers in respect of the injuries.

Section 15 (1). The employer and workman may after the injury in respect of which the claim to compensation has arisen specify in writing as to the compensation to be paid by the employer. The agreement shall be in duplicate, one copy to be kept by the employer and one copy by the workman.

(2) The compensation agreed upon shall not be less than the amount payable under this Act.

(3) Where the workman is illiterate or is unable to read and understand writing in the language in which the agreement is expressed, the agreement:

(a) Shall not be binding against him unless it is endorsed by a certificate of a Labour Officer to the effect that such officer read over and explained to the workman the terms thereof and that the workman appeared fully to understand and approve of the agreement; and

(b) Shall not operate to preclude the workman from instituting proceedings independently of this Act to recover damages in respect of the injuries to which the agreement relates unless the certificate of the Labour Officer contains a statement to the effect that he explained to the workman that the making of the agreement would preclude him from instituting any such proceedings and that the workman appeared fully to understand and accept the legal position in that regard.

(4) A Labour Officer, for reasons which to him appear sufficient, other than that the workman is illiterate or is unable to read and understand writing in the language in which the agreement is expressed, may endorse any agreement in paragraph (a) and containing the statement mentioned in paragraph (b) of subsection (3) of this Section and the provisions of the said subsection shall apply in all respects as they apply to an agreement endorsed thereunder, to an agreement endorsed under this subsection.

(5) Any agreement made under subsection (1) of this Section may on application to the Court be made an order of the Court.

(6) Where compensation has been agreed the Court may, notwithstanding that the agreement has been made by an order of the Court under the previous subsection, on application by any party within three months after the date of the agreement, cancel it and make such order (including an order as to any sum already paid under the agreement) as in the circumstances the Court may think just, if it is approved:

(a) That the sum paid or to be paid was or is not in accordance with the provisions of subsection (1) of this Section; or

(b) That the agreement was entered into in ignorance of, or under a mistake as to the true nature of the injury; or

(c) That the agreement was obtained by such fraud, undue influence, misrepresentation or other means as would, in law, be sufficient ground for avoiding it.

IV.

The principle that motherhood and childhood are entitled to special care, aid, assistance and that all children, whether born in or out of wedlock, shall enjoy the same social protection is endorsed in the Maintenance of Children Act, 1965 (Act 297) which provides for the maintenance of neglected children, and makes it possible to take a father to Court where the father having the

means fails to make adequate provision for his child or children.

Before Court proceedings can be instituted, an application must first have been made to the Commissioner responsible for Labour and Social Welfare in accordance with Sections 1 and 2 of the Act.

THE MAINTENANCE OF CHILDREN ACT, 1965 (ACT 297)

1. Where a father neglects to provide reasonable maintenance for his infant child or children or when a man alleged to be the father denies that he is the father of the child, the mother of the child may apply to the Commissioner responsible for Labour and Social Welfare (in this Act referred to as "the Commissioner") or such other person as may be directed by the Commissioner in that behalf to persuade the father to make reasonable provision for the maintenance of the child or make such other award as the Commissioner may consider appropriate in the circumstances in accordance with the provisions of this Act.

2. Without prejudice to paragraph (1) (f) of paragraph 49 of the Court Decree, 1966 (N.L. C.D. 84) which confers jurisdiction on District Court to appoint guardians of infants and to make orders for custody of infants), a father in respect of whom an application has been made under Section of this Act may also apply to the Commissioner to request the mother to give him the custody of the child.

3. Where an application has been made under Section 1 or both Sections 1 and 2, the Commissioner may appoint a Committee consisting of such fit and proper persons as he may consider appropriate to inquire into the matter in relation to which the application has been made and to make recommendations to him.

4. The Commissioner may, on receipt of the recommendations of the Committee appointed under Section 3 of this Act, make a ruling in accordance with any of the succeeding provisions of this Section as he may consider just:

(a) Where the matter under consideration relates solely to an application under Section 1 of this Act, the Commissioner may, having regard to the means of the father and the mother, request the father to make such reasonable allowance not exceeding 10 new cedis a month for the maintenance of the child as the Commissioner may specify; or

(b) Where an application has also been made under Section 2 of this Act, the Minister may either make a ruling in accordance with paragraph (a) of this Section or request the mother to give the custody of the child to the father:

Provided that before making a ruling, the Minister shall regard the welfare of the child as the first and paramount consideration.

Where a ruling has been made by the Commissioner under Section 4 of this Act, the mother in respect of whom such children such ruling has

been made may make an application to the Court in accordance with the provisions of Part II or III of the Act, as the case may be:

(a) If she is dissatisfied with the ruling of the Commissioner;

(b) If the father in respect of whom an application under Section 1 of this Act was made:

(i) fails to appear before the Commissioner or a committee appointed under Section 3 of this Act when requested to do so;

(ii) refuses or fails to comply with any ruling made under Section 4 of this Act; or

(iii) denies that he is the father of the child.

No proceedings shall be instituted under Part II or III of this Act unless an application has first been made and a ruling thereon in accordance with the provisions of this Part.

V.

The right of an individual to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author is contained in the Textiles Designs (Registration) Act, 1965 (Act 317).

The Textile Designs (Designs Registration) Act, 1965 (Act 317) provides for the registration of textile designs for the protection of the registered proprietors of such designs.

THE TEXTILE DESIGNS (REGISTRATION) ACT, 1965 (ACT 317)

1. (1) Subject to the other provisions of this Act, a textile design may upon application made by the person claiming to be the proprietor, be registered under this Act in respect of any textile article or textile articles specified in the application.

(2) Subject to the other provisions of the Act, a textile design shall not be registered:

(a) If it has been copied exactly from a design belonging to a registered proprietor;

(b) If it is similar to any textile design in such a way as to be likely to mislead purchasers in Ghana or to damage the business of any registered proprietor of a textile design;

(c) If it differs from another textile design only in material details or in features which are variants commonly used in the trade; or

(d) For any prescribed reasons.

3. The registration of a textile registered under this Act shall give to the registered proprietor of such design, the copyright therein, that is to say, the exclusive right in Ghana to make or import for sale or for use for the purposes of trade or business, or to sell, hire, or offer for sale or hire any textile article in respect of which the textile design is registered.

GREECE

CONSTITUTION OF GREECE¹

Preamble

We, the Greek People, fully cognisant of our responsibility towards coming generations, strictly adhering to the values of the Greek Christian civilisation as well as to the principles of national sovereignty, democracy, peace and progress, and resolved to:

*Secure national and State unity;
Consolidate the system of Crowned Democracy in freedom, equality and justice;
Reform political and parliamentary life;
Safeguard internal peace and security;
Contribute to social progress and prosperity and to serve international peace through justice and liberty as a member of equal standing in the world-wide society of peoples;*

do hereby approve by referendum this Constitution.

Part One — General provisions

Article 1

1. The established religion in Greece is that of the Eastern Orthodox Church of Christ. The exercise of proselytism, as well as any other form of interference against the established religion, is prohibited.

...

Article 2

1. The form of Government in Greece is that of a Crowned Democracy.

2. All powers emanate from the People, exist in favour of the People and the Nation and are exercised in the manner prescribed by the Constitution.

...

¹ Text of the Constitution approved by the Greek people in a referendum on 29 September 1968 and published in the *Government Gazette*, No. 267, of 15 November 1968.

Article 7

1. Greeks are equal before the law.
2. Greek citizens are those who possess the qualifications, as provided by the Laws of the State.
3. Titles of nobility or distinction are neither conferred upon nor recognized in Greek citizens.
4. Only Greek citizens are acceptable in all the public services, except for cases introduced by special legislation.
5. Greek citizens shall contribute, without exception, towards meeting public expenditure according to their means.
6. Every Greek able to bear arms is obliged to assist in the defence of the Country as provided for by the law.

Part Two — The State and the individual

Chapter A

INDIVIDUAL RIGHTS

Article 8

Every person within the territorial boundaries of the Greek State shall enjoy full protection for his life, honour and freedom, irrespective of nationality, creed or language. Exceptions are permitted in such cases as provided for by International Law.

Article 9

1. Every person has the right to the free development of his personality provided he does not infringe on the rights of others and does not violate the Constitution and the moral code.

2. Personal liberty is inviolable. No one is prosecuted, arrested, imprisoned or otherwise restricted, except when and as the law provides.

Article 10

1. With the exception of persons caught in the act of committing an offence, no one shall be arrested or imprisoned without a judicial warrant stating the reasons, which must be served at the time of arrest or remand in custody pending trial.

2. The person caught in the act or held on a warrant of arrest, is brought before the competent examining magistrate not later than 24 hours from the time of the arrest, and if the arrest is made beyond the seat of the examining magistrate, then within the absolutely necessary time for his conveyance before said magistrate. Within three days of the time of presentation, the examining magistrate is obliged to either release the person arrested or deliver a warrant for his imprisonment. This delay can be extended by two more days at the request of the person arrested in the event of *force majeure* which must be certified forthwith by a decision of the competent judicial council.

3. Should both the aforementioned delays expire without any action, every jailer or other officer, whether civil or military, in charge of the arrested person, must release him forthwith. The violator of the above provisions shall be punished for illegal confinement and shall be obliged to make good all damages sustained by the injured party and, in addition, to give satisfaction to said party by such a sum of money as the law provides.

4. The law provides that the maximum term of custody pending trial cannot exceed one year for criminal charges and six months for misdemeanour charges. In completely exceptional cases, these maximum time limits can be further extended by six and three months respectively, through decision of the competent judicial council.

5. The law defines the conditions under which, through judicial decision, the State indemnifies those unjustly imprisoned or convicted.

Article 11

1. No crime shall exist nor shall any sentence be imposed unless provided in a law existing prior to the commission of the act. A heavier sentence than that provided for at the time the act is committed shall never be imposed.

2. Tortures and general confiscation are prohibited. Permanent and total suspension of civil rights shall not be imposed. Death penalty for political crimes, except compound, shall not be imposed.

Article 12

No one shall be removed without his consent from the jurisdiction of the judge assigned to him by law. The establishment of judicial committees or extraordinary courts under any name is prohibited.

Article 13

1. The home of each person is inviolable. No house search can take place except in a time and manner provided by law.

2. The violators of the above provision shall be punished for violation of the sanctity of the

home and shall be obliged to fully indemnify the injured party and to give him further satisfaction through the payment of a monetary sum, as provided by law.

Article 14

1. Everyone may express orally, in writing, in print or in any other way his thoughts, with due adherence to laws of the State.

2. The Press is free and discharges a public function involving rights and duties, and responsibility for the accuracy of its content.

3. Censorship and every other preventive measure is prohibited.

4. Seizure of printed matter, either before or after publication, is prohibited. By exception, seizure after circulation is permitted by order of the public prosecutor:

(a) Because of insult to the Christian and any other known religion;

(b) Because of insult to the person of the King, the Crown Prince, their wives and children;

(c) Because of a publication which (i) discloses information on the organisation, composition, armament and deployment of the armed forces, or on the fortifications of the country; (ii) is patently rebellious, or aims at overthrowing the regime or the existing social system or is directed against the territorial integrity of the State or creates defeatism, or provokes or instigates the commission of a crime of high treason; (iii) intends to project or diffuse, for political exploitation, views of outlawed parties or organisations, and

(d) Because of indecent publications manifestly offending public decency in cases provided by law.

5. In all cases of the previous paragraph the public prosecutor must, within twenty-four hours from the seizure, submit the case to the judicial council, and the latter must, within another twenty-four hours, decide whether the seizure will be maintained or lifted, otherwise the seizure is lifted *ipso jure*. The public prosecutor and the publisher of the seized item may appeal against the decision of the council.

6. Press offences are deemed offences whose author is taken in the act, and are subject to legal proceedings without preliminary examination, as provided by the law. Violation of this provision by the competent public prosecutor constitutes a serious disciplinary offence.

7. After the second within five years conviction for any press offence whatsoever as provided for by paras. 4 and 9 of this article, the Court shall order the permanent or temporary suspension of the publication of the printed matter involved and, in serious cases, the prohibition of the exercise of the profession of journalism by the person convicted as provided by law. Such suspension or prohibition shall commence from the time the Court order becomes final.

8. The title of a suspended publication cannot be used by anyone, so long as such suspension is still effective.

9. The publisher of the printed matter and the writer of an offending publication involving one's

private or family life, aside from the penalties provided for in criminal statutes, shall have a civil and joint liability to fully compensate any damage caused thereby, and to give monetary satisfaction to the victim as provided by law.

10. The law shall determine the manner in which inaccurate publications shall be fully rectified in print.

11. The preconditions for issuing newspapers or other political publications, the conditions and ethical rules of exercising the profession of journalism, and the rules for operation of newspaper enterprises shall be determined by law.

12. Law establishes compulsory financial control of newspaper enterprises. The outcome of such control shall be published.

13. Special repressive measures may be adopted by law to protect youth from literature dangerous to morals.

14. The provisions on the protection of the Press contained in the present article shall not be applicable to motion pictures, public shows, phonograph records, radio and television broadcasts, as well as any other similar means of conveying speech or image.

Article 15

The privacy of letters and all other means of correspondence is inviolable. Law designates the guarantees under which judicial authority, for reasons of national security and public order or for the ascertaining of abject crimes, is not bound by the inviolability of letters and correspondence.

Article 16

1. The freedom of religious conscience is inviolable.

2. Every known religion is free and the forms of worship thereof shall be practised without hindrance, under the protection of the laws.

3. The functionaries of all the known religions are subject to the same supervision by the State reserved to the functionaries of the established religion.

4. The exercise of religious duties shall be free but it cannot offend public order, good morals or the national symbols.

5. No one, shall, by reason of his religious convictions, be exempt from discharging his duties to the State or refuse to comply with the laws of the country.

6. No oath shall be administered except by law determining also the form thereof.

Article 17

1. Education shall be under the highest supervision of the State, shall be offered at its expense, and shall aim at the ethical and intellectual training, as well as the development of the patriotic conscience of the youth based on the principles of the Greek and Christian civilization.

2. The establishment of general directives of national policy on education is being made as

prescribed by law, after consultation with the National Council of Education.

3. Elementary education shall be compulsory for all. The law fixes the years of compulsory instruction which cannot be less than six.

4. The highest educational institutions are self-administered legal entities of public law and operate under the supervision and financial support of the State. Their teaching staff are civil servants. The administrative bodies of these institutions are elected by their regular professors. State supervision over the highest educational institutions is exercised by the Minister of National Education and Religion through a Government Commissioner, as the law provides.

5. Subject to permission by the authorities, private citizens whose civil rights have not been revoked as well as legal entities may establish schools operating according to the Constitution and the laws of the State. Those establishing private schools and those teaching in them are obliged to have the same moral and other qualifications as those required of public servants and prescribed by law.

Article 18

1. Greeks have the right to assemble peacefully and unarmed as provided by law.

2. The police may be present only at public gatherings. Public gatherings must be duly notified to the police authorities forty-eight hours prior to their being held. Open air gatherings may be prohibited if they endanger public order and security.

Article 19

1. Greeks have the right to form associations with due adherence to the laws of the State, which, however, shall under no circumstances subject this right to prior permission by the Government.

2. Every union of persons, the purpose or the activity of which are directed against the territorial integrity of the State, or the regime or the social order or the security of the State or the political or civil liberties of the citizen, shall be prohibited. It is dissolved by Court decree.

3. Co-operatives are dissolved, because of violation of law or their statutes, by Court decree. By decree issued by the chief judge of the district Court, the operation of a co-operative or union may be suspended temporarily if at the same time proceedings for its permanent dissolution are initiated.

4. The right of association of civil servants may be subject to certain restrictions imposed by law. The same restrictions on the right of association may be imposed on employees of local government bodies, or other legal entities of public law, public enterprises, and public utilities.

5. Resort to strike for the purpose of achieving political or other ends unrelated to material or moral interests of the workers shall be prohibited.

6. Strikes of any form by Civil Service personnel of any kind, personnel of local government bodies or of other legal entities of public law

shall be prohibited. The participation of such personnel in a strike is considered in itself as a submission of resignation.

Article 20

1. Any person or persons acting together, observing the law of the State, have the right to submit applications in writing to the authorities, which are obliged, in accordance with the law, to act promptly and give a written and reasoned reply to the petitioner.

2. Prosecution of the petitioner for violations existing in the application is permitted only after the final decisions and with permission of the authority which received the application.

Article 21

1. Property is under the protection of the State.

2. No one shall be deprived of his property, except for duly proven expediency of public benefit, when and as the law provides, and at all times after full compensation. The compensation must correspond to the value of the expropriated property at the time of publication of the expropriation act as the law specifically provides. An eventual change of the value of the expropriated property occurring after the expropriation has been announced and because of it, is not taken into consideration.

3. The amount of compensation shall always be fixed by the civil courts. Compensation may also be provisionally fixed by the court, after a hearing or summons of the beneficiary who may be obliged, in the judgement of the Court, to offer a reasonable guarantee for its collection, as provided by law. Before payment of provisional or final compensation, the owner retains his rights and occupation of the expropriated property shall not be permitted. The designated compensation must be deposited at the latest within one and a half years after the judicial decision is issued, otherwise the expropriation is lifted *ipso jure*.

4. In cases of expropriation for the purpose or urbanization and town planning, especially in the large urban centres, the law may provide that in lieu of a monetary compensation the owner will be granted a realty located within the area under expropriation and of value equal to that which is being expropriated. If the value of the real property being offered in exchange is disputed, the courts shall decide on it and may adjudge a supplementary monetary compensation. The transfer of title of the ceded property is effected by registering the court decree ordering the expropriation. The provision of paragraphs 2 and 3 of the present article have analogous application as to the rest.

5. Special laws regulate matters pertaining to ownership and disposition of mines, quarries, caverns, archaeological treasures, mineral, running and subterranean waters.

6. Matters pertaining to the ownership, exploitation and administration of sea shoals and large lakes are regulated by law.

7. Special laws regulate matters pertaining to requisitions for the needs of the armed forces in event of war or mobilization or towards resolving an urgent social need which could endanger public order and health.

8. Any other enjoyment of the free use and enjoyment of property beyond the cases referred to in the previous paragraph, may be imposed by law. The law shall determine the debtor and the procedure whereby the beneficiary of the compensation for the deprivation of use and enjoyment of the property shall be satisfied. The aforementioned deprivation is immediately voided when the reasons calling for it are eliminated. In the event the deprivation is not removed, the Constitutional Court shall decide upon application by any person having a vested legal interest.

9. A law may permit the expropriation by zones in favour of the State for the purpose of executing public works or projects of public benefit. The same law shall determine the prerequisites and the conditions for such an expropriation, as well as matters relating to the disposal by the State of expropriated land over and above those necessary for the project under execution.

10. The redistribution of agricultural tracts for a more profitable exploitation of the land is permitted in accordance with the procedure determined by special law.

11. The agricultural properties of the Stavropigiakon Holy Monasteries of Saint Anastasia Farmakolitrias in Chalkidiki, of Vlatadon in Thessaloniki and of the Evangelist John the Theologist in Patmos, excepting those of Metochion, are not subject to expropriation.

Article 22

1. The alteration of the contents or the conditions of a testament, codicil or donation, in so far as the provisions in favour of the State or for the public benefit are concerned, is prohibited.

2. When it has been judicially established that the will of the testator or donor cannot be carried out to its full extent, the application of the donation or bequest for a more beneficial use identical or similar to the one envisaged, may be permitted by way of exception, as the law provides.

Article 23

1. Legislative decree No. 2687 of the year 1953, issued in application of article 112 of the Constitution of January 1st, 1952, "Concerning investment and protection of foreign capital", as authentically interpreted by legislative decree No. 2928 of the year 1954 and paragraph 3 of article 5 of legislative decree No. 4256 of the year 1962, maintains its prior formal force. Subsequent law to be issued only once and for all may amend the above legislative decree to confer additional protection to the foreign capital involved.

2. Emergency Law No. 465 of the year 1968 "on amendment and completion of some provisions of Law 1880/1951 on ship taxation" enlarging the protection of Greek merchant marine beyond the one afforded by art. 13 of legislative decree 2687/1953 "Concerning investment and

protection of foreign capital" cannot be amended. Subsequent law to be issued only once and for all may amend it only to confer additional protection.

3. Emergency Law 89 of the year 1967 "Concerning establishment in Greece of foreign commercial and industrial companies" and emergency law 378 of the year 1968 supplementing the above, cannot be amended. Subsequent law to be issued only once and for all may amend them only to confer additional protection.

Article 24

1. The exercise of civil rights and liberties shall be reserved to everyone within limits securing the enjoyment of the same rights and liberties by other citizens and protecting the interests of the society as a whole.

2. Whoever abuses the inviolability of a home, the freedom of expression, especially in print, the secrecy of the means of correspondence, the freedom of assembly, the freedom of forming associations or co-operatives, and the right of property, for the purpose of combating the prevailing political system, the civil liberties, or of endangering the national independence and territorial integrity of the State, shall be deprived of these rights or of all rights safeguarded under the Constitution. The determination of the abuse, the deprivation of individual rights and the extent thereof shall be pronounced by the Constitutional Court as provided by law.

Article 25

1. In case of war, mobilization due to external dangers or serious disturbance or clear threat to the public order and security of the State from internal dangers, the King on the recommendation of the Council of Ministers may suspend by Royal Decree throughout the country or in part thereof the operation of articles 10, 12, 13, 14, 15, 18, 19, 111 and 112 of the Constitution or some of them, and put into effect the then applicable law on "State of Siege" and to establish extraordinary tribunals. This law may not be modified while in operation.

2. The Royal Decree referred to in the above paragraph, and the measures taken by virtue thereof, are communicated to the Parliament at the first meeting after its publication. In the event of a serious disturbance or patent threat to the public order and security of the State from internal dangers, the Royal Decree is placed before the Council of the Nation within twenty-four hours after its issuance. If the Council of the Nation does not agree with the issuance of the Royal Decree, Parliament is obligatorily convoked even if it has been dissolved, within twenty days of its publication, in order to decide whether to maintain or annul the decree's effect by absolute majority vote of its entire membership in this last instance.

3. The effect of the above Royal Decree shall not, in the case of war, extend beyond the end thereof, and in all other cases its effect shall *ipso facto* be terminated three months from the date of its publication, unless it has been extended in

the meantime by another Royal Decree with the permission of the Parliament.

Chapter B

SOCIAL AND ECONOMIC RIGHTS AND DUTIES

Article 26

1. Marriage and the family are under the protection of the State.

2. The parents have the right and duty to raise and educate their children. The State shall take measures for the moral, intellectual and patriotic education of the minors.

3. Families with many children, war disabled, as well as widows and orphans of those fallen in war, shall enjoy the special care of the State.

SECTION 2

THE PARLIAMENT

Chapter A

ELECTION AND CONSTITUTION OF THE PARLIAMENT

Article 56

1. The Parliament is composed of Deputies, elected in accordance with the law through direct, universal and secret ballot by those citizens who have completed their twenty-first year of age and have the right to vote.

2. Those irrevocably convicted to any penalty whatsoever for acts or activities directed against the existing political or social system shall be denied the right to vote.

3. The parliamentary elections shall be carried out simultaneously throughout the country.

4. The exercise of the right to vote shall be obligatory.

Article 57

1. The number of Deputies for each electoral district is designated by a Royal Decree in proportion to its legal population, as determined in the last census; however, the total number of Deputies shall never exceed one hundred and fifty.

2. The electoral system and the electoral districts shall be determined by law voted upon in a plenary session of the Parliament, and applicable to the elections following the next pending ones.

3. The number of electoral districts may not be less than ten or more than fifteen, while the formation of each one of them on the basis of legal population must be such so as to elect a minimum of at least five Deputies.

4. The election of a portion of Parliament, not less than one-sixth and not more than one-fifth of the total number of Deputies, shall be carried out uniformly throughout the country on the basis of

the electoral strength of each party. The nomination of these Deputies shall be made as specifically provided by law on the basis of a separate list of candidates from each party and in proportion to the number of preferences votes which each one received. These lists shall be deposited with the Constitutional Court and published at least fifteen days before the elections. The candidates appearing on the list may not also stand as candidates in the electoral districts.

5. The number of Deputies elected in the electoral districts shall be determined by subtracting from the total number of Deputies those elected in accordance with the previous paragraph.

6. A party or coalition of parties which has not accumulated a certain percentage of the total valid ballots shall not be entitled to representation in Parliament. This percentage fixed by law can not be higher than one-sixth and lower than one-tenth for the parties, and not higher than one-third and lower than one-fourth for the coalitions of parties.

Article 58

1. Greek citizens having the right to vote may freely establish political parties and participate in them. The political parties through their activity shall express the will of the people and must contribute to the advancement of the national interest.

2. The organization, the programme and the activity of the parties must be governed by national and democratic principles. Their leaders and governing committee must be elected by representative conventions of their members. The Charter of every party must be approved by the Constitutional Court, which checks as to the conformity of its provisions in relation to the Constitution. No party shall have the right to participate in elections if its Charter has not had the aforementioned approval.

3. The parties shall be required to maintain records of income and expenses, as well as data for checking them. In these books, every type of contribution must be listed by name. During the month of February of each year, the parties shall be required to publish their financial statement of the previous year.

4. The general functioning of the parties, as more specifically provided by law, shall be subject to the continuous supervision of the Constitutional Court, which shall have the right to dissolve any party whatsoever for violation of the Constitution or the laws.

5. Parties whose aims or activities are manifestly or covertly opposed to the form of government or tend to overthrow the existing social system or endanger the territorial integrity of the state or public security, shall be outlawed and dissolved by decision of the Constitutional Court, as provided by law.

6. The Deputies of the Party being dissolved shall be declared deposed of their office, and the seats held by them in Parliament shall remain vacant until the termination of the parliamentary period.

7. The application of the provisions of this article are regulated by law.

Article 59

The Deputies shall represent the Nation.

Article 60

1. The Deputies shall be elected for five consecutive years commencing from the day of the general elections. Upon the expiration of the parliamentary period, a Royal Decree countersigned by the Council of Ministers shall direct the holding of general parliamentary elections within thirty-five days. The new Parliament shall convene in regular session within forty-five days from the time the elections were held.

2. The parliamentary elections shall be carried out in any case by a political (not caretaker) Government.

3. A Parliamentary seat vacated during the last year of the period shall not be filled through a supplementary election, as provided by law, when the number of the vacant seats does not surpass a fifth of the total number of Deputies.

4. In the event of war, the Parliamentary period is extended for its entire duration. If Parliament has dissolved, the carrying out of elections is postponed until the end of the war.

Article 61

1. In order for one to be eligible for Deputy, he must be a Greek citizen, must have completed his 25th year of age on the day of election, and when eligible to vote in accordance with the law, must be enrolled in an electoral list, and must possess at least a high school, general or vocational education diploma.

2. No one can be proclaimed a candidate or elected Deputy if:

(a) He does not possess Greek nationality by birth, except in case of territorial annexation;

(b) He is a naturalized Greek male citizen as well as a female who acquired Greek citizenship through marriage before ten years have elapsed from the time of naturalization or the marriage;

(c) He has not fulfilled his military obligations or has not been legally exempted from them;

(d) Through an irrevocable sentence, he has been deprived of his political rights, for a period of time twice as long as that prescribed in the Court decision depriving him of his political rights, even though he may have been pardoned with lifting of the consequences.

(e) He has been irrevocably convicted for treason, for premeditated murder, espionage, robbery, theft, bribery, desertion, counterfeiting, forgery, perfidy, fraud, extortion, crimes against morals, slanderous defamation or traffic of narcotics, for life, except if reinstated.

(f) He has been irrevocably convicted for active participation in a party, organization, association or union, whose aim is the propagation and application of ideas tending to overthrow the existing political or social system or the detachment of part of the territory of the State, for life.

3. A Deputy deprived of one of the above qualifications or falling under one of the cases of para. 2, forfeits *eo ipso* his parliamentary office. Should doubts arise, the Constitutional Court shall decide.

4. No one may be elected Deputy for four continuous parliamentary periods. Exception is made for those who served as parliamentary Prime Ministers, or leaders of parties recognized according to the Constitution and the Rules of Parliament.

5. A member of the Government, with the exception of the Prime Minister and Deputy Prime Ministers of the Government, may not submit candidacy for the immediately forthcoming elections even though he had resigned before the termination of the period.

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Chapter B

POWERS AND OPERATION OF PARLIAMENT

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Article 82

1. No tax can be levied or collected without a law.

2. The object of taxation, the tax rate, the procedure of assessing taxes, tax exemptions or exceptions and the granting of pensions cannot be objects of legislative delegation.

3. No tax or any other financial levy can be imposed by a retroactive law.

4. By way of exception, any import or export duties or consumer's tax levied or increased can be collected from the day the Bill is submitted to Parliament on condition that the law be promulgated in accordance with the time limits in article 47, para. 2, nevertheless at the latest within 10 days after the close of the session.

....

SECTION 4

THE COURTS

Chapter A

CONSTITUTION OF THE COURTS

Article 95

1. Justice is administered by courts constituted of regular judges.

2. In discharging their duties, judges are subject only to the Constitution and the Laws.

5. No question or interpellation or declaration may be submitted or any discussion whatsoever may be made in Parliament concerning a trial pending before any court.

....

Chapter C

THE FUNCTIONING OF THE ADMINISTRATION OF JUSTICE

Article 116

The hearings of the courts are public. By exception, the court by its own decision, as provided

by the law, must order the proceedings *in toto* or in part, to be held in closed doors if the public discussion is prejudicial to national interests or the social order, or the Armed Forces, or good morals, or public order or special reasons to protect the family or the private life of a person, suggest it.

Article 117

All decisions must be duly supported and pronounced in public sessions.

Article 118

The courts are bound not to apply provisions of a law, legislative decrees, and regulative acts, which are enacted in violation of the Constitution or are inconsistent with its provisions.

Article 119

Every citizen is entitled to demand the protection of the court and to have the opportunity to advance views in support of his rights or interests before the court.

SECTION 5

THE ADMINISTRATION OF THE STATE

Chapter A

ORGANIZATIONAL PRINCIPLES OF THE ADMINISTRATION

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Article 121

1. Local Government is constituted by the municipalities and the communities.

2. The election of Municipal and Community authorities is effected through general secret ballot.

....

4. In order to be elected Mayor, Community President, Municipal or Community Counsellor, one must be a Greek citizen, have completed his twenty-fifth year of age on the day of election and at the same time have the right to vote, be registered in the electoral lists and not come under any of the cases as provided for in article 64, para. 2.

....

Part Five — Effect and revision of the Constitution

Article 137

1. The provisions of the Constitution which designate the form of the government as a Crowned Democracy, as well as the balance of the fundamental provisions thereof, may never be revised.

2. After the lapse of ten years from the approval of the Constitution by the referendum, the revision of its non-fundamental provisions shall be permitted; whenever the Parliament, through a majority vote of three-fifths of its entire membership, so requests by an act, specifically designating the provisions to be revised, and voted upon

in two votings which shall be at least one month apart.

3. Once the Parliament has decided on the revision, the subsequent Parliament, during its first session, shall decide on the provisions to be revised by absolute majority of its total membership.

4. Every revision of non-fundamental provisions of the Constitution voted on shall be issued and published in the Government Gazette within ten days of its being passed by the Parliament and it shall come into effect by a special Parliamentary Act.

Article 138

The present Constitution, after its approval by the Greek People through Referendum, signed by the Council of Ministers and published in the Government Gazette, comes into immediate effect, with the exception of the provisions of articles 10, 12, 13 para. 1, 14 paras. 1 and 3, 18, 19, 25 paras. 2 and 3, 58 paras. 1 and 2, 60, 111, 112, 121 para. 2, which provisions the National Revolutionary Government is authorized to place into effect through acts published in the Government Gazette.

GUATEMALA

CIVIL SERVICE ACT

Promulgated by Decree No. 1748 of 2 May 1968 ¹

TITLE I

Sole Chapter

GENERAL PROVISIONS

Article 1. Nature of the Act. This Act concerns matters of public policy and the rights set forth herein are minimum indefeasible guarantees for public servants, which are subject to improvement in accordance with the requirements and resources of the State. Consequently, all acts and provisions which purport to revoke, diminish or distort the rights established in the Constitution, those set forth herein or all prior acquired rights are *ipso jure* null and void.

Article 2. Purpose. The general purpose of this Act is to regulate relations between the Public Administration and its employees with a view to guaranteeing their efficiency, ensuring that they receive just treatment and have an incentive to perform their work, and establishing standards for the application of a personnel administration system.

Article 3. Principles. The fundamental principles of this Act are the following:

1. All Guatemalans have the right to choose employment in the Civil Service, and no person may be prevented from exercising this right if he complies with the conditions and has the qualifications required by law. Civil Service posts shall be filled solely on the basis of ability, training, efficiency and honesty.

2. In filling Civil Service posts, there shall be no discrimination on grounds of race, sex, civil status, religion, birth, social or economic position or political opinions. Physical defects and psychoneurotic illness shall not prevent a candidate from holding a Civil Service post, provided that, in the

opinion of the National Civil Service Board, they do not interfere with his capacity to perform the work for which he is applying.

3. The national Civil Service system shall promote efficiency in the Public Administration and provide guarantees to its employees for the enjoyment and protection of their rights.

4. Appointments to posts in the Public Administration shall be made on the basis of the ability, training and honesty of the candidates. Consequently, a competitive examination system shall be established for the purpose of making such appointments, constituting the first step in an administrative career. Those posts which because of their nature or their purpose cannot be filled by competitive examination shall be indicated by law.

5. Equal salaries shall be paid for equal work performed under the same conditions with equal efficiency by persons of the same seniority. Consequently, posts in the Public Administration shall be organized on the basis of a system of classification and evaluation which takes account of the duties, responsibility and requirements pertaining to each post and lays down an equitable and uniform salary scale.

6. Employees of the Public Administration shall be guaranteed against dismissals which are not based on legal grounds. They shall comply with normal standards of discipline and shall receive reasonable salaries and social security benefits.

Article 4. Public Servants. For the purposes of this Act, a public servant shall be deemed to be any person who occupies a post in the Public Administration by virtue of an appointment, contract or any other legally binding agreement, in pursuance of which he has undertaken, in exchange for a salary, to perform services or to carry out work personally under the continuous jurisdiction and the direct supervision of the Public Administration.

Article 5. Supplementary Sources. Cases which are not provided for in this Act shall be decided

¹ *El Guatemalteco*, vol. CLXXXII, No. 60, of 23 May 1968.

in accordance with its underlying principles, the tenets of personnel management in the public service, equity, ordinary laws and the general principles of law.

Article 6. Exemption from Taxes. With the exception of the document conferring the appointment or the appointment contract, all legal instruments and procedures of whatsoever kind executed in pursuance of this Act shall be exempt from the stamped paper and revenue stamp taxes.

Article 7. Preference for Guatemalans. Public servants covered by this Act must be Guatemalan citizens. Aliens may be appointed only if there are no Guatemalans capable of performing the work concerned efficiently, and subject to the approval of the National Civil Service Office, which shall obtain the necessary information thereon.

...

TITLE II

ORGANIZATION

...

Chapter II

NATIONAL CIVIL SERVICE BOARD

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Article 19. Duties and Powers. The National Civil Service Board shall have the following duties and powers in addition to those assigned to it elsewhere in this Act:

...

6. To conduct investigations and give rulings—through the administrative channel, upon appeal and at the request of the employee concerned—on claims arising from the application of this Act in the following matters: recruitment, selection, appointment, assignment or reassignment of posts, transfers, suspensions, temporary unemployment and dismissal.

...

TITLE VI

Sole Chapter

RIGHTS, DUTIES AND PROHIBITIONS

Article 61. Rights of Public Servants. Public servants appointed on the basis of a competitive examination shall enjoy the rights established in the Constitution and in this Act as well as the following rights:

1. The right not to be removed from their posts unless they give duly proved cause for dismissal, as set out herein;

2. The right to have twenty working days of annual leave with pay after each year of continuous service;

Leave may not be accumulated and must be taken in continuous periods; salary may not be taken in lieu of leave, except when the right thereto has been acquired but not exercised at the

time of separation from the service, for whatever reason;

3. Public servants exposed to the risk of industrial illnesses, which shall be listed for the purpose in the applicable regulation, shall have a right to thirty working days of annual leave with pay;

4. The right to take sick leave, maternity leave, study leave, training and other leave, with or without pay and in accordance with the applicable regulations;

5. The right to see the periodic reports on their performance;

6. The right to receive each year in the first fortnight of December a cash bonus which shall be paid in accordance with the law and the applicable regulations;

7. The right to receive compensation for the abolition of their post or for unjust dismissal, whether direct or indirect, in the amount of one month's salary for each year of continuous service and on a *pro rata* basis if the period of service is less than one year. The amount shall be calculated on the basis of the average salary received during the six months prior to the date of the abolition of the post. In no case shall the compensation exceed five months' salary.

The compensation shall be paid in monthly instalments with effect from the date of the abolition of the post until the appropriate amount has been paid. It is understood that if ... the dismissed employee rejoins the public service with a salary equal to or higher than the one he was receiving before, the compensation payment shall cease with effect from the date on which he takes up his new post. If the salary is lower, the compensation payments shall be continued for as long as is necessary to make up the difference between the amount of compensation already paid and the amount of compensation to which he is entitled.

Public servants who are entitled to pension or superannuation payments shall be excluded from this right but shall receive the said compensation until the pension or superannuation authorized is issued. The bodies responsible for issuing such authorizations shall do so within a maximum period of four months;

8. The right to participate in the superannuation, pension and survivors' pension schemes in accordance with the applicable law;

9. The right to receive a family allowance if eligible under the fiscal provisions and in accordance with the applicable law;

10. The right to promotion to a more senior post and/or salary on the basis of proved efficiency and merit in accordance with the provisions of this Act;

11. The right to a fair salary that enables him to lead a decent life, appropriate to his responsibilities and his personal merit; and,

12. The right to mandatory leave with pay for thirty days before and forty-five days after confinement.

Article 62. Public servants who have not been appointed on the basis of a competitive examination shall be covered by the provisions of the

preceding article, with the exception of those contained in paragraphs 7 and 10 thereof, and those relating to appointment and separation from the service.

Article 63. Right of Association. Public servants shall have the right freely to form associations for professional, co-operative, mutual assistance, social or cultural purposes. Associations formed by public servants may not engage in political activities. Strikes by public servants are prohibited.

Article 64. Duties of Public Servants. In addition to those laid down in the laws and regulations, the duties of public servants are:

1. To swear allegiance to the Constitution of the Republic, and to respect and uphold it;
2. To comply with and to ensure compliance with this Act and its regulations;
3. To respect orders and instructions given by senior officials in conformity with the law, to comply with and to carry out efficiently the duties of their posts and, if necessary, to take responsibility for abuse of authority and for the execution of any orders that they may give without being absolved from personal responsibility for the actions of their subordinates;
4. To exercise discretion, even after having ceased to occupy their posts, concerning those matters which by virtue of their nature or by virtue of laws, regulations or special instructions require to be treated as confidential;
5. To perform their functions with dignity and respect for the public, their chiefs, colleagues and subordinates, to be careful of their personal appearance and to perform the tasks falling within their competence promptly, efficiently and impartially;
6. To avoid, both in the service and outside, the commission or acts contrary to the law, public decency and morality that might damage the prestige of the Public Administration;
7. To arrive at work punctually;
8. To conduct themselves loyally in the performance of their functions;
9. To use their initiative for the benefit of, and take an active interest in, the department in which they serve and the Public Administration generally;
10. To attend to the requirements of the National Civil Service Board or Office to submit whatever documents and information it may request for the purposes of this Act.

Article 65. General Prohibitions. In addition to those provided for in this Act and in any other Acts that may be applicable, the following general prohibitions shall apply to public servants:

1. They shall not discriminate on political, social, religious, racial or sexual grounds in such a way as to prejudice or benefit public servants or candidates for employment in the Civil Service;
2. No official or other employee shall use his official authority to compel his subordinates, or to allow them to be compelled, to engage in political activities, whether or not as part of their functions as public servants, or to engage in any other activity on behalf or to the detriment of any political party.

Article 66. Special Prohibitions. In particular, public servants shall be prohibited from:

1. Soliciting or accepting gifts, donations or rewards from their subordinates or from private individuals and from soliciting, giving or accepting gifts from their superiors or from private individuals, for the purpose of performing, failing to perform, or performing more carefully or more slowly any act which is part of or related to their functions;
2. Performing any of the acts described in the preceding paragraph for the purpose of obtaining an appointment, an increase in salary, promotion or any other similar benefit;
3. Soliciting or collecting direct or indirect contributions, subscriptions or dues from other public servants, except in the very special circumstances laid down by the regulations;
4. Engaging in activities or publicity of a political nature during working hours and at the place of work;
5. Taking account of the political affiliation of citizens when attending to their affairs and from favouring them or discriminating against them for such reasons;
6. Restricting, directly or indirectly, the right to vote; and,
7. No person may hold more than one paid public post or appointment, with the exception of those employed in educational centres or welfare agencies and then only if the time-tables are compatible.

...

TITLE IX

...

Chapter III

APPEALS AGAINST DECISIONS

Article 80. Procedure. The claims referred to in article 19, paragraph 6, of this Act, as well as others mentioned therein, shall be substantiated in the following manner: the employee shall submit his appeal in writing to the Director of the National Civil Service Office within three days of the notification of the contested decision.

Upon submission of the above-mentioned documents, the Director shall immediately inform the National Civil Service Board, whose ruling shall be given within a period, which may not be extended, or thirty days following receipt of the dossier. In appeals against dismissal only, if the Board has not given a ruling within that time-limit, recourse through the administrative channel shall be deemed to have been exhausted and the petition shall be considered to have been rejected, in which case appellants may have recourse to the Labour and Social Welfare Tribunals. These Tribunals shall follow rules of ordinary labour procedure and their ruling shall be final.

In other cases covered by this Act, the Board shall rule on all claims within the same period of thirty days but the rulings given shall be final and not subject to appeal.

The Board shall grant the appellant a hearing, which may not exceed forty-eight hours, to enable him to explain the reasons for his grievance.

Upon receipt of the dossier, the Board shall, whenever it considers it necessary, immediately ask the Director of the National Civil Service Office to arrange for further investigations the collection of additional evidence and the adoption of all measures considered necessary in order to obtain more complete information; in exercising this prerogative, the Board shall enjoy the fullest authority to determine and evaluate the facts relating to the case under consideration.

Dismissal rulings of the Board shall be entered by the Board's secretariat in the appropriate record.

Article 81. Effects of the Ruling. In dismissal cases, the National Civil Service Board shall determine whether the dismissal was justified or unjustified. If the Board rules that the dismissal was justified, the appointing authority shall immediately execute the decision in question, if it has not already ordered the suspension of the civil servant. If the Board rules that the dismissal was unjustified, the appointing authority shall accept the ruling as final and implement it immediately. The National Civil Service Board is empowered, on the basis of the established facts, to order the appointing authority to apply any of the penalties specified in this Act and to authorize the adoption of other measures to ensure the maintenance of discipline and order in the Service. In no circumstances may such decisions contravene the rights established in this Act.

In the event of the investigations carried out by the National Civil Service Office or the ruling of the National Service Board being favourable to the suspended civil servant, he shall be reinstated and paid the salary which was due to him during the period of suspension. The regulations of this Act shall establish the other formalities to be completed to ensure the implementation of the foregoing provisions.

Article 82. Abolition of Posts. The appointing authorities shall, subject to the approval of the National Civil Service Office, be empowered to order the removal of public servants when abolition of posts is considered necessary because of an unavoidable curtailment of services due to lack of funds or a reduction in staff through reorganization. Public servants so removed shall enjoy the rights specified in article 61, item 7.

Article 83. Reinstatement. Reinstatement of a civil servant shall create a new labour relationship but shall not affect previously acquired rights not covered by this Act, with the exception of those revoked on the grounds specified in article 76.

Article 84. Final Separation. The following shall constitute grounds for final separation of public servants from the competitive civil service:

1. Resignation by the public servant;
2. Dismissal or removal;
3. Total disability;
4. Retirement, in accordance with the relevant act.

ACT CONCERNING THE JUDICIAL ORGAN

Promulgated by Decree No. 1762 of 2 July 1968²

Sole Chapter

GENERAL PRINCIPLES

Article 1. The rule of law shall apply to all inhabitants of the Republic, including aliens, except where such provisions of international law as have been accepted by Guatemala otherwise ordain.

Article 2. Ignorance, desuetude or contrary custom or practice may not be invoked as reasons for failure to observe the law.

Article 3. Instruments executed contrary to the purport of the law shall be void, save where the law recognizes their validity.

Article 4. The special provisions of an Act

shall take precedence over the general provisions thereof.

Article 5. Legislation shall be annulled by subsequent legislation:

- (a) Where this is expressly stated in the latter;
- (b) Partially, where the provisions of the new legislation are incompatible with those of the old;
- (c) Completely, where the new legislation fully regulates the matters covered by the earlier legislation; and

(d) Completely or partially, where the Constitutional Court hands down a definitive judgement declaring legislation to be unconstitutional.

Article 6. The rights granted by law may be waived, provided that such waiver is not contrary to the public interest or to public policy or harmful to a third party, and that it is not prohibited by other legislation.

² *Ibid.*, vol. CLXXXIII, No. 14, of 26 July 1968.

Article 7. The public interest shall take precedence over private interests.

Article 8. The words of an Act shall be construed in their natural and obvious sense, as defined in the dictionary of the *Real Academia Española*; however, when words have been expressly defined by the legislator, they shall be given their legal meaning.

Article 9. When the meaning of an Act is clear, its literal purport shall not be disregarded on the pretext of invoking its spirit.

Article 10. The technical words used in any science or art shall be taken to have their appropriate meaning, unless it is clearly evident that they have been used in a different sense.

Article 11. The individual parts of an Act shall be interpreted and construed in the light of the whole; however, obscure passages in an Act may be elucidated by reference to the following, in the order indicated:

1. The spirit of the Act;
2. A trustworthy account of the proceedings by which it was enacted;
3. The provisions of other Acts governing similar cases; and
4. Whatever appears most concordant with equity and the general principles of law.

Article 12. Judges may not suspend, delay or refuse the administration of justice without incurring responsibility therefor.

Where the law is lacking, obscure, ambiguous or inadequate, judges shall deliver judgement in accordance with the rules established in the preceding article and shall then report the case to the Supreme Court of Justice, so that the matter may be dealt with as laid down in article 171 of the Constitution of the Republic.

Article 13. A person's status and capacity shall be governed by the laws of his place of domicile.

Article 14. Civil capacity, once acquired, shall not be affected by a change of domicile.

Article 15. The civil status acquired by an alien under foreign laws shall be recognized in Guatemala unless such laws are contrary to the Guatemalan laws concerning public policy.

Article 16. The law of the country in which a person resides shall determine the conditions to be fulfilled in order that residence may constitute domicile.

Article 17. Property of whatsoever kind situated in Guatemala shall be subject to Guatemalan law, even where the owner is an alien.

Article 18. The law of the place where instruments are executed or where contracts are to be performed shall govern their nature, validity, effects, consequences, execution and all other matters relating thereto, under whatsoever head.

Article 19. The procedures and formalities required for all documents establishing rights and obligations shall be governed by the law of the country where they are executed. However, Guatemalans or aliens residing outside Guatemala may abide by the requirements laid down by Guatemalan law where the instrument or contract is to be executed in Guatemala.

Diplomats and career consular officers, if they are notaries, are empowered to attest such instruments and contracts. These may also be attested by Guatemalan notaries, on unstamped paper, having legal effect as from the date on which they are registered in Guatemala. Registration may be effected by the notary who attested the document, acting alone, or by another notary acting at the request of the beneficiary.

Article 20. Jurisdiction, procedure and means of defence shall be governed by the law of the place where the action is brought.

Article 21. An alien, even if he is outside the Republic, may be summoned to appear before the courts of Guatemala:

1. When any real action is brought relating to property situated in Guatemala;
2. When any personal action is brought deriving from and relating to instruments and contracts made in Guatemala;
3. When an obligation has been contracted abroad and it has been stipulated that disputes relating thereto shall be settled by the courts of Guatemala.

Article 22. Any person basing his rights on foreign legislation must prove that such legislation exists.

Article 23. The laws, documents and judgements of foreign countries, as well as private arrangements or agreements, shall have no effect if they infringe national sovereignty, the Constitution of Guatemala or the requirements of public policy.

Article 24. The law recognizes relationships by consanguinity up to and including the fourth degree, relationships by affinity up to and including the second degree, and civil relationship, which arises from adoption and exists only between the adopter and the adoptee. Spouses are related, but their relationship does not constitute a degree of kinship.

HAITI

NOTE ¹

In accordance with the spirit and letter of the various resolutions of the Economic and Social Council of the United Nations governing publication of the *Yearbook on Human Rights*, this Haitian contribution may be divided into two parts: *Part one*, which merely mentions briefly the acts, decrees, legislative-decrees, international conventions and contracts, etc., which are mainly general in scope and relate to educational, economic or social matters but which are only indirectly or occasionally applicable to human rights; and *Part two*, which comprises complete texts relating directly to human rights, or the main provisions of such texts, with introductory and explanatory commentaries.

PART ONE

At the present stage of development of the social sciences, it is recognized that the progress of an individual or of society depends on the combined action of two factors—that of education or instruction, which mainly concerns the mind, and that of relative economic well-being, which concerns the body—corresponding respectively to articles 25 and 26 of the Universal Declaration of Human Rights. All measures which have been adopted with the obvious aim of ensuring an improvement in one of these two areas may, therefore, be considered liable to exert a favourable influence on respect for, and effective enjoyment of, human rights and, consequently, should be mentioned briefly without commentary or publication of their texts. These measures are the following:

1. Four orders dated 31 January 1968, signed in pursuance of the Act of 18 July 1967 which established the Ministerial Department of Social Affairs in place of the Department of Labour and made provision for the administrative bodies responsible for ensuring the smooth operation of

the new Department. These four orders, obviously on the basis of the competence required, appoint the members of the Senior Council on Salaries, the Governing Board of the Labour Insurance Office (industrial accidents, sickness and maternity insurance), the Governing Board of the National Old-Age Insurance Office and the Governing Board of the National Housing Office. (*Le Moniteur*, No. 10 of 1 February 1968).

2. Act of 8 May 1968 approving the contract concluded on 3 May 1968 between the Haitian State and the Italian company Gruppo Industrie Elettromeccaniche per Impianti all'Estero, hereinafter referred to as GIE, established at Milan (Italy), relating to the supply of material and equipment for the installation of a hydro-electric power station at the Péligre dam and a transmission line and sub-station at Port-au-Prince (*Le Moniteur*, No. 40 of 1 May 1968).

3. Decree of 24 June 1968 ratifying the Convention of 21 March 1968 signed at Bogotá (Colombia) between the Haitian State and the Banco Popular with a view to promoting the development of savings in Haiti, by replacing the similarly named branch of the Banco Popular, whose registered capital, which was exclusively Colombian, amounted to one hundred and twenty-five thousand (125,000) dollars, by a joint stock, banking and loan company, called the Banque populaire Colombo-Haïtienne, with a capital of one million (1,000,000) dollars or 5 million gourdes in local currency, half of which is Haitian. (*Le Moniteur*, No. 52 of 24 June and No. 62 of 26 July 1968).

4. Decree of 8 August 1968 approving the contract concluded between the Haitian State and the Canadian Continental Telephone Company for the purpose of installing a telephone and telecommunication system and a cable and wireless system in the territory of the Republic (*Le Moniteur*, No. 66 of 8 August 1969).

5. Pursuant to the International Coffee Agreement adopted by the International Coffee Council at its eleventh plenary session held in London from 15 to 19 February 1968, the decree of 19 August 1968 replaced the National Coffee

¹ Note furnished by Dr. Clovis Kernisan, ex-Dean of the Faculty of Law at the University of Port-au-Prince, government-appointed correspondent of the *Yearbook on Human Rights*.

Board by the Haitian Institute for the Promotion of Coffee and Export Commodities (IHPCADE), a public agency with corresponding privileges and obligations, with a view to promoting the production of coffee, the country's principal source of revenue (*Le Moniteur*, No. 71 of 26 August 1968).

PART TWO

TEXTS RELATING DIRECTLY TO HUMAN RIGHTS

The purpose of these two texts is to ensure the direct and effective application of certain articles of the Universal Declaration of Human Rights. These decrees were promulgated by the Life President of the Republic by virtue of the extraordinary full powers conferred on him by the Constitution while the Legislative Chamber was in recess and until it reconvened on the second Monday in April.

1. *Decree of 8 January 1968* amended the Act of 5 March 1937 in order to guarantee rural Haitians, who make up 85 to 90 per cent of the total population, more effective protection of their right to own movable and immovable property, in accordance with the spirit of articles 10 and 17 of the Universal Declaration of Human Rights. It was time to end the brazen exploitation of the ignorance and naïveté of the rural people which had long been practised by unscrupulous businessmen seeking to appropriate the movable or immovable property of the peasants, illegally and without compensation, sometimes with the complicity of their dishonest lawyers or helped by the negligence of officers responsible for enforcing the Act. Appeals for such a measure addressed to the Head of State in recent newspaper petitions resulted in an immediate amendment of the earlier Act, the reasons being given two preambular paragraphs, the texts of which are reproduced in full below:

"(1) The provisions of the Act of 5 March 1937 do not really provide adequate protection for the rural population with a view to eliminating the wrongs committed against it through the greed of certain people who specialize in land-grabbing; (2) Accordingly, the Act should be amended to bring it into line with the norms of the Duvalierist Revolution, one of the main functions of which is to protect the peasant masses and improve their lot."

Such protection is provided under this decree by making it mandatory that the *Ministère public*—the *Commissaire du Gouvernement* or his deputy—should be involved in all proceedings instituted against persons living in rural areas relating to movable or immovable property, both during the hearing of the case and when the judgement is handed down and in any implementation of judicial decisions involving or implying expropriation of or eviction or expulsion from, premises, which may not take place without an opinion from the *Ministère public* stating the grounds on which it is based. These provisions are laid down subject to severe penalties, namely, the suspension of the official concerned with loss of salary or even the dismissal of any member of the *parquet* who fails to comply with them.

2. *Decree of 9 January 1968*, which brings the Haitian Act of 6 October 1885 into line with the new Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works, adopted at Washington on 22 June 1946, and the Universal Copyright Convention adopted at Geneva on 6 September 1962, in application of article 27 of the Universal Declaration of Human Rights.

This decree is based on two considerations: (a) since the judicial concept of the patrimonial nature of intellectual rights is gaining ground daily, it is important to take account of the demands of the modern age and of the significant evolution which is taking place almost everywhere towards the extension and strengthening of copyright in respect of literary, scientific and artistic works; and (b) at the same time, copyright in respect of letters should also be regulated. In view of the growing importance attached nowadays to intellectual or cultural relations between individuals or national organizations throughout the world, we believe it may be useful to publish the complete text of the decree, which is given below:

Article 1. Under the appellation "Copyright", the prerogatives relating to the exclusive exploitation of a person's creation, including all the modalities in respect of the protection which he may claim for it, are recognized in favour of the person under whose name a literary, scientific or artistic work is made public, constituting, at least for a limited period, a legal monopoly to this effect.

Article 2. The notion of copyright implies, by itself, a particular form of complete appropriation. It gives rise, independently of any suggestion of material integration in the intellectual works which form the subject thereof, to the juridical concept of incorporeal of intellectual property which forms the basis of literary and artistic property protected by law.

Article 3. Copyright confers the maximum of advantage upon its owner. To its character of exclusivity, which forms an obstacle to any rival claim in respect of the same works, there is added the quality of opposability, which is capable, if need be, of being invoked against all persons.

Article 4. Whereas subjective rights, established in relation to a totality of values, positive or negative, devolve upon the same person and are divided into patrimonial and extra-patrimonial rights, the monopoly of exploitation indicated in Article 1, and vested in the author, comprises only the patrimonial rights, without prejudice to the non-commercial privilege, which devolves upon him, of conserving the mastery of his thought and of his work, and of deciding, if need be, upon its publication or its non-publication. This right, which belongs to him alone, is absolute; it is discretionary.

Article 5. This moral or extra-patrimonial right, forming part of the attributes of personality, and not being capable of pecuniary evaluation, remains intangible and is inalienable and undistrainable.

Article 6. Further, the author has the right to choose between the publication of his work under

his name, or under another name, or in anonymous form.

Article 7. In so far as the author has not proceeded to publish his work, its reproduction by any means is strictly prohibited. No person may compel the writer or artist to reveal his intellectual or moral personality to the public.

Article 8. Accordingly, the work cannot be the subject of seizure on the part of creditors of the writer or of the artist.

Article 9. If the author consents to allow the publication of his work in a specified manner, the work may only be published in accordance with such manner. Agreements drawn up to this effect, in the form of a contract for publication, reproduction or performance, have the force of law as between the parties, in accordance with article 925 of the Civil Code.

Article 10. Copyright comprises the exclusive right of the author of a literary, scientific or artistic work to make use of his work and to authorize the utilization thereof, in whole or in part; to dispose of his rights, upon any basis, in whole or in part, and to transmit them by will or by operation of law. Utilization of the work may be effected in accordance with its nature, by any of the following processes, or by others which may come into existence hereafter.

The author may:

(a) Publish it, either in printed form or in any other form;

(b) Present, recite, exhibit or perform it publicly;

(c) Reproduce it, adapt it or present it by cinematography;

(d) Adapt it, and authorize its general or special adaptation to apparatus serving to reproduce it mechanically or electrically, or perform it in public by means of such apparatus;

(e) Diffuse it by photography, telephotography, television, radiodiffusion or by any other process at present known or which may subsequently be invented and which serves for the reproduction of signs, sounds and images;

(f) Translate it, transpose it, arrange it, score it, dramatize it, adapt it and, in general, transform it in any manner;

(g) Reproduce it, in any form, in whole or in part.

Article 11. Literary, scientific and artistic works, protected by the present Decree, comprise: books, manuscripts, brochures of all kinds, whatever their length, manuscripts or printed texts of lectures, speeches, lessons, sermons and other works of the same nature; theatrical and dramatico-musical works, choreographies and pantomimes, the acting form of which is fixed in writing or otherwise; musical compositions, with or without words; drawings, illustrations, paintings, sculptures, engravings, lithographies; photographic and cinematographic works; astronomical or geographical spheres, maps, plans, sketches or plastic works relating to geography, geology, topography, architecture, or any other science; and finally all literary, scientific or artistic productions, capable of being published or reproduced.

Article 12. The rights of an author in respect of unedited or unpublished works are equally recognized.

Article 13. The same protection is also granted to works of art executed principally for industrial purposes, without such protection extending to the industrial utilization of scientific theories.

Article 14. Translations, adaptations, compilations, arrangements, abridgments, dramatizations, or other versions of literary, scientific and artistic works, including photographic and cinematographic adaptations, enjoy the protection established by the present Decree as original works, without prejudice to the rights of the author in respect of the work utilized.

Article 15. When the works indicated in the preceding Article are ascribable to works which have fallen into the public domain, they are still protected as original works. However, this protection does not convey the exclusive right to utilize the basic work.

Article 16. Literary, scientific and artistic works which enjoy the benefit of legal protection and which are published in newspapers and magazines may not be reproduced without authorization, whatever the nature of their subject.

Article 17. Articles of news, published in newspapers and magazines, may be reproduced in the press unless their reproduction is forbidden by a special or general reservation included in them. In all cases, the source from which they originate must be indicated in a precise manner. However, the simple signature of the author shall be equivalent to a mention of reservation.

Article 18. The protection of the law does not apply to information contained in news of the day published in the press.

Article 19. The right to paternity, in respect of a literary or artistic work, is the right which the author has to publish the work under his name. Being an intellectual creation, the work is linked with the author by a relationship of intellectual filiation. Thus, if it is for the author alone to decide whether his work should or should not be published, it is also for him alone to decide whether his work should or should not be published under his name.

Article 20. The author is equally invested with the right to defend his name. Not only may he proceed against any person who gives a false name to his works and forbid such person to publish them under a name other than that of the author, but he may take proceedings against persons who usurp his name.

Article 21. The fraudulent use of the name of an author constitutes an infringement, and every infringement is an offence. In such a case, apart from the penalties of fine and confiscation specified, according to circumstances, in Articles 349, 350 and 351 of the Penal Code, which will be applied by the competent Correctional Court, the victim of the offence, by making himself a civil party, may also claim damages under repressive jurisdiction, in conformity with Articles 3 of the

Code of Penal Procedure, 11 of the Penal Code, and 1168 and 1169 of the Civil Code.

Article 22. An accomplice in infringement is punishable under the conditions of common law. He can be proceeded against even if the principal offender is unknown and has not been made a party to the proceedings.

Article 23. Authors have the exclusive right, during their lifetime, to sell, to cause to be sold, to distribute, to perform, to translate or to cause to be translated into another language, any of their works in general, to assign property in them, in whole or in part, employing the processes appropriate to the reproduction of each category of works, with due regard to the enunciations of Article 10 of the present Decree.

Article 24. Upon the death of an author, the same rights pass to his heirs, who will benefit from them, as owners of his patrimonial rights, for twenty-five years calculated from the date of his death, in the order and in accordance with the rules determined in the Civil Code in respect of succession. Thereafter, the protected works fall into the public domain.

Article 25. During this period of twenty-five years, the surviving spouse, having community of property to the exclusion of personal heirs, legatees and assigns is entitled, apart from other advantages which the law confers upon such spouse, to one-half of the receipts resulting from the exploitation of the intellectual works of the deceased author when such works were created during the course of the marriage. Any disagreement between interested parties will be resolved by the appropriate Courts.

Article 26. This division of pecuniary products will not operate in the event of a final judgement of judicial separation or divorce pronounced between spouses, and ceases if the said spouse contracts a new marriage.

Article 27. Any person who has published, reproduced, displayed or caused to be performed without being furnished with the written consent of the author or of his heirs or successors in title, an artistic, literary or scientific work of which he has not acquired the ownership, is guilty of the offence of infringement, and will be proceeded against and punished in accordance with the provisions of Articles 347, 348, 349, 350 and 351 of the Penal Code.

Article 28. The competent Magistrate (*Juge de paix*) is required to confiscate, upon the first request of the authors, their heirs or other proprietors, and for their profit, all examples or copies or reproductions of a work, printed or engraved or painted, or intended for any process, or sculpted, without the consent referred to in the preceding Article.

Article 29. The infringer shall, moreover, be ordered by the competent Court to pay damages.

Article 30. The vendor of infringing editions shall equally be liable for damages, in favour of the proprietor, even if such vendor is not recognized as an infringer.

Article 31. A parody or a pastiche will not be deemed to be an infringement. These are lawful, provided they do not constitute a reproduction of the original work and cannot mislead by causing confusion.

Article 32. Equally, there is occasion to distinguish between infringement and plagiarism. Plagiarism, although morally blamable, only gives rise to sanctions in the event of abuse which makes it assimilable to infringement. This is the case when borrowings from the works of other persons, without mention of source, are considerable and damaging. In this matter, the Courts enjoy considerable freedom in making appraisal.

Article 33. A translation, published without the authorization of the author, constitutes an infringement if the work is still in the private domain.

Article 34. All the means of proof under common law are admissible to establish infringement in the literary and artistic field.

Article 35. The President (*Doyen*) of the Civil Court may, by judgement on petition, authorize the seizure of infringing articles. Subject to any appropriate civil or penal action, his intervention ceases to be facultative in its application when required to have the effect of suspending public performances or presentations of theatrical works or musical compositions made in violation of copyright. Giving summary decision, in application of Article 754 of the Code of Civil Procedure, the President of the Civil Court shall be competent, in cases of duly established urgency, to order replevin or splitting-up of the seized articles constituting infringement, upon reasoned considerations, and without prejudice to the principal party.

Article 36. When the Civil Court, sitting in its normal capacity, has decided the matter at issue, at the request of the alleged infringer, the Court is competent to order the cancellation of the seizure, and even to condemn the distrainer, who is liable to pay damages. The Court is equally competent to pronounce infringement at the request of the author or his successors in title. Nevertheless, upon action by the alleged infringer, the author also has the right to reply by means of a petition direct to the Court of Petty Sessions.

Article 37. Even in the absence of complaint by the injured party, the Public Prosecutor may, as an administrative act, order seizure and proceed against infringers.

Article 38. In so far as the author has not revealed himself by the disclosure of his identity, proceedings may be validly instituted by the publisher in the case of anonymous works.

Article 39. Authors who have a pseudonym have, in this respect, the same rights as authors who publish under their real name.

Article 40. The offence of infringement prescribes after three years, in accordance with the distinctions between periods of time established by Articles 466 and 477 of the Code of Penal Procedure.

Article 41. Literary property, in respect of an intellectual work, exists as of right, from the sole fact of its creation, independently of any formality.

Article 42. The rights of foreign authors, nationals of a State bound by the same International Conventions as Haiti, are protected, under the benefits of reciprocity recognized by their domestic law, equally with the rights granted to Haitian authors, in respect of all works which are the product of the intellect, whatever their nature, value, extent or destination. However, as regards any work published in Haiti, the author or the owner of such right is required, before putting it on sale; to deposit six copies with the State Registry for the Interior and for National Defence, for distribution to public libraries by the Head of that Department. Moreover, when works of a didactic character and publications which are of interest to youth are concerned, three supplementary copies must be deposited with the Department of National Education, for purposes of control, without prejudice to the preceding provisions.

Article 43. This legal deposit shall be effected, for works published abroad and put on sale in Haiti, by a national of Haiti, or by a foreigner domiciled in Haiti, within three months of their publication.

Article 44. In the event of failure by the copy-right owner to carry out the above requirement, a summons will be served on him, through the Court Usher, at the request of the Government Commissioner, upon the written order of the Ministerial Departments concerned. If the deposit in question is not accomplished within thirty days following such summons, the offender will incur the penalty of a fine of two hundred and fifty gourdes, which will be pronounced against him by the competent Jurisdiction, at the instance of the Public Prosecutor. In the event of recidivism, this fine will be doubled.

Article 45. With a view to facilitating the utilization of literary, scientific and artistic works, use is recommended of the expression "*Droits Réservés*", or its abbreviation "D.R.", or the symbol "C" (within a circle), followed by an indication of the year from which protection commences, together with the name and address of the owner of the rights and the place of origin of the work, on the back of the title page, in the case of a written work, or in any other appropriate place, according to the nature of the work, as, for example, in the margin, on the back, on the permanent base, pedestal or substance upon which the work is affixed. It is, moreover, understood that the fact of reserving the rights in the above form, or in any other form, will be interpreted as a condition for the protection of the work in application of the present Decree.

Article 46. The author of any work which is protected shall, when he disposes of his copyright by sale, assignment, or in any other manner, conserve the right to claim paternity of his work, and to oppose any modification or utilization thereof which could be prejudicial to his reputation as author, unless, by earlier, contemporary or subsequent consent to such modification, he has assigned this right or has renounced it.

Article 47. The title of a protected work which, by reason of its international reputation, has acquired a character which is so distinctive that it gives it a special identity, shall not be reproduced in another work without the consent of the author. This prohibition does not extend to the use of a title in relation to works of such a different nature that all possibility of confusion is eliminated. Where appropriate, the suppression of the title, with requirement to the usurper for damages, in favour of the injured party, may be ordered, following legal proceedings.

Article 48. The proprietors of posthumous works, by succession or any other title, are assimilated to their authors and enjoy the same rights and privileges, subject to the obligation to print such works separately.

Article 49. When they present an original character, letters, that is to say, written matter which one person addresses to another and which constitute correspondence exchanged between them, also enjoy the same protection as is acquired for literary property.

Article 50. To this effect, it is necessary to distinguish, on the one hand, between the body of the letter, that is the material instrument, and on the other hand, the work itself or the content of the instrument.

Article 51. Although, as from its receipt, the material property of the letter belongs to the addressee, copyright resides in the person of the writer, and upon his death passes to his heirs or successors in title, who, in turn, conserve it for twenty-five years, in accordance with the provisions of Article 24.

Article 52. If, according to general principles, the author of a letter may freely dispose of his work and, in particular, alienate it, either for valuable consideration or gratuitously, he may, nevertheless, only publish it provided he does not mention the name of the addressee, unless so authorized by him, and provided it causes the addressee no harm, even of moral character.

Article 53. Assured by the material ownership of the letter, the addressee, for his part, has the right to conserve it for himself, and to refuse to restore it to the sender. He also has the right to require it to be restored in the event of it being unduly detained by a third party.

Article 54. Nevertheless, the rights of the author of the letter, and also those of the addressee, are limited by the right to secrecy. Secret matter included in the letter is inviolable; but this principle only applies to letters which are confidential in character. It is for the Judge concerned to decide the dividing line between letters destined to remain secret and those which can be divulged without penalty.

Article 55. Any violation of secrecy of a letter, which is not justified by a serious and legitimate interest, is an abuse of the right of ownership and can give rise to an action for damages, based upon the provisions of Article 1168 of the Civil Code.

Article 56. The present Decree abrogates all Laws or provisions of Laws, all Decrees, etc.

HOLY SEE¹

MESSAGE FROM HIS HOLINESS POPE PAUL VI OF 15 APRIL 1968 TO THE INTERNATIONAL CONFERENCE ON HUMAN RIGHTS HELD IN TEHERAN FROM 22 APRIL TO 13 MAY 1968

We learnt with lively satisfaction that the United Nations Organization, wishing to commemorate as is fitting the twentieth anniversary of the Declaration of Human Rights, decided to convene an international conference. And replying willingly to the invitation extended to Us, We have appointed a delegation to represent Us, whose leadership We have entrusted to Our dear son Theodor Hesburgh, Rector of Notre Dame University.

If this Declaration has "raised objections and been the subject of justified reserves", as Pope John XXIII pointed out, there is nevertheless no doubt that it has marked an important step "towards the establishment of a juridico-political organization of the world community", as the unforgettable Pontiff also emphasized with joy: "it acknowledges to all human beings the dignity of a person; it proclaims for every individual the right of free movement in the search for truth and the attainment of moral good and of justice, and also, the right to a dignified life, while other rights connected with these mentioned are likewise proclaimed".

So, in his Encyclical *Pacem in Terris*, a true spiritual testament which still lives in the memory of us all, Our venerated predecessor spoke of it with good reason as a "sign of the times". He immediately added, moreover, with realism: "May the day soon come when this United Nations Organization will effectively guarantee the rights of the human person, which derive directly from his dignity as a person, and which are therefore universal, inviolable and inalienable rights".

When the Vatican Ecumenical Council was being held in Rome, We Ourselves, as the interpreter of this fraternal Assembly, had the honour of making this United Nations programme Our own, at the rostrum of the Organization itself: "The ideal mankind dreams of in its pilgrimage through time, the greatest hope of the world: the

fundamental rights and duties of man, his dignity, his freedom, and above all religious freedom". For the Church, which shares "the joys and hopes, the griefs and anxieties of the men of this age" (*Gaudium et Spes*, para. 1), resolutely demands that "every type of discrimination with respect to the fundamental rights of the person . . . be eradicated as contrary to God's intent" (*ibid.*, para. 29, No. 2).

Who does not see it? There is a long road to tread in order to put into effect these declarations of intention, to translate the principles into deeds, to eliminate the numerous and constant violations of principles justly proclaimed "universal, inviolable and inalienable". Therefore we considered as a "duty of Our office", in Our Encyclical on the development of peoples, to echo the legitimate aspirations of men today, not hesitating to see there the action of "evangelical ferment in the human heart" calling with deep concern and hope on all men to live as brothers, since they are all sons of the living God (*Populorum Progressio*, paras. 2, 6, 13, 21).

With all men of good will, We shall follow with great interest this conference in Teheran which means to formulate and prepare a programme of measures to be taken in the prolongation of this Human Rights Year. Racial discrimination raises so many troubles, social injustice, economic misery and ideological oppression, so many revolts, that "recourse to violence, as a means to right these wrongs to human dignity, is a grave temptation". However, it must be repeated: "a real evil should not be fought against at the cost of greater misery" (*ibid.*, paras. 30 and 31). May all men of heart join together peacefully in order that the principles of the United Nations may be not only proclaimed, but put into effect, and that not only the Constitutions of States may promulgate them, but public authorities apply them, so that all men may finally lead a life worthy of the name.

The extent and urgency of the action to be accomplished require the support of all, one with another. How can the means be found to give

¹ Text of messages furnished by the Permanent Observer of the Holy See to the United Nations.

effect to international resolutions, for all peoples? How can the fundamental rights of man be assured, when they are flouted? How, in a word, can we intervene to save the human person, wherever it is threatened? How to make the leaders aware that this concerns an essential heritage of mankind, which no one may harm with impunity, under any pretext, without attacking what is most sacred in a human being, and without thereby ruining the very foundations of life in society? These are all grave problems and one cannot hide from this: it would be vain to proclaim rights if at the same time everything was not done to ensure the duty of respecting them by all people, everywhere, and for all people.

To speak of human rights is to affirm a common good of mankind, it is to work for the building of a fraternal community, for a world "where each man will be loved and helped as his brother, as his neighbour" (*ibid.*, para. 82). Such is the golden rule: "Whatever you wish that men would

do to you, do so to them" (Matt. 7,12). Faithful to this teaching of her divine Founder, the Church reaffirms it in this Human Rights Year, desiring to co-operate with all those of good will in "building a world where every man, no matter what his race, religion or nationality, can live a fully human life . . . , where freedom is not an empty word" (*ibid.*, para. 47).

This peaceful enterprise destined—We said yesterday in our Easter message—to affirm human rights "in a clearer, more authoritative and more effective way" well merits the generous emulation of all men of heart. There is no doubt that the Teheran Conference will bring its welcome contribution. We are happy the Conference is taking place in a country whose people are eager in their efforts to overcome illiteracy and to give woman her legitimate place in society. And We gladly call on all its participants as on their noble hosts the abundance of blessings of the Almighty.

MESSAGE FROM HIS HOLINESS POPE PAUL VI OF 4 DECEMBER 1968
TO HIS EXCELLENCY MR. EMILIO ARENALES CATALAN, PRESIDENT OF THE
TWENTY-THIRD SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS

In 1948, the United Nations, after the tragic experience of the Second World War, solemnly published its Universal Declaration of Human Rights, and during the past year this precious document has been placed before universal mankind as an ideal for the community of man. The realization of this goal, as urgent as ever, is still the principal goal of the United Nations, and it remains the basis of effective brotherly collaboration among men without which a true peace can never be achieved. In Our unforgettable visit to the General Assembly, We associated Ourselves with the programme of the United Nations in this important field by calling it the ideal of which the human race dreams in its pilgrimage in time and the greatest hope for the world. We stated that "you proclaim here the fundamental rights and duties of man, his dignity, his freedom, and above all his religious freedom". In substance, you have placed before the world ideals which dedicated men have striven to achieve, a fundamental principle expressed in the Constitution of the United States—"All men have been created equal; they have been endowed by the Creator with inalienable rights, among which are life, liberty and the pursuit of happiness".

This Universal Declaration of Human Rights is equally important today; it has indicated a course that cannot be abandoned if mankind sincerely wishes to achieve peace. The events of our days, unfortunately, make it evident that this brotherly collaboration in an atmosphere of respect and understanding is still cruelly contradicted in many parts of the world, by racial, ideological

and religious discrimination, by the forceful subjection of weaker nations, by political regimes which deprive citizens of just freedom, by recourse to threats and violence instead of recourse to negotiations to resolve conflicts of self-interest. There is a direct relation between human rights and peace. It is impossible to have true and lasting peace where human rights are unrecognized, violated and trampled upon.

The Catholic Church will not remain indifferent to responsibility towards the unity of the human family. She seeks not to impose new structures or establish juridic norms for the City of Man, but she does insist that these norms be inspired by the principle of respect for human rights and by the promotion and preservation of these same rights. On January 1st, the universal Church will sponsor a World Day of Peace, and she will emphasize the theme that promotion of the rights of man is the path towards peace. In this We follow closely the example of Christ, who has given to the Church the message of love from which the norms of moral life derive and which sanctions fully the respect owed to the human person.

We call upon you, Your Excellency, and your colleagues, who represent the aspirations of all men, not to cease your efforts to make the Universal Declaration of Human Rights a reality which will bring about the peace so desired by men everywhere. For Our part, by prayer, in season and out, We shall beg God's blessings upon the efforts of the United Nations for men, brothers of one human family and children of one God.

HONDURAS

ORGANIC ACT CONCERNING THE HONDURAN INSTITUTE OF ANTHROPOLOGY AND HISTORY

Promulgated by Decree No. 118, of 16 October 1968 ¹

Article 1. The Honduran Institute of Anthropology and History is hereby established, . . . It shall be governed by this Act, its regulations and other applicable provisions . . .

PURPOSE

Article 5. The purpose of the Institute shall be to protect, explore, restore, recover, collect and undertake scientific research concerning the archaeological, anthropological, historical and artistic treasures of the nation, and places which are typically Honduran or notable for their natural beauty.

¹ *La Gaceta*, No. 19,654, of 24 December 1968.

HUNGARY

NOTE ¹

The Hungarian People's Republic devotes special attention to guaranteeing and realizing human rights in the fullest possible measure. This endeavour is evidenced with increasing strength in the Hungarian legislation as well. The protection and development of human rights were further enhanced in 1968 by the following statutory provisions and Supreme Court ruling:

Act I of 1968 on Minor Offences (Chapters II, V and VI);

Law-Decree No. 19 of 1968 on the eligibility for sick-pay of single workers attending to their sick children (Article 1, paras. 1 and 2) and in connexion therewith, Government Decree No. 23/1968/VI.30 defining the term "single workers" (Article 3);

Government Decree No. 20/1968/V.21 on Family Allowance (Articles 1 to 4, 7 and 8);

Government Decree No. 34/1968/IX.21 or the Social Insurance Coverage of Hungarian Citizens Taking Up Employment Abroad (Articles 1 to 7);

Ruling No. 460 of the Criminal and Military Division of the Supreme Court on widening the scope of functions of defence counsel, which serves to orient lower courts and to influence thereby judicial practice.

Extracts from the statutory provisions and the text of the Supreme Court ruling are given below.

Act I of 1968 on Minor Offences

Chapter II

PUNISHMENTS AND MEASURES

TYPES OF PUNISHMENTS AND MEASURES

Article 16. (1) The punishments applicable for minor offences are fines and, in exceptional cases defined by law, confinement.

(2) The measures applicable in case of minor offence are admonition, confiscation and public notification of decision.

FINES

Article 17. (1) The lowest possible fine shall, with the exception of on-the-spot fine, be 20 forints and the highest 5,000 forints.

(2) The highest fine decreed by village councils and councils of higher rank may be 500 and 1,000 forints respectively.

Article 18. (1) A fine not paid shall be commuted to confinement if it cannot be deducted from wages (other emoluments).

(2) A fine shall not be commuted if imposed by an inspectorate (Articles 35 and 36) or on the spot.

(3) In case of commutation, one day of confinement shall be counted as equivalent to 20 to 200 forints. The term of confinement in lieu of fine shall not be less than one day and not more than thirty days.

CONFINEMENT

Article 19. (1) Confinement as a punishment for minor offences may be prescribed by law or law-decree.

(2) The duration of confinement shall range from one day to thirty days.

ADMONITION

Article 20. The proceeding authority applies admonition in lieu of punishment when, considering the gravity and nature of the minor offence, the facts of its commission and the personal circumstances of the perpetrator, it can be expected to produce the desired educational effect.

CONFISCATION

Article 21. (1) The following objects shall be confiscated:

(a) Anything which was used as a tool in committing the minor offence or came about as a

¹ Note furnished by the Government of Hungary.

result of its commission, provided its possession is prohibited by law or its possession by the perpetrator, is dangerous to public order or public security;

(b) Anything received by the perpetrator for the commission of the minor offence.

(2) An object whose confiscation is prescribed or permitted by special regulations establishing minor offences shall or may be confiscated unless confiscation is liable to cause disproportionate prejudice.

(3) Confiscation under paragraphs (1) and (2) shall also be admissible if the perpetrator cannot be held responsible or his calling to account is excluded by a procedural impediment.

(4) Confiscation shall not prejudice the right of another person, whether natural or juristic.

PUBLIC NOTIFICATION OF DECISION

Article 22. In case of fine or confinement, the enforceable decision may be ordered to be publicly notified within determined limits (workplace, tenement house, local community) if, considering the gravity and nature of the minor offence committed as well as the personal circumstances of the perpetrator, public notification can reasonably be expected to produce an increase educational and deterrent effect.

IMPOSITION OF PUNISHMENT

Article 23. (1) Punishment shall, within the framework defined by law, be imposed in a manner having regard to the gravity of the act and the personal circumstances of the perpetrator.

(2) If proceedings are instituted against the perpetrator in several cases before the same authority, all minor offences shall be considered in one proceeding and one punishment shall be imposed for all minor offences. In this case, the upper limit of the punishment established for the gravest minor offence considered by the proceeding authority may be imposed.

(3) If the same person is called to account in one proceeding for several financial, customs or currency contraventions, the fine shall be imposed for each minor offence separately but fixed in one amount. In this case, the fine fixed in one amount may exceed the sum of 5,000 forints.

INCLUSION OF REMAND

Article 24. (1) The whole period of remand shall be included in the duration of confinement imposed.

(2) Remand shall be deemed to have settled a proportionate part of the fine according to the commutation set out in Article 18 (3).

PRESCRIPTION OF PUNISHMENT

Article 25. (1) Punishment shall not be executed if one year has elapsed since the date of final decision. The period of prescription, however, shall not be credited with respite and the time granted for deferred payment.

(2) Prescription shall be interrupted by acts of execution. The period of prescription shall commence again on the day of interruption. Enforceability shall cease upon the expiry of two years from the date of final decision.

EXEMPTION FROM PREJUDICIAL LEGAL CONSEQUENCES

Article 26. The perpetrator shall, after two years from the date of final decision imposing punishment, be exempted from the prejudicial legal consequences attached by other statutory provisions to arraignment for minor offences.

SPECIAL PROVISIONS RELATING TO YOUNG PERSONS AND TO SERVICEMEN

Article 27. (1) If a minor offence has been committed by a young person who is of school age or takes part in regular school education, the minor offence shall, as a rule, entail application of disciplinary measures by the school.

(2) A fine may only be imposed on a young person having an earning or income of his own.

(3) A fine imposed on a young person shall not be commuted to confinement.

(4) Confinement may only be imposed on a young person who has completed the sixteenth year of age at the time the minor offence was committed.

(5) For the purposes of the provisions relating to minor offences, a young person is he who has completed his fourteenth but not yet his eighteenth year of age when the minor offence was committed.

Article 28. (1) If the minor offence has been committed by a serviceman, a disciplinary measure shall be applicable.

(2) For the purposes of the provisions relating to minor offences servicemen are: persons in active service with the armed forces (people's army, frontier-guard, military organs of civil defence) as well as members of the police force and the penitentiary guard, and, in case of minor offences committed in service or in relation thereto, members of the militia as well as of the customs and revenue guard entitled to wearing of uniform.

Chapter V

HEARING

GENERAL PROVISIONS

Article 52. (1) The proceeding authority shall hear the case if so warranted by the establishment of facts or the attainment of educational effect.

(2) During the hearing, the proceeding authority shall hear the perpetrator, the witnesses and, where necessary, the expert.

(3) The hearing shall ordinarily be held in the chambers of the proceeding authority. In justified cases the hearing may take place outside the seat of the proceeding authority.

(4) A record shall be made of the hearing to contain a brief statement of anything essential to the judgement of the case.

(5) The proceedings shall, as a rule, be concluded at one hearing and the decision of first instance shall be brought possibly within thirty days from the institution of proceedings. This latter provision shall also apply if no hearing is held in the case.

REPRESENTATION

Article 53. A power of attorney or legal representative or a relative (Article 60, paragraph 3) may act on behalf of the perpetrator and the injured person at any stage of the proceedings.

SUMMONS

Article 54 (1) The proceeding authority may oblige a person whose hearing is justified to be present at the hearing.

(2) Members of the armed forces and of the police force shall be summoned through their commanders.

(3) The proceeding authority may, on justified grounds, request the minor offences authority competent for the place of residence of the person to be heard to effect the hearing and to transmit to it the record thereof. The date of the hearing shall be notified to the persons referred to in Article 58 (1).

Article 55. (1) The proceeding authority may impose a fine of 10 to 100 forints on a person who has ignored the summons to appear or has left before the hearing—or may, in lieu thereof, initiate disciplinary measures against any of the persons referred to in Article 54 (2)—and may oblige him to pay the costs so incurred. This provision shall also apply if the witness declines to depose or the expert to give his opinion without good reason.

(2) The perpetrator failing to appear despite a repeated summons and to give sufficient reason for his absence may, with the approval of the procurator, be compelled to appearance through the police.

(3) If the person summoned has given sufficient reason for his absence, the proceeding authority revokes its decision rendered under paragraphs (1) and (2).

CONDUCT OF PROCEEDINGS

Article 56. (1) All hearings shall be public. The proceeding authority may, however, order the restriction or exclusion of publicity if warranted by the nature of the case.

(2) The proceeding authority may call a person to order for obstructing the course of proceedings, order him to leave the room or fine him 10 to 100 forints for repeated or serious misconduct, or may, in lieu thereof, initiate a disciplinary measure against the persons referred to in Article 54 (2).

Article 57. (1) Once the identity of the perpetrator, the truth and the facts of the case have been established, the perpetrator shall be heard circumstantially and be given an opportunity for a coherent presentation of arguments in his defence.

(2) If during the hearing the perpetrator admits the commission of the minor offence and there is

no reason for doubt as to his admission, the taking of further evidence may be dispensed with.

Article 58. (1) The perpetrator and the injured person and their representatives may add their observations on the statements made at the hearing, may ask questions of the persons heard, and may present motions on the hearing of other persons and the taking of further evidence.

(2) The proceeding authority may order the taking of supplementary evidence even in the absence of a motion thereon.

Article 59. If the perpetrator has failed to appear at the hearing despite the prescribed summons, the proceeding authority may examine the case in his absence and render a decision. It shall, however, set a new date for the hearing if warranted by the ascertainment of facts or the attainment of educational effect.

WITNESS

Article 60. (1) If the perpetrator or the injured person is present at the hearing, the witnesses shall be heard in their presence.

(2) A witness shall, before hearing, be advised of his obligation to speak the truth and of his exemption, if any, from giving testimony.

(3) Testimony may be refused by a person who is the perpetrator's:

(a) Linear relative or his/her spouse;

(b) Adoptive or foster-parent, adopted or foster-child;

(c) Brother, sister, spouse or life-companion.

(4) Testimony may be refused in matters in which the witness would, by giving evidence, incriminate himself or any of his relatives enumerated in paragraph (3).

(5) The provisions of this Article shall also apply to the expert accordingly.

COSTS OF PROCEDURE

Article 61. (1) If the proceeding authority has established the commission of a minor offence, the costs of procedure (expenses of the witness and the expert, fee of investigations, etc.) shall be paid by the perpetrator.

(2) If the proceedings have been terminated, the costs of procedure shall be borne by the State. The perpetrator shall nevertheless be liable to pay the costs of procedure if the proceeding authority has established the responsibility of the perpetrator and has terminated the proceedings without his arraignment or by recourse to admonition (para. 1 (a)-(b) of Article 49).

(3) The costs of procedure shall be subject to prescription after five years from the date of final decision.

DECISION

Article 62. (1) The proceeding authority shall, on the basis of the hearing, bring a decision either applying a punishment (measure) against the perpetrator or terminating the proceedings (Articles 48 and 49).

- (2) The decision rendered in due form shall:
- (a) Name the proceeding authority and indicate the number and nature of the case;
 - (b) Contain, in the operative part, the particulars of the perpetrator, indicate the minor offence and the punishment imposed (measure applied) and other dispositions, state the length of confinement in lieu of fine, and to give reference to enforcement and legal redress;
 - (c) Give a brief statement of the reasons for the decision, indicating the facts established, the evidence weighed, the circumstances considered in the imposition of punishment, and refer to the statutory provisions establishing the minor offence concerned;
 - (d) State the place and date of the decision.
- (3) The decision shall be signed by the person acting on behalf of the proceeding authority.

COMMUNICATION OF DECISION

- Article 63.* (1) The decision shall be pronounced at the hearing.
- (2) The decision shall be served on the person entitled to appeal (Article 68) unless he has accepted it when pronounced.

MEASURES TO PREVENT MINOR OFFENCES

Article 64. With a view to preventing further minor offences, the proceeding authority shall, in justified cases, notify the reporting organ, or the organ authorized to take measures, of the decision rendered in the case and of the causes and circumstances which have led to the commission of the minor offence.

CORRECTION AND COMPLETION OF DECISION

- Article 65.* (1) The decision is corrected by the proceeding authority in case of a misnomer, a wrong number, a miscalculation, or other errors of a similar nature.
- (2) The decision is completed by the proceeding authority with any additional point of substance which has not been considered previously.
- (3) Any correction or completion shall be communicated to the person who has been notified of the original decision and/or is affected by the supplementary decision. The supplementary decision shall be appealable.

EXCUSE FOR ABSENCE

- Article 66.* (1) If, through no fault of his own, the perpetrator has failed to appear at a set date or observe a time-limit, the consequences of absence and omission may be remedied by excuse. A person entitled to appeal may also excuse his failure to observe the time for appeal.
- (2) An application for excuse may be submitted within eight days from the date or the last day of the time-limit missed. If the omission became known to the perpetrator (the person entitled to appeal) afterwards or the impediment ceased to exist subsequently, the eight-day term shall commence on the day on which such knowledge was obtained or the impediment removed.

- (3) No application for excuse shall be admissible beyond three months from the date (time-limit) missed.

Article 67. (1) The application for excuse shall be decided upon by the proceeding authority before which the omission occurred. In case of missing the time for appeal, decision shall lie with the authority of second instance.

- (2) In case of acceptance of the application for excuse, the proceeding authority orders continuation of the proceedings and, subject to the result thereof, upholds its original decision or revokes it and renders a new decision.
- (3) The application for excuse shall have no delaying force either in regard to the continuation of proceedings or to the execution of decision but the proceeding authority may, in justified cases, suspend the execution of decision.

Chapter VI

LEGAL REMEDIES AND SUPERVISORY MEASURES

APPEAL

Article 68. (1) The perpetrator shall have a right of appeal from the decision of the proceeding authority passed upon the merits of the case in the first instance. A person who has claimed damages or has presented his claim for damages under Article 49 (2) or who is affected by the decision shall similarly be entitled to appeal against that part of the decision which bears on him.

- (2) The person concerned may appeal against other decisions only if the proceeding authority imposes a fine (Articles 55 and 56), charges the costs of procedure, or an appeal is specifically permitted by this Act.
- (3) An appeal may be given at the time the decision is pronounced or within fifteen days from the date of service. The appeal shall be lodged with the authority of first instance.
- (4) The appeal shall delay the execution of decision.

Article 69. (1) The proceeding authority of first instance shall refuse an appeal lodged beyond the set time-limit or presented by a person other than that entitled thereto.

- (2) The authority of second instance shall, as a rule, decide a case appealed against on the basis of the files thereof. Where necessary, however, it may summon the persons concerned and decide on the basis of their hearing and of other evidence as may have been produced. It may also order evidence to be taken by the authority of first instance. A decision on the merits of the case shall be handed down within thirty days.
- (3) The authority of second instance may:
- (a) Approve;
 - (b) Alter; or
 - (c) Rescind the decision of first instance and terminate the proceedings or order new proceedings, or take another measure as appropriate.

(4) The authority of second instance shall communicate its decision in accordance with Article 63. Its decision shall be served through the authority of first instance.

SUPERVISORY MEASURES

Article 70. (1) If in the exercise of its supervisory function the superior organ of state administration finds a contravention of the law in the decisions rendered or the measures taken by the subordinate authorities in connexion with minor offences, it shall eliminate such a contravention. In so doing it shall not alter the decision (measure) to the detriment of the perpetrator but may, if the proceedings were terminated in violation of law, order new proceedings within six months from the date of the final decision or of the measure taken.

(2) Complaints against the decisions or measures of the administration and financial departments of the executive committee of the county council, town council of county rank or the council of Budapest, as well as public notifications or suggestions shall be dealt with by the chairman of the executive committee of the respective council.

LEGALITY CONTROL BY THE PROCURATOR

Article 71. (1) The procurator shall supervise the legality of decisions rendered and measures taken by the authorities proceeding in cases of minor offence. In this function the procurator shall have the same rights as are exercised in the course of general legality control and may also participate in the proceedings on the case with a voice but not vote.

(2) The procurator may lodge a protest with the proceeding authority against the decisions or measures violating the law. He may intervene in the interest of eliminating illegality revealed by unlawful conduct of affairs or by default, and may warn against the possible occurrence of future infringements of the law.

(3) The protest of the procurator shall delay the execution of the decision (measure) objected to. A protest to the detriment of the perpetrator may only be lodged within six months from the date of the final decision or of the measure taken.

(4) The exercise of the right to protest, intervention and warning shall, in other aspects, be governed by the statutory provisions concerning the Procurator's Office.

Law-Decree No. 19 of 1968 amending Law-Decree No. 39 of 1955 on Workers' Sickness Insurance

The Presidential Council of the People's Republic modifies certain provisions of Law-Decree No. 39 of 1955 as follows:

Article 1. Article 11 of the Law-Decree shall be superseded by the following provisions:

"Article 11. (1) Sick-pay shall be due to a working mother who is prevented from work by attending to her ill child under one year of age or by nursing it in hospital.

"(2) Sick-pay shall also be due to a single working man who is prevented from work by attending to his ill child under one year of age."

Government Decree No. 23/1968/VI.30 amending Government Decree No. 71/1955/XII.31 on the Enforcement of Law-Decree No. 39 of 1955 on Workers' Sickness Insurance

Article 3. Article 18 of the Government Decree shall be superseded by the following provisions:

"Article 18. (1) A single person shall be deemed to be one in employment:

(a) Who is unmarried, widowed, divorced or living apart from his/her spouse;

(b) Whose husband is in regular military service;

(c) Whose spouse:

— is under arrest;

— is serving a term of imprisonment;

— attend the day-time course of a higher educational establishment;

— is expected to remain fully incapable of work for at least six months in consequence of his/her physical or mental infirmity or illness;

— is a pensioner;

— is under compulsory medical treatment ordered by a court of law,

and his/her earnings (income) or pensions do not exceed 500 forints a month;

(d) Who lives in the same apartment with his/her spouse but

— is suing for a decree of divorce;

— on account of termination of marital relationship is, under a court decision (settlement in court), paying a maintenance to his/her spouse or to their child in the custody of his/her spouse or is receiving a maintenance for himself/herself or for their child in his/her custody.

"(2) A person in employment who has a life-companion shall not be deemed to be a single person during the continuance of cohabitation. The provisions of paragraph (1) shall accordingly apply also to the life-companion."

Government Decree No. 20/1968/V.21 amending Government Decree No. 16/1966/VI.1 on Family Allowance

Article 1. Article 1 of the Government Decree shall be superseded by the following provisions:

"Article 1. This Decree shall apply to:

(a) Persons in employment;

(b) Members of agricultural and fishing co-operative farms;

(c) Members of lower forms of agricultural co-operatives;

(d) Professional, re-enlisted and retired officers of the armed and police forces;

(e) Members of artisan co-operatives;

(f) Persons engaged in home industry;

(g) Persons entitled to old-age or invalidity pension;

(h) Students of higher educational establishments on social scholarship;

(i) Industrial apprentices in the last year of studies."

Article 2. (1) Article 2, paragraph 2, of the Government Decree shall be superseded by the following provisions:

"(2) A single worker or a blind worker whose spouse (life-companion) is similarly blind shall be entitled to family allowance also for one child."

Article 3. Article 5 of the Government Decree shall be superseded by the following provisions:

"Article 5. Family allowance for a child receiving an orphan's maintenance allowance shall not be due except to single or blind workers referred to in paragraph 2 of Article 2."

Article 4. Article 7 of the Government Decree shall be superseded by the following provisions:

"Article 7. A working person shall continue to be entitled to family allowance even after termination of employment:

(a) For the period of military service, or of foreign studies on scholarship from the competent organ of supervision, or of attendance at a full-time school (course, training camp) organized by State, co-operative or social organs, provided that in the month of the occurrence of the said conditions or in the one immediately prior thereto he/she was in an employment qualifying for family allowance;

(b) For the period in which he/she enjoys a sick-pay or a maternity-confinement allowance."

Article 7. Article 16 of the Government Decree shall be superseded by the following provisions:

"Article 16. (1) Family allowance shall be due to a co-operative farm member who in the previous calendar year has worked at least 120 work-days (80 in the case of women) in collective labour.

"(2) A co-operative farm member who in the previous calendar year has worked less than 120 (80) work-days shall, from the first day of the following calendar year, be entitled to family allowance in proportion to the number of days worked, namely for a period of one month per every 10 days (7 in the case of women) in collective labour.

"(3) The detailed rules for the calculation of days worked in collective labour shall be laid down by the Central Council of the Hungarian Trade Unions with the concurrence of the Minister of Agriculture and Food in consultation with the Secretary-General of the National Co-operative Farms Council."

Article 8. Article 19 of the Government Decree shall be superseded by the following provisions:

"Article 19. (1) The amount of family allowance due to a co-operative farm member per calendar month shall be a total of:

- 200 forints for two children;
- 360 forints for three children;
- 120 forints for every further child.

"(2) A single co-operative farm member or a blind one whose spouse (life-companion) is similar-

ly blind shall receive a monthly sum of 120 forints for one child, 240 forints for two children, and the sum indicated in paragraph (1) for every further child.

"(3) The family allowance due to a co-operative farm member shall amount to 120 forints monthly for one child suffering from infirmity or illness as referred to in paragraph (3) of Article 2. In case of entitlement to family allowance for two children, one or both of whom suffer from infirmity or illness as referred to in paragraph (3) of Article 2, the monthly sum of family allowance shall be a total of 240 forints for the two children. For three or more children, the sum provided for in paragraph (1) shall be payable in all cases."

Government Decree No. 34/1968/IX.21 on the Social Insurance Coverage of Hungarian Citizens Taking Up Employment Abroad

The Hungarian, Revolutionary Workers' and Peasants' Government decrees the following with regard to the social insurance coverage of Hungarian citizens taking up employment abroad:

Article 1. (1) This Decree shall apply to Hungarian citizens who, in possession of a labour permit issued by the competent authority, take up employment abroad (hereinafter referred to as employees) in order to:

(a) Fill posts allotted to Hungary at international organizations;

(b) Execute interstate conventions, or treaties (agreements) concluded by Hungarian State and social organs;

(c) Execute agreements on manpower co-operation with the socialist countries;

(d) Exchange experience or enlarge professional knowledge at foreign employers for the purpose of solving specific tasks for their enterprises or other organs.

(2) The provisions of this Decree shall also apply to family members living with the employees and similarly contracting for work.

(3) Hungarian citizens taking up employment in a State with which Hungary has a convention on social security shall be subject to the provisions thereof.

Article 2. The employees shall, regardless of whether or not they are in employment in Hungary, be covered by the sickness insurance scheme for the duration of their employment abroad.

Article 3. (1) The employees and their family members shall, while abroad, enjoy maternity allowance and funeral grant in the way of sickness insurance benefits under the same conditions as the employed persons in Hungary and members of their families, being entitled to reimbursement of 85% of the expenses of medical treatment, medicaments, spa therapy, medicinal waters, medical appliances, artificial teeth, dental protheses and hospitalization, including surgery. Expenses in excess of the above scale shall not be reimbursed.

(2) The benefits referred to in paragraph (1) shall be enjoyed by the employees and members

of their families during their stay abroad only if, subject to confirmation by the respective foreign representation, the employees are not covered by compulsory sickness insurance under foreign legislation or have no recourse to voluntary sickness insurance in the country of employment.

(3) The expenses of certified use of services shall be refunded in Hungarian currency.

Article 4. The employees and members of their families shall, while staying in Hungary, enjoy the same benefits of sickness insurance under the same conditions and to the same extent as the employed persons in Hungary and members of their families.

Article 5. Accidents and diseases arising in connexion with employment abroad shall not be regarded as industrial accidents or occupational diseases.

Article 6. The employees shall not be eligible for family allowance during the period of employment abroad.

Article 7. With the additional conditions otherwise prevailing, the employees and members of their families shall be entitled to sickness insurance benefits only if they have paid their contribution due for at least three calendar months preceding the accrual of entitlement not later than the day on which entitlement accrues.

Ruling No. 460 of the Criminal and Military Division of the Supreme Court

The scope of powers of attorney conferred on a defence counsel in criminal proceedings is determined partly by the tenor of assignment, partly by the nature of proceedings.

The powers of a selected or appointed counsel for the defence are as a rule valid until final completion of a criminal case.

The provisions of criminal procedure guarantee the defendant extensive rights to defence.

The defendant is entitled to select a counsel immediately upon the institution of proceedings against him. Counsel for the defence may act on behalf of the defendant at any stage of the proceedings (Article 7 (2) and Article 41 of the Code of Criminal Procedure).

Article 38 of the Code of Criminal Procedure makes it mandatory, in the cases enumerated in paragraph (1), for the interests of the defendant

to be represented by defence counsel at the trial and even at the preliminary stage of proceedings, and if the defendant does not have a defence counsel, designated or selected, the presiding judge shall appoint a counsel *ex officio*. If so required by the interest of the defendant, the court may, even outside the scope of mandatory defence, appoint a counsel either *ex officio* or upon the application of the defendant or any one of his relatives specified in Article 114 of the Penal Code.

Issues to be decided are the scope of powers, and their length of validity, given to a counsel in criminal proceedings.

The powers of attorney given by the defendant may extend to the entire course of criminal (primary) proceedings or only to a stage thereof, to additional proceedings connected with criminal procedure or to any separate procedure following the primary proceedings (e.g., the entire course of primary proceedings; proceedings in first or second instance only; following pronouncement of judgment; notice of appeal only, retrial only, protest on legal grounds or any other special procedure in which the services of counsel are or may be required).

In practice, the defendant in the criminal proceedings against him usually limits the powers of attorney to action in the primary case, without keeping in mind further proceedings that might subsequently arise from the primary case.

After final conclusion of the criminal (primary) case a need may arise for proceedings which, although independent, are warranted by and so closely related with the decisions rendered on the merits of the primary case that they appear to justify the continued services of the same counsel, selected or appointed, who acted in the primary case (e.g., retrial, certain special procedures concerning subsequent order of the execution of suspended penalty, inclusion of detention under remand, termination of compulsory cure, etc.).

It follows, therefore, that the scope of powers of attorney given to a defence counsel in criminal proceedings is determined partly by the tenor of assignment partly by the nature of proceedings.

Unless denounced or revoked, the powers of attorney in criminal (primary) cases or the appointment of counsel within the limits set by paragraphs (3) and (4) of Article 39 of the Penal Code are as a rule valid until final completion of the criminal (primary) case.

IRAN

NOTE ¹

During 1968, the following laws relating to human rights were promulgated:

1. Act concerning the Establishment of the Iranian Association for the Rehabilitation of the Disabled.
2. Act concerning the Accession to the International Agreement on the International Campaign against Educational Discrimination.
3. Act concerning the Establishment of the Imperial Inspection Organization.
4. Women's Social Services Act.
5. Act concerning Accession to the Agreement on the Elimination of All Forms of Racial Discrimination.
6. Nationalization of Water Resources Act.
7. Act concerning the Application of Article 10, Note 3, of the Labour Act to Immigrant and Stateless Persons.
8. Regulations concerning the Establishment of Juvenile Courts.
9. Statute of the Iranian Association for the Rehabilitation of the Disabled.

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 ESTABLISHMENT OF THE ASSOCIATION FOR THE REHABILITATION OF THE DISABLED

Promulgated in Bahman 1346 (January 1968) ²

Sole article. The Government shall establish an Association for the Rehabilitation of the Disabled under the supervision of the Ministry of Labour and Social Services. The Association shall help the psychologically and physically disabled and train them for a suitable active life.

Note 1. The regulations and organizational structure of a Central Association and branches, the expansion of its activities and its curriculum for teaching and training the disabled for employment shall be prepared by the Ministry of Labour and Social Services and the Ministry of Health and ratified by the Cabinet.

² Published in the *Legal Series* of 1346 (1968), pp. 377 and 378.

Note 2. The Government shall include the funds necessary for all the programmes of the Association in its general budget.

Note 3. The Association shall have its own legal rights and shall not be subject to the Public Estimates Act or the regulations on government transactions. The Association shall be governed by regulations to be ratified by the Cabinet.

Note 4. The Association may accept all contributions from persons or institutions, foreign or domestic, to complete its programmes.

Note 5. Every year, the Association shall issue a report on the services performed together with a financial statement.

...

STATUTE OF THE ASSOCIATION FOR THE REHABILITATION OF THE DISABLED

CHAPTER I

SUMMARY

Article 1. The Association, which is under the supervision of the Ministry of Labour and Social Services, shall have its own legal rights and shall not be subject to the Public Estimates Act or the regulations on government transactions. The Association shall be operated in accordance with regulations to be ratified by the Cabinet.

Article 2. The Central Office shall be situated at Teheran. If necessary, the Association may establish branches in other provinces.

Article 3. The duties of the Association shall be:

(a) To provide all the facilities necessary for rehabilitating the disabled and preparing them for suitable employment and a comfortable life;

(b) To give proper guidance to the organizations for the disabled, and technical and financial aid to these organizations;

(c) To help the disabled to organize co-operative production corporations;

(d) To conduct research on the disabled, in order to discover scientific and practical means of promoting hygiene and instruction methods, and to apply such methods in the organizations for the disabled;

(e) To provide the necessary psychological therapy for those who suffer from severe handicaps and are not capable of any work;

(f) To establish centres for the rehabilitation of the disabled, and to enable the disabled to resume social activities.

...

Article 16. The duties of the accountant shall be:

(a) To prepare and keep the accounts and submit the statement for each fiscal year, including all the profits and losses of the Association, to the Assembly, no later than 15 days before the Assembly is convened;

(b) The accountant may request to check any books of the Association. The head of the Association must provide all the necessary information to facilitate the accountant's duties.

(c) The accountant may submit his requests to the head of the Association. If the head does not act on the accountant's requests within 15 days, or if the accountant is not satisfied, the accountant may report the matter to the Assembly. The accountant may not, however, intervene directly in the operation of the Association.

CHAPTER III

FINANCIAL MATTERS

Article 17. The financial year of the Association shall be from the first of Farvardeen to the end of Esfand (21 March - 21 March of the following year).

Article 18. The Board of Directors shall be required to publish a financial statement for the year by the end of Khordad (21 June) covering all the contributions and activities of the Association. The statement must be approved by the Assembly prior to publication.

Article 19. All financial activities and statements of the Association shall be recorded and kept in legal files.

Article 20. All cheques, contracts, agreements and other documents which would obligate the Association financially must be co-signed by the head and the treasurer.

...

ACT CONCERNING THE ACCESSION OF IRAN
TO THE INTERNATIONAL AGREEMENT ON THE INTERNATIONAL
CAMPAIGN AGAINST EDUCATIONAL DISCRIMINATION

Promulgated in Esfand 1346 (March 1968)³

Sole article. The Agreement on the International Campaign against Educational Discrimination consists of an introduction and nineteen articles. The Agreement was adopted on 15 December 1960 at the Eleventh General Conference of UNESCO in Paris and was signed by the President of the Conference and the executive head of UNESCO. This Agreement is being ratified by the Iranian Government and, under article 12 of the Agreement, the Government must deposit the instrument of ratification with the executive head of UNESCO.

...

³ Published in the *Legal Series* of 1346 (1968), pp. 377, 378.

ACT CONCERNING THE ESTABLISHMENT OF THE IMPERIAL
INSPECTION ORGANIZATION

No. 4148 of 12 Khordad 1347 (2 June 1968)⁴

Article 1. In order to consider public complaints against the employees of Ministries, government institutions, government-affiliated business organizations, police departments, city governments, appointed mayors and any establishment whose assets are partially or wholly owned by the Government, an Imperial Inspection Organization shall be established under the direct supervision of His Imperial Majesty the Shah. The Prime Minister shall represent the Imperial Inspection Organization in the Senate and the Majlis.

NOTE. The Imperial Armed Forces are under their own jurisdiction.

Article 2. The Director of the Inspection Organization shall be appointed by the Shah.

Article 3. The inspection procedure and the duties of the different divisions of the Inspection Organization shall be laid down in a Statute by the Organization and ratified by the Cabinet. In technical matters, the Organization may use the assistance of technical advisors and specialists.

Article 4. The Organization shall select the required number of inspectors from among employees of the civil service, military or judiciary whether retired or not. The inspectors may be selected on a temporary or permanent basis. The permanent inspectors shall be full-time employees of the Organization. The temporary inspectors

shall be employees of the organizations referred to in article 1. The Organization may deputize temporary inspectors whenever it deems this necessary.

NOTE. Remuneration for over-time, travel expenses, and special allowances for inspectors and other employees shall be governed by a regulation to be prepared by the Organization and ratified by the Cabinet.

Article 5. The organization referred to in article 1 may agree to assign their employees for service in the Inspection Organization. Where the organizations do not agree, the Inspection Organization may recruit these employees. The period that any employee of the judiciary spends in the Organization shall count in full towards regular judicial service.

Article 6. The Organizations may organize Inspection Committees to investigate the complaints referred to in article 1. Where graft is involved, the Committees may order the temporary discharge of the guilty employee and inform the employee's organization. Employees thus suspended shall be considered as reserves pending future employment. Where the head or any other member of the Committee is of judicial rank, he may exercise the powers of an attorney. Warrants of arrest may, however, only be issued by justice officials.

A complaint shall not be considered until there is sufficient evidence.

⁴ Published in *Official Gazette* No. 6784 of 15 Khordad 1347 (5 June 1968).

Article 7. The Organization may recruit any Government employee as an inspector. The inspector shall perform his duties on the instructions of the Organization.

Article 8. The organizations mentioned in article 1 are required to provide all the relevant records and information necessary to facilitate the operations of the Organization. Where such information refers to confidential operations and the institution involved deems divulging the information may adversely affect the public interest, the investigation shall be turned over to the Cabinet.

Article 9. After establishing the Imperial Inspection Organization, the present National Department of Inspection shall become the Department of Inspection of the Ministry of Justice and its functions shall be limited to matters concerning the Ministry of Justice. All the other duties of the Department of Inspection shall be transferred to the Imperial Inspection Organization in accordance with the Statute. The service of all employees of the Department of Inspection with judicial

status shall be considered the same as that of employees of the Ministry of Justice.

Article 10. The regulations concerning employment and financial affairs of the Imperial Inspection Organization shall form part of the Statute and shall be proposed by the Organization and ratified by the Cabinet.

Article 11. The Organization's budget shall be completely independent and included in the National Budget every year.

Article 12. Organizations or elected mayors who do not consider themselves included in the categories under the jurisdiction of the Imperial Inspection Organization may claim exemption only with His Imperial Majesty's permission.

Article 13. The regulations for executing this Act shall be proposed by the Organization and ratified by the Cabinet.

Article 14. Where there is a discrepancy between other Acts and this Act, this Act shall prevail.

WOMEN'S SOCIAL SERVICES ACT

No. 8268 of 3 Mordad 1347 (26 July 1968)⁵

Article 1. In order to enhance the role of women in social progress and the programmes of the White Revolution, women with secondary school or higher diplomas are required to participate in the educational, health and welfare, and social services.

Article 2. The services referred to in article 1 shall consist of the following:

- (a) Education and vocational training;
- (b) The literacy campaign;
- (c) Helping with health and care in government organizations;
- (d) Helping to improve society and promoting home economics.

Article 3. Every year, the list of all school graduates and a list of government requirements in the areas specified in article 2 shall be announced. Secondary school graduates between 18 and 25 years of age and graduates with higher diplomas under 30 years of age shall be eligible for services and shall be so notified. The Government shall first accept all volunteers and, if the number of volunteers is not sufficient, the rest shall be selected by the Government. If the number of eligible persons exceeds the needs of the Government, names shall be drawn by lot. Persons

whose names are not drawn shall be given a certificate of exemption. This group may, however, serve voluntarily at a future date.

NOTE. All graduates who have been admitted to academic institutions for further education shall be given a student deferment until they complete their education.

Article 4. Secondary school graduates in any of the following categories shall not be required to serve:

- (a) Married women and mothers;
- (b) Women who are the sole source of income for their family;
- (c) Women who for medical reasons are incapable of serving.

Persons in categories (a) and (b) may serve voluntarily.

Article 5. Women who are called to serve shall be given up to six months' training in their own skills. The regulations concerning the training programmes shall be approved by the Cabinet. After training, the women shall serve the rest of their period of service in their own cities, unless there is need for them in other cities. The total period of service shall be 18 months and all services shall be performed during daily office hours.

Article 6. The scale of remuneration shall be drawn up and approved by the Cabinet. The

⁵ Published in *Official Gazette* No. 6846 of 27 Mordad 1347 (18 August 1968).

maximum remuneration shall not exceed the highest pay of a military draftee. The maximum remuneration shall be paid to volunteers who choose to work in rural co-operatives.

Article 7. Social service volunteers shall be given the following benefits:

(a) Priority in employment by all government organizations.

(b) Priority in educational fellowships.

Article 8. The Ministry of Education may employ women who have fulfilled their service obligations in an educational programme. The basis of their employment shall be equivalent to that of the military's educational draftees.

Article 9. The period of service of women who are government employees and volunteer for social services will be credited as official employment time within the meaning of article 125 of the Constitution.

Article 10. Service for women with diplomas higher than the secondary school diploma shall be mandatory and they shall serve in accordance with article 5 of this Act. Women of this level

who are in any of the categories specified in article 4 shall not be required to serve.

Article 11. The salaries and expenses of those who undertake educational instruction shall be provided by the Ministry of Education, and of those who undertake other social services by the respective Ministry or government organization.

Article 12. After this Act enters into force, no governmental or private organization may employ women who are eligible but have not served or are not in possession of a certificate of exemption.

Article 13. Women who, at the time this Act enters into force, are employed by the Government and obtain higher diplomas shall not be required to serve. In addition, in the case of women who are employed in educational or health organizations or the armed forces, their employment shall be deemed equivalent to social service.

Article 14. Women who have obtained secondary school or higher diplomas prior to this Act and who satisfy the age requirements may volunteer for service.

Article 15. The Regulations pertaining to this Act shall be formulated by the organizations concerned and submitted to the Cabinet for approval.

ACT CONCERNING ACCESSION TO THE INTERNATIONAL AGREEMENT ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

Promulgated in Teer 1347 (July 1968) ⁶

Sole article. The International Agreement on the Elimination of all Forms of Racial Discrimination consists of a preamble and twenty-five articles. The Agreement was presented at the twentieth session of the General Assembly of the United Nations on 21 December 1965 (30 Aban 1344) and was signed by the Iranian Ambassador to the United Nations on 8 March 1967 (17 Esfand 1345). The Agreement has been ratified and the Government is authorized to deposit the relevant instrument with the Secretary-General of the United Nations.

⁶ Published in the *Legal Series* of 1347 (1968), p. 223.

NATIONALIZATION OF WATER RESOURCES ACT

No. 9146 of 27 Mordad 1347 (18 August 1968)⁷

CHAPTER I

SUMMARY

SECTION 1. NATIONAL OWNERSHIP
OF WATER RESOURCES

Article 1. All the water resources in rivers, streams, floods, waste waters, lakes, mineral waters and any surface or underground water including the source are national property. The Ministry of Water Resources and Electricity shall be fully responsible for the utilization and conservation of this national wealth.

...

SECTION 2. WATER RIGHTS, PERMITS

Article 3. Water rights are rights legally vested in a property owner to use a certain amount of water prior to this Act.

Article 4. If so authorized, a person may have the right to use a certain body of water for useful purposes.

...

SECTION 3. ISSUANCE OF PERMITS

Article 9. The Ministry of Water Resources and Electricity shall be the sole agency for issuing permits. The granting of water rights in the future shall be unlawful.

NOTE. When issuing documents in respect of land, the Ministry of Land Reform and Rural Co-operatives shall specify that the water rights are to be converted to permits.

Article 10. No use may be made of the resources referred to in article 1 before a permit is issued.

...

CHAPTER III

UNDERGROUND WATER

Article 23. Persons wishing to utilize underground water by means of drilling wells, except in the cases referred to in article 25, must have a permit issued by the Ministry.

...

Article 25. Well drilling in any area for drinking and domestic purposes shall be permitted

without a permit. Maximum capacity should not exceed 25 cubic metres per day. The Ministry may inspect such wells for survey purposes.

NOTE. When a new well leads to the drying of a neighbouring well and the parties involved cannot come to an agreement, the Ministry may stop use of the most recent well.

...

CHAPTER V

ACQUISITION OF NEEDED LAND

Article 50. Whenever technological projects, agricultural expansion or any other government programmes necessitate the acquisition of land or other facilities, and this has been approved by the Department of Projects and the Ministry, the Ministry shall have the right to acquire the land and pay compensation in cash. In emergencies, the Ministry may take possession before any price agreement is reached.

(a) Agreement on prices shall be reached by the owners and the Ministry and, in case of disagreement, a Committee composed of the Minister of Water Resources and Electricity, the Minister of Land Reform, the Chairman of the Department of Projects, and the Attorney-General shall set the price. If the owner disagrees with this price, the local attorney may sign the ownership certificate and turn the land over to the Ministry.

(b) The price shall be based on the land and facilities, without regard to possible future growth due to the nature of the project, and it shall be determined by Ministry specialists.

(c) The price of agricultural land shall be calculated in accordance with sub-paragraph (b) and also articles 5 and 6 of the Land Acquisition Act relating to Farahnaz Pahlavi Dam, promulgated on 25 Khordad 1345 (15 June 1966).

...

CHAPTER IX

MISCELLANEOUS REGULATIONS

Article 62. Nationalization of water shall proceed gradually from area to area and shall be published by the Ministry in advance. The dates for each programme shall be set by the Ministry.

Article 63. The Ministry shall publicize the site of the next project six months before the project is to begin.

...

⁷ Published in *Official Gazette* No. 6857 of 9 Shahrivar 1347 (29 August 1968).

REGULATIONS CONCERNING THE ESTABLISHMENT OF JUVENILE COURTS

No. 7 - 4742 of 9 Mehr 1347 (1 October 1968)

In accordance with article 29, and in implementation of articles 20 and 24, the note to article 7, note 2 to article 3, and all of the Act on the Establishment of Juvenile Courts, the Regulations pertaining to this Act (4 chapters and 40 articles) are being ratified.

CHAPTER I

REFORM CENTRES

Article 1. Reform centres shall take charge of juveniles who are assigned to them by the courts.

Article 2. Each reform centre shall consist of three sections:

- (a) Temporary quarters;
- (b) A reform and training section;
- (c) A penitentiary.

These sections shall be completely separate from each other. The juveniles shall be placed in different sections depending on their age and previous record. Boys shall be segregated from girls.

Article 3. The temporary section shall be only for juveniles for whom no court decision has been given. Juveniles who have been sent to this section, in accordance with article 20 of the Act, shall remain in custody until proved innocent. In exceptional cases, a juvenile may be assigned to solitary confinement.

Article 4. During temporary custody, in accordance with article 7 of the Act, a study of the juvenile and his background shall be made. A final report based on this study shall be prepared under the supervision of the director. One copy of this report shall be transmitted to the Court, and another copy shall be kept in the juvenile's file.

Article 5. The reform and training section shall accommodate juveniles who have been assigned to it in accordance with note 2 to article 17 and note 3 to article 18, or those who are sent back again in accordance with Act 26 of 1338 (1959).

Article 6. The penitentiary shall be for those juveniles who have been assigned to it in accordance with note 4 to article 18 of the Act.

Article 7. In all three sections, juveniles shall undergo proper training programmes depending on their age and education and in accordance with articles 15 and 16 of these Regulations.

Article 8. Living conditions and training programmes in the reform section and the penitentiary shall be identical. The director may, however, divide the juveniles in the penitentiary into groups,

depending on their psychological and social conditions, and forbid any intermingling of the groups.

Article 9. The hour and date of his arrival shall be recorded in each juvenile's file. All the juvenile's belonging, shall be withheld during his stay and returned on his release from the Centre.

Article 10. Juveniles assigned to the reform section shall be required to attend thirty-six hours of vocational or educational courses per week, and one hour of athletic activities per day.

CHAPTER II

DUTIES OF PERSONNEL

Article 11. There shall be a Director of the reform centre for every region of a city, and a Supervisor for each of the three sections. In addition, a sufficient number of doctors, psychiatrists, physio-therapists, teachers, and guards shall be available.

NOTE. The Central Director may choose a Deputy with the approval of the Ministry of Justice.

Article 12. The Director of the Centre shall be responsible for all operations and must execute court decisions concerning juveniles. He must ensure the proper training and treatment of juveniles.

Article 13. Every three months, the Director shall prepare a progress report on every juvenile and submit it to the court which dealt with the juvenile's case. The court may review the juvenile's case and make new recommendations.

NOTE. In the event that, prior to the three-month report, the Director observes an extraordinary improvement in a juvenile, he may so report immediately.

Article 14. Where a juvenile is suffering from an illness, the Director shall inform the court judge and, with the judge's approval, the juvenile shall be sent to a health institution. The period of stay in the health institution shall count as part of the period in the reform centre.

Article 15. All teachers and supervisors shall comply with the curricula drawn up by the Director and the Department of Social Services and approved by the Ministry of Justice.

Article 16. Instructors in vocational training courses shall follow the curricula drawn up by the Director in conjunction with the Department of

Social Services and with the approval of the Ministry of Justice.

Article 17. In order to keep order, special guards shall be assigned to each section. Internal security shall be the responsibility of internal guards, and external activities shall be supervised by external guards. The internal security guards must be at least thirty and married and hold at least a 6th Grade Certificate. The external guards may be chosen from the police.

Article 18. The Director shall assign one supervisor to the internal guards and one to the external guards.

NOTE. Where external guards are police officers, their supervisor shall be assigned by the Chief of Police.

Article 19. Juveniles must be kept under surveillance by guards twenty-four hours per day. At the end of each shift, one guard must report on his watch to his supervisor.

Article 20. Guards must follow the regulations scrupulously. If a guard helps a juvenile to escape, he shall be punished according to the criminal law.

Article 21. All personnel, including teachers, must file a monthly report with the Director on the behaviour and progress of each juvenile. These reports shall be examined by the authorities referred to in article 4 and recommendations shall be made.

Article 22. Juveniles who participate in educational courses may be recommended by the Director for official academic diplomas.

NOTE. Certificates shall not mention the place where the diploma was obtained.

Article 23. The reform centres are under the jurisdiction of the Department of Social Services and the Ministry of Justice.

Article 24. The centres must submit a full report on their accomplishments and future needs to the Department of Social Services every six months. The Department shall study the reports and, if it approves of the need for improvements, after ratification by the Ministry of Justice, it shall authorize the requests.

CHAPTER III

DISCIPLINE, INCENTIVES AND TERMINATION OF PROGRAMMES

Article 25. Juveniles who do not comply with the rules shall be subject to one of the following, at the discretion of the Director:

Counselling, punishment, suspension of visiting privileges for fifteen days, suspension of correspondence privileges, suspension of purchasing rights for a period of five to thirty days, suspension of cinema privileges, solitary confinement for a period of one to fifteen days.

Article 26. The only persons who may visit the juveniles are their parents, close relatives and attorneys.

NOTE. The Director may grant visiting privileges to other persons who may be helpful to the juvenile, and withdraw those privileges for members of the juvenile's family who are harmful, and record this in the file.

Article 27. On the completion of a juvenile's term, the Director must act to release him. In the event of a juvenile's death, the Director must inform the court immediately.

Article 28. Fifteen days prior to the release of a juvenile, the Director must inform the Organization for the Protection of Prisoners so that the Organization may use its services to obtain employment and proper social rehabilitation for the juvenile.

Article 29. In the case of juveniles whose terms exceed six months, in the last month of the term the Director may permit the juveniles to accept employment or attend classes in approved institutions during the day and return to the centre at night.

NOTE. The Director shall maintain contact with such institutions in order to evaluate the juvenile's performance. In the event of a violation, the Director shall report the matter to the court.

Article 30. Juveniles who have behaved satisfactorily during their term shall receive a cash reward from the Director.

Article 31. Juveniles who, in accordance with note 4 to article 18 of the Act, are assigned to the penitentiary section, shall stay there until they are twenty years of age and spend the remaining time in a section provided for youths.

CHAPTER IV

REGULATIONS CONCERNING COUNSEL AND LEGAL AID

Article 32. Juvenile court counsels shall receive from 300 to 500 rials for each session of the court.

Article 33. Where a counsel is absent from a court session without excuse, or if he does not perform his duties, the court may dismiss him and appoint a replacement.

Article 34. The following persons are not eligible to act as counsel:

1. Corrupt persons;
2. Alcoholics or drug addicts;
3. Persons with criminal records;
4. Persons under thirty-five years of age;
5. Single persons.

Article 35. Investigations into a juvenile's past record, in accordance with article 7 of the Act, may be undertaken by the members of the reform centre called legal aids, or the regular court legal aids.

Article 36. Legal aids shall take an oath to the effect that they will perform their duties with integrity and honesty; they shall fill out the questionnaires truthfully and shall never divulge a juvenile's personal matters outside the court.

Article 37. Where legal aids are full-time employees, their pay scale shall be based on the National Employment Act, and where they work on a part-time basis, the judge shall determine their remuneration, which may not exceed 3,000 rials for one case.

Article 38. The present employees of the reform homes shall continue in their posts until the Ministry of Justice has taken action to select employees for reform centres under this Act.

Article 39. The Juvenile Courts Act of 24 July 1945 (16 October 1966) of the Ministry of Justice shall be superseded with the entry into force of this Act.

Article 40. The above regulations shall become officially effective ten days after publication in the *Official Gazette*.

IRAQ

NOTE ¹

During 1968, the following acts and regulations were promulgated:

1. Regulation No. 6 of 1968 amending Insured Employment Regulation No. 5 of 1966 (*Waqayi' al-Iraqiya*, No. 1545, of 14 March 1968; English text: *The Weekly Gazette of the Republic of Iraq*, No. 10, of 5 March 1969);
2. Regulation No. 17 of 1968 concerning the leaving of insurable employment (*Ibid.*, No. 155, of 17 April 1968; English text: *Ibid.*);
3. Regulation No. 18 of 1968 amending Regulation No. 57 of 1967 concerning the election of workers' and officials' representatives on the administration boards of industrial corporations and undertakings (*Ibid.*; English text: *Ibid.*);
4. Regulation No. 18 of 1968 amending General Amnesty Act No. 65 of 1966 concerning those who participated in the events of the North (*Ibid.*, No. 1553, of 7 April 1968; English text: *Ibid.*, No. 39, of 25 September 1968);
5. Regulation No. 27 of 1968 containing (fifth) amendment to Employees Appointment and Promotion Regulation No. 22 of 1958 (*Ibid.*, No. 1582, of 10 June 1968; English text: *Ibid.*, No. 47, of 20 November 1968);
6. Act No. 80 of 1968 granting amnesty to absentees, truants, delinquents and stragglers (*Ibid.*, No. 1611, of 25 August 1968; English text: *Ibid.*); and
7. Act No. 91 of 1968 granting pension to the family of Martyr Haji Mohammed Yasin (*Ibid.*, No. 1614, of 31 August 1968; English text: *Ibid.*).

¹ Note based upon texts furnished by the Government of Iraq.

INTERIM CONSTITUTION OF IRAQ ²

In the name of God, the Merciful, the Compassionate,

Whereas a dedicated group of citizens with faith in God and in the aims of the Arab people, believing in the right of this nation to a free and decent life, in its confidence in its ability to face difficulties and in its indomitable will, and placing their trust in God and in the loyal citizens and armed forces, launched the revolution of 17 July 1968, put an end to abnormal conditions and took over the reins of government in order to safeguard the rule of law, provide equal opportunities for citizens, strive for national unity, remove the causes of internal dissension, free citizens from

² Text published in *Al-Waqayi' al-Iraqiya*, No. 1625, 28 Jumada al-Akhira 1388/21 September 1968, and furnished by the Government of Iraq.

exploitation, fear, ignorance, sectarian, racial and tribal prejudices and all other concomitants of tyrannous misrule, and establish a society marked by brotherhood, love, harmony and a sense of responsibility in the face of decisive events by ensuring a democratic way of life for the people through popular organizations as a step towards the establishment of a National Assembly representing all sectors of the nation,

We hereby promulgate this Interim Constitution which lays down the rules of government and regulates the relationship of the State to the individual and the community. This Interim Constitution shall remain in force until the drafting of the permanent Constitution, concerning which the final power of decision shall lie with the people under the universal guidance of Almighty God.

The Council of the Revolutionary Command

THE INTERIM CONSTITUTION

TITLE I

THE STATE

Article 1. The Republic of Iraq is a people's democratic State deriving its popular and democratic basis from the Arab heritage and the spirit of Islam.

The Iraqi people are a part of the Arab nation and aspire to the goal of comprehensive Arab unity, to the achievement of which the Government is committed.

Article 2. The Republic of Iraq is a full sovereign State. No portion of its territory may be ceded.

Article 3. All authority derives from the people.

Article 4. Islam is the religion of the State and the fundamental basis of the Constitution. Arabic is the official language.

Article 5. The capital of the Republic of Iraq is Baghdad, but another city may be adopted as the capital by a decision of the Council of the Revolutionary Command if circumstances so require.

Article 6. The Iraqi flag and the emblem of the Republic of Iraq and the regulations governing them shall be established by law.

TITLE II

BASIC CONSTITUENTS OF SOCIETY

Article 7. Social solidarity is the basis of Iraqi society.

Article 8. The family, founded on religion, morality and patriotism, is the basic unit of society.

Article 9. (a) The State shall ensure the support of the family and the protection of mothers and children in accordance with the law.

(b) The State shall provide for social security services, and Iraqis shall be entitled to old-age, sickness, disability and unemployment assistance.

Article 10. The State shall guarantee equal opportunities for all Iraqis.

Article 11. Work in the Republic of Iraq is a right, duty and honour for every capable citizen. Public office is a trust, and the aim of public officials in the performance of their duties and functions shall be to serve the people.

Article 12. The aim of the economic system shall be the establishment of socialism through the application of social justice, which proscribes any form of exploitation.

Article 13. The national economy shall be a controlled system in which the public and the private sectors shall co-operate for the achievement of economic development through increased production and equitable distribution.

Article 14. The country's natural resources are the property of the State, which shall ensure their proper exploitation.

Article 15. Capital shall be employed in the service of the national economy, provided that its employment does not conflict with the public interest.

Article 16. Public funds shall be inviolable and their protection a binding duty.

Article 17. (a) Private ownership is guaranteed and the law shall define the nature of its social role. Private property shall not be expropriated except in the public interest and in return for just compensation in accordance with the law.

(b) Inheritance is a right regulated by the Islamic Sharia.

Article 18. Agricultural ownership shall be subject to a maximum to be established by law so as to prevent the formation of feudal estates. Non-Iraqis may not own agricultural land except in the circumstances specified by law.

Article 19. The State shall encourage the co-operative movement and safeguard its institutions.

TITLE III

PUBLIC RIGHTS AND DUTIES

Article 20. (a) Iraqi nationality shall be defined by law. An Iraqi belonging to an Iraqi family which was resident in Iraq prior to 6 August 1924 and which formerly had Ottoman nationality and opted for Iraqi citizenship may not be deprived of his Iraqi nationality.

(b) Iraqi nationality may be withdrawn from naturalized persons in the circumstances specified in the Nationality Act.

Article 21. All Iraqis have equal rights and duties before the law, without distinction as to race, sex, language or religion. Arabs and Kurds shall co-operate in preserving the national identity, and this Constitution shall establish their national rights within the unity of Iraq.

Article 22. There is neither crime nor penalty except under law, Penalties may be imposed only in respect of offences committed after the enactment of the law prescribing them.

Article 23. Penalties shall be personal.

Article 24. No one may be arrested, detained, imprisoned or searched except in accordance with the law.

Article 25. An accused person shall be presumed innocent until proved guilty in a legal trial at which he has had the necessary guarantees for the exercise of his right of defence, in person or through an agent. The physical or psychological maltreatment of accused persons is prohibited.

Article 26. Every person accused of a crime must have counsel to defend him with his consent in accordance with the law.

Article 27. No Iraqi shall be prohibited from residing in any place or compelled to reside in a particular place except in the circumstances specified by law.

Article 28. The extradition of political refugees shall be prohibited.

Article 29. Private residences shall be inviolable and may not be entered or searched except in the circumstances specified by law.

Article 30. The State shall safeguard the freedom of religion and protect the observance of religious rites, provided that they do not disturb public order or violate public decency.

Article 31. Freedom of opinion and scientific research shall be guaranteed, and everyone shall have the right to express his opinion orally, in writing or pictorially or by any other means within the limits of the law.

Article 32. Freedom of the press, printing and publication shall be guaranteed in accordance with the public interest and within the limits of the law.

Article 33. Freedom to form associations and trade unions by legal means and in accordance

with patriotic principles shall be guaranteed within the limits of the law.

Article 34. Iraqis shall have the right of unarmed peaceful assembly without prior notice having to be given. Public meetings, processions and gatherings shall be permitted within the limits of the law.

Article 35. Every Iraqi shall have the right to education. The State shall guarantee this right through the establishment of schools, institutes, universities and educational and cultural institutions. Education shall be free, and the State shall give special attention to the physical, intellectual and moral guidance of youth.

Article 36. The State shall ensure that all Iraqis receive equitable treatment in respect of work performed, by regulating working hours and wages and making provision for social security, health and unemployment insurance and enjoyment of the right to rest and holidays in accordance with the law.

Article 37. Health care is a right which shall be guaranteed by the State through the establishment of hospitals and health institutions in accordance with the law.

Article 38. Defence of the homeland is a sacred duty and the performance of military service an honour for Iraqis. Conscription shall be compulsory in accordance with the law.

Article 39. No tax or duty may be levied, modified, abolished or waived except by virtue of a law.

Article 40. Iraqis shall have the right to participate in elections, and this right shall be regulated by law. Participation in public life is a national duty.

TITLE IV

Chapter 1

THE SYSTEM OF GOVERNMENT

1. THE COUNCIL OF THE REVOLUTIONARY COMMAND

Article 41. The Council of the Revolutionary Command is the revolutionary organ which led the masses of the people and the armed forces on the morning of 17 July 1968. The titles of its members shall be designated by law.

2. THE POWERS OF THE COUNCIL OF THE REVOLUTIONARY COMMAND

Article 44. The Council of the Revolutionary Command shall be the supreme State authority and shall exercise the following powers:

1. The election of the President of the Republic;
2. Supervision of the armed forces and the internal security forces;
3. The proclamation of mobilization, the declaration of war, the acceptance of armistice, and the conclusion of peace;

4. The appointment of the Prime Minister and the other Ministers, the acceptance of their resignations, and their removal from office;

5. The ratification of laws, regulations, decisions of the Council of Ministers, and international treaties and agreements;

6. The supervision of national affairs in a way which ensures the safeguarding of the revolution and the attainment of its goals as set forth in the proclamation of the revolution and in the other official statements issued by the Council;

7. The issuing of decisions having binding force in accordance with the provisions of this Constitution and the laws in force.

...

Chapter 2

THE PRESIDENT OF THE REPUBLIC AND HIS POWERS

Article 50. The President of the Republic shall be Head of State, Commander-in-Chief of the Armed Forces and President of the Council of the Revolutionary Command, and shall exercise the following powers:

1. The approval of international treaties and agreements, laws, regulations and decisions of the Council of Ministers, and the issuing of decrees;

2. The appointment, removal from office, dismissal and retirement of public officials in accordance with the law;

3. The appointment and retirement of officers in accordance with the law;

4. The appointment of judges and political representatives in accordance with the law;

5. The acceptance of the credentials of representatives of foreign States and international organizations to the Republic of Iraq;

6. The declaration and termination of a state of emergency, with the consent of the Council of the Revolutionary Command and the Council of Ministers, in the circumstances specified by law.

Article 51. Capital sentences shall not be carried out until they have been confirmed by the President of the Republic. The President shall have the right to reduce any criminal penalty or to annul it by special pardon. However, a general amnesty may be granted only by a law.

Article 52. If the President of the Republic refuses to ratify a decision of the Council of the Revolutionary Command, he may state his opinion to the Council within a period of seven days. When this has been done, or if the President does not make such a statement of opinion within the seven-day period, the Council shall meet to reconsider the question, and a decision taken by a two-thirds majority of its members shall be final.

Article 53. If the President of the Republic wishes to resign from office, he shall submit his letter of resignation to the Council of the Revolutionary Command, whereupon a meeting of all the other members of the Council shall be convened to consider whether to accept or to reject the

resignation. If the resignation is accepted, the Council shall elect a new President.

Article 54. If the Presidency of the Republic falls vacant for any reason, a meeting of all the other members of the Council of the Revolutionary Command shall be convened within a period not exceeding seven days from the occurrence of the vacancy to elect a new President.

Article 55. If the President of the Republic leaves the country, the eldest member of the Council of the Revolutionary Command shall assume the Presidency of the Council and the powers of the President of the Republic for the period of the President's absence from Iraq.

Article 56. The emoluments of the President of the Republic shall be fixed by law.

Article 57. The President of the Republic and his deputies shall take the following oath before the Council of the Revolutionary Command:

"I swear by almighty God to be loyal to my religion, my country and my people, to safeguard the Republican system and respect the Constitution and the law, to protect fully the interests of the nation and to safeguard the country's independence and territorial integrity."

Article 58. The Council of the Revolutionary Command shall exercise the legislative power until such time as the first session of the National Assembly is convened.

Article 59. The manner in which the National Assembly shall be constituted shall be prescribed by law.

...

Chapter 3

THE EXECUTIVE POWER

1. THE GOVERNMENT

...

Article 62. The Government shall be responsible for executing the general policy of the State in accordance with the Constitution and the laws in force and shall be invested with the powers necessary for that purpose.

Article 63. The Government shall be responsible for the organization and implementation of economic, cultural, social and health measures designed to raise the people's standard of living with a view to building a better society, and shall pursue a sound foreign policy.

Article 64. (a) The Government shall have competence in the following spheres:

1. The safeguarding of State security and the protection of citizens' rights;

2. The direction, co-ordination and supervision of the work of the Ministers and the public agencies and organizations;

3. The issuing of administrative and executive decisions in accordance with the laws and regulations;

4. The ratification of draft laws and regulations;

5. The appointment, removal from office, dismissal and retirement of public officials in accordance with the law;

6. The preparation of the general State budget and the supplementary budgets;

7. The preparation of the general State Plan for the development of the national economy and the adoption of the necessary measures for its implementation in accordance with the law;

8. Supervision of the organization and administration of the currency and credit systems;

9. The contracting and granting of loans in accordance with general State policy;

10. Supervision over all official and semi-official bureaux and agencies and all private companies and establishments serving the public interest;

11. Supervision and follow-up of the implementation of laws, regulations and Republican decisions and decrees.

(b) The Government may abrogate or amend its decisions if the public interest so requires.

Chapter 4

THE JUDICIAL POWER

Article 79. Judges are independent; the only authority above them in the administration of

justice is the law. No authority may interfere with the independence of the judiciary or in the affairs of justice. The organization of the judiciary shall be established by law.

...

Article 81. Courts shall sit in public, unless a court decides to sit *in camera* for the preservation of public order or morality.

Article 82. Judgements shall be issued and executed in the name of the people.

...

TITLE V

GENERAL PROVISIONS

...

Article 92. This Constitution shall remain in force until such time as the permanent Constitution to be drafted by the National Assembly enters into force. It shall not be amended unless circumstances so require, in which case any amendment shall be made by the Council of the Revolutionary Command.

...

IRELAND

NOTE ¹

1. PERFORMERS' PROTECTION ACT, 1968

While the Copyright Act, 1963, protects producers of phonograms and broadcasting organizations, there was not, until the passing of the Performers' Protection Act, 1968, any legislation to protect performers. The latter Act provides penalties for the making of a record, film, broadcast or public communication of a performance without the consent of the performers. It also prohibits the selling, hiring, commercial distribution or public performance or exhibition of a record or film so made.

2. LOCAL AUTHORITIES (HIGHER EDUCATION GRANTS) ACT, 1968

The Local Authorities (Higher Education Grants) Act, 1968, enables grants to be given to deserving persons to follow approved courses of higher education. Grants are tenable at universities and also at technological colleges and other institutions of higher education in so far as their courses of study are of the requisite standard.

3. ROAD TRAFFIC ACT, 1968

The Road Traffic Act, 1968, has as its main objects:

(a) The ensuring of a higher standard of road-worthiness of vehicles and their equipment and of better standards of driving and driving instruction,

(b) The modification of the law in relation to serious driving offences and, in particular, the recasting of the law on driving while under the influence of drink or a drug, and

(c) The amending in certain respects of the law on compulsory motor insurance and the law relating to the control and operation of public service vehicles and the regulation of traffic.

4. SOCIAL WELFARE (MISCELLANEOUS PROVISIONS) ACT, 1968

The Social Welfare (Miscellaneous Provisions) Act, 1968, provides for increased social assistance payments from the beginning of August, 1968, and increases the rates of social insurance benefits and contributions from the beginning of January 1969. The Act also contains a number of miscellaneous provisions designed to improve and to extend the schemes of social insurance and social assistance.

¹ Note furnished by the Government of Ireland.

ISRAEL

NOTE ¹

I. LEGISLATION

1. BASIC LAW: THE GOVERNMENT

The Israel legislature continued during the year under review to enact "basic laws" which are to form parts of the future Constitution of the country. Whilst a Basic Law: Rights of Man is still in the stage of preparation, the *Knesset* has passed the Basic Law: The Government. This enactment consolidates and enlarges older provisions on the subject. Its character as a basic law is expressed in the final section which prevents its alteration by emergency regulations of the Government (other laws can in this way be altered or suspended). Apart from this, the Law can be amended in the same way as ordinary legislation.

The Israel Government is collectively responsible to the *Knesset*. The Law does not provide for votes of confidence or no-confidence in respect of individual Ministers, but only for a motion of no-confidence against the Government as a whole or for the resignation of a Minister. Resignation of the Prime Minister means resignation of the Government. But in any case of dissolution of the Government, it continues in office until its successor takes over.

A provision which has a direct bearing on recognized human rights and which is also one of the few innovations of the Law concerns the secrecy of the Government's deliberations and decisions. Till now their secrecy was considered a matter of course. The Basic Law only prohibits publication of matters of security and foreign relations, of other classes of matters which are classified as secret in a Government Order, and of individual matters which the Government decides to keep secret; a decision of the latter kind binds, however, only persons who know of its existence.

2. THE NATIONALITY (AMENDMENT No. 2) LAW, 1968

The Nationality Law 1952 ² was amended in several respects, i.e., with a view to adapting it to international law and to modern developments in human rights.

1. Anticipating the adoption of the Draft International Convention on the Reduction of Statelessness (1961), the Amendment Law gives a new right to apply for Israel citizenship to persons who were born in the country after the foundation of the State, provided they have been residents for the last five years and have never possessed another nationality. The applicant has to exercise this right during the three years following his majority, i.e., between the ages of eighteen and twenty-one years. The Minister of the Interior must accede to such a request unless the applicant has been convicted of an offence against the security of the State or sentenced for any other offence to imprisonment for five years or more.

2. Section 11 of the Law permits the Minister of the Interior to ask the Court to deprive a person of his Israel nationality if he has lived for seven years abroad without maintaining any connexion with the country.

3. Under the Nationality Law as originally enacted, a Jewish child born in Israel automatically becomes an Israel national. The Amendment Law exempts from this provision children born to foreign diplomatic and consular representatives (except honorary consuls).

4. The Law of 1952 conferred Israel nationality on any Jew immigrating under the Law of Return 1950, ³ unless he rejected it not later than on the day of his immigration. This provision has now been amended so as to give new immigrants an additional period of three months during which to decide on acceptance or rejection of Israel nationality. The rejection of nationality may include a minor child of the immigrant, but the

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 *Yearbook on Human Rights for 1952*, p. 144; for 1958, p. 112.

³ *Yearbook on Human Rights for 1950*, p. 163.

Amendment Law now permits such a child, within three years of attaining majority, to assume Israel nationality by his own declaration.

3. KNESSET ELECTION (AMENDMENT NO. 8) LAW, 1968

Through the rule of general and equal voting rights has been axiomatic in Israel even before the foundation of the State, there are always unavoidable imperfections. One of them concerned citizens who are on the election day absent from the country. To hold elections on foreign soil would of course be unfeasible; but the question is different with Israel ships abroad. Since the State is interested in its merchant marine plying the seas, it felt it ought to offer its seamen the opportunity of exercising their right of participation in national elections wherever they find themselves on election day. The principle was recognized long ago, but its translation into practice required detailed legislation.

The new Amendment Law, apart from introducing a number of technical reforms destined to shorten the pre-election period, imposes upon the Central Election Committee to determine the ships where elections are to be held; they are those who are expected to be on the election day abroad and have on board no less than 14 Israel citizens of 18 years or over. Facility to vote is given to travellers as well as to members of the crew. The voting is to be held on the fifth day before the general Election Day. Two persons are in charge of voting arrangements—the captain or, in case he is not an Israel citizen, the highest ranking Israel seaman on board, and in addition the most senior among the Israel ratings. Election propaganda on board is of necessity somewhat restricted: no election assemblies are to be held nor loud-speakers be used, and the ship's officers are to refrain from any propaganda activity. The law provides for immediate transmission of the entire voting materials (protocol and closed voting envelopes) to the Central Election Committee in Israel, which alone is entitled to open the latter.

4. THE LAW OF EVIDENCE AMENDMENT LAW, 1968

This Law touches upon a number of matters which, though they concern vital rights and interests of the individual, had not previously been embodied in the statute law of the country.

1. *State privilege*: In the matter of the right of government institutions to object, for reasons of public interest, to the taking of evidence on a certain matter, the local practice had till now followed English common law. The new Law distinguishes between evidence calculated to endanger the security or foreign relations of the State and evidence calculated to endanger other important public interests. In the latter case, any Minister may, by an instrument under his hand, express his objections to the giving or taking of the evidence; in cases of the first class, either the Prime Minister himself or the Ministers of Defence or Foreign Affairs (respectively), must sign the document. In all cases, however, the Minister's certificate is not the last word and the party interested in the evidence may bring the question of its admis-

sibility to judicial decision. The difference between the two classes of cases is that in matters concerning security or foreign relations, the trial is interrupted and the question of the admissibility of the evidence submitted to a member of the Supreme Court, while in other cases, the decision is taken by the trial court. The proceedings are conducted *in camera*. The Supreme Court judge or the trial court may ask for the evidence or its contents be brought to their notice and may hear explanations by the Attorney-General or his representative or representations of the Ministry concerned (even in absence of the parties to the trial). The judge or the court will then decide "whether the necessity to disclose the evidence for the purpose of doing justice outweighs the interest in its non-disclosure".

2. *Privilege against self-incrimination*: The right to refuse to answer incriminating questions has long been recognized in this country, but its legislative expression was unsystematic and therefore insufficient. The new Law is not restricted to oral statements but permits a person to refuse to give evidence of any kind if it would contain an admission of a fact constituting an element of an offence of which he is or might be accused. If the court nevertheless orders him to give evidence and he complies with such order, the evidence may not be used against him without his consent in a trial for the offence in question. The privilege is, however, not available where an accused person has decided to testify in his own behalf and is questioned with regard to the offence for which he is being tried.

3. *Advocate's privilege*: While the Chamber of Advocate's Law, 1961, prescribes the advocate's duty of secrecy in matters referring to his clients, the present Law sets out the corresponding privileges. Moreover it extends them to the advocate's auxiliary staff and makes it clear that they continue even after the witness has ceased to be an advocate or an advocate's employee. The privileges may be waived by the client, but the court has no power to decide that the interest of justice prevails.

4. *Privilege of physicians*: Following the English precedent, local law gave no statutory recognition to any right claimed by medical practitioners to refuse evidence relating to their patients' affairs. While English courts use their discretion, it was felt in Israel that a clear legal provision was desirable. The new Law gives medical practitioners and their assistants as well as psychologists⁴ the right to keep silent on those matters which are usually disclosed in confidence to a doctor or psychologist. This privilege may not only be waived by the patient, but also overruled by the court. The question as to whether evidence should be admitted is discussed *in camera* and the Court may also hear the evidence in private.

5. *Privilege of priests*: The Law also recognizes for the first time the secret of the confessional. In so far as religious law imposes a duty of secrecy, statements made in those circumstances are absolutely privileged.

⁴ The term is not yet legally defined in Israel; the law provides for its definition by Ministerial Order.

5. YOUTH (CARE AND SUPERVISION) (AMENDMENT) LAW, 1968

This Law and the subsequent Law on dangerous drugs amend existing legislation and are destined to provide special protection from dangers of modern life to young persons.

Recent experience has revealed gaps in the legislation destined to prevent undesirable publicity in respect of young persons. On the one hand, adolescent girls were occasionally persuaded to pose in the nude for publication in illustrated papers; the new law forbids the publication of such pictures of persons between the ages of 9 and 18 years, if they are calculated to disclose the identity of the minor, even though the minor or his (or her) parent or guardian may have consented thereto. On the other hand, the by now traditional restrictions on the publication of criminal trials in which young persons are involved have proved insufficient to prevent mischief. Harm may be caused to juveniles by mentioning their name in connexion with crime, even before court proceedings are instituted; by publications imputing to a minor non-criminal immoral behaviour; by reporting that the Welfare Officer found him in need of protection; or by hints that he is a near relative of a person guilty or suspected of an offence or of dishonesty. The Amendment Law does not restrict the publication of those facts, which may be of legitimate public interest; but it prohibits any hint which may lead to the identification of a minor involved.

6. DANGEROUS DRUGS ORDINANCE (AMENDMENT No. 2) LAW, 1968

The question of dangerous drugs generally is not mentioned in the United Nations instruments on human rights. Juveniles may perhaps come under Article 10 (3) of the Covenant on Economic, Social and Cultural Rights, which calls for special measures of protection on their behalf. Though the problem is in Israel not graver than in many other countries, it is being given serious attention, and when a member of the Knesset proposed to increase the punishment of persons inducing children to use dangerous drugs, the Government co-operated with him in drafting the above-mentioned Amendment Law. In protecting minors (up to the age of 18 years), it makes no difference whether the minor knew he was taking a dangerous drug or not, nor whether it was took the initiative of the accused. A person who commits certain acts which amount to offering a minor the opportunity of obtaining the drug, is presumed to have committed the offence, though he may disprove it. The penalty is imprisonment up to 10 years, the same as under the general law, but with the qualification that it may not be entirely replaced by another punishment or by a probation order (which Israel law does not consider a punishment).

7. COPYRIGHT ORDINANCE (AMENDMENT No. 2) LAW, 1968

Article 13(2) of the International Covenant on Economic Social and Cultural Rights postulates the provision of free primary education for all,

and Article 15 (1) obliges the States Parties to the Covenant to recognize every person's right to take part in cultural life and to enjoy the benefits of scientific progress and its applications; but the same provision also protects the moral and material interests of authors. In applying these principles in Israel, particularly in connexion with school television, certain difficulties, if not contradictions, arose which had to be solved by law.

For Israel, television is still a luxury and only during the year under review, the Broadcasting Authority Law 1965⁵ was amended so as to permit the Authority to include television among its activities⁶. Till then only an instructional programme for schools was provided by the generosity of a foreign benefactor. For this purpose it was not always easy to find suitable material. The new Law permits to include in radio and television transmissions which are mainly destined for schools copyrighted works or parts therefrom for incidental purposes such as background, connexion or exemplification. A special provision of the Law forbids any use which may jeopardize the author's good name or his honour as an artist or author. The owner of the copyright is to receive royalties, which are to be agreed upon and only in case of disagreement to be fixed in quasi-judicial proceedings by a commission headed by a district court judge. But where the commission finds that the use made of the work is too insignificant to impair the author's right, it may absolve the transmitter from the payment of royalties.

II. JUDICIAL DECISIONS

1. PROTECTION OF HOLY PLACES

*Reuben & anr. v. State of Israel*⁷

(In the Supreme Court sitting as a Court of Criminal Appeal. Judgement of 29 May 1968)

The two accused confessed to having entered, during the night of 2 August 1967, the Church of the Holy Sepulchre and to having there stolen a golden crown held sacred by the faithful. Parts of it were later discovered by the Israel police and the rest returned by the thieves.

Section 296 of the Criminal Code Ordinance 1936 provides a penalty of five years, imprisonment for entering, with intent to commit theft, any building which is used either as a human dwelling or as a place of worship. Since the penalties prescribed are maxima, it is rare for Israel courts to apply the full severity of the Law. But in this case, the District Court imposed upon one of the offenders five years, imprisonment and upon the other, who had no previous convictions, four years.

In rejecting the appeal against sentence of both the accused, the Supreme Court held:

In their pleadings in mitigation of sentence, defence counsel submitted other instances of

⁵ See *Yearbook on Human Rights for 1966*, p. 197.

⁶ Broadcasting Authority (Amendment No. 2) Law 1968 (not reported upon in the present *Yearbook*).

⁷ (1968) 22 *Piskei-Din* II. 77.

burglary, and even one case of theft of sacred vessels from a synagogue, as though the acts of these accused were to be viewed as daily occurrences such as the courts had already been called upon to deal with in the past. But that is not the case: the crimes committed by these accused are unheard of in Israel and are not to be measured by any regular and familiar yardstick which may suit other cases of burglary or even theft of ordinary cult objects.

In considering the punishment appropriate to the acts of the accuser, the Court has to give weight to the fact that at the very time the accused planned and executed their crime, the State was engaged in extending its protection over the Holy Places within the walls of the Old City and in demonstrating to the world that all creeds can dwell in safety under Israel rule. The acts of the accused, by disturbing a few weeks after the end of the war one of the places most sacred to the Christian faith and by violating one of its most venerated ornaments, not only caused severe damage to the good name of the State and to its vital interests, but also undermined the efforts of [the Government] and endangered its policy.

In dealing with certain mitigating circumstances pleaded by defence and with suggestions of imposing probation instead of punishment, the Court pronounced:

This is one of the cases where the personal circumstances of the accused must yield to considerations of public interest. In respect of an act such as judged by us today, the decisive consideration is the need of deterring other potential lawbreakers: may the entire nation hear that whoever shall seek enrichment through violation of the weal of the State and through disregard for its vital interests, and even through disrespect and contempt towards values sacred to his neighbour, such person shall bear the utmost measure of punishment the law permits to impose.

2. FREE SPEECH—PRIVILEGE OF MEMBER OF ISRAEL PARLIAMENT

*State of Israel v. Ben-Moshe*⁸

(In the Supreme Court sitting as a Court of Criminal Appeals. Judgement of 8 September 1968)

The accused was convicted of having attacked a Communist member of the Knesset and of having inflicted upon him a wound which could have proved dangerous but which fortunately healed well. The District Court sentenced him to eighteen months' imprisonment. On the State's appeal against the leniency of that judgement, the Supreme Court substituted a sentence of imprisonment of

four years, one half of which was to be suspended on condition that the accused should not commit any felony nor a misdemeanour against the person.

During his trial, the accused did not deny his act. He based his defence, on the one hand, on his own persecution and suffering in Russia and, on the other hand, on the complainant's provocative anti-Israel attitude—his treasonable activities, his attempts to incite the Arab population against the State and his display of contempt for the Israel army and its fallen. The accused maintained that his intention was not to kill the complainant but merely to cause him pain, so that he might think twice before continuing his activities and might change his attitude; that he wanted to protest against what he considered the Government's apathy towards the complainant's provocation, to rouse public opinion, and to bring about the withdrawal of the complainant's parliamentary immunity so that he should not continue his hostile propaganda without fear of punishment. (In this respect, the Supreme Court pointed out that this immunity cannot be lifted with regard to acts done by a person in his capacity as a member of the Knesset.)

In presenting the appellant's case, the State Attorney criticized the District Court for regarding the accused's motives as extenuating and not as aggravating circumstances. Leniency towards crimes of violence, particularly towards the use of violence as a means of intimidating others from expressing their opinion or from continuing their political activities, endangers the rule of law on which Israel democracy is based and opens the door to political terror.

The President of the Supreme Court, in announcing the Court's graver sentence, stressed that the lower court had not entirely overlooked the political dangers inherent in the accused's attitude; rather it had failed to give them sufficient weight in comparison with the accused's personal circumstances. The President, for his part, would not have interfered with the District Court's judgement, even though the legislature, by fixing a maximum penalty of 20 years imprisonment, had indicated how grave a view it took of crimes of violence; however, the political implications of the accused's motive called in his view for a more severe sentence. For his act was calculated to undermine that highly valued principle of democracy—freedom of expression and public debate. The Court—which had earlier in its history vindicated the right of a Jewish and an Arab Israel newspaper to attack the Government and invalidated a closing order of the then Minister of the Interior⁹—now proceeded to protect the right of a Communist parliamentarian to express his views, however unpopular and even dangerous, without fear or hindrance.

⁸ (1968) 22 *Piskei-Din* II. 427. English excerpts: *Jerusalem Post*, 26 September 1968.

⁹ *Kol Haam v. Minister of the Interior and El Ittihad v. Minister of the Interior*, in *Selected Judgements of the Supreme Court of Israel*, I. 90. See also *Yearbook on Human Rights for 1953*, pp. 151-159.

3. EXTRADITION—"OSTENSIBLE" AUTHORITY TO CONCLUDE TREATY—FOREIGN MINISTER'S CERTIFICATE ON VALIDITY OF TREATY—INTERNATIONAL AND INTERNAL LAW—CITIZEN'S RIGHT—INDEPENDENCE OF COURTS—ACCUSED'S RIGHT OF SILENCE IN FOREIGN AND LOCAL LAW

*Kamiar v. State of Israel*¹⁰

(In the Supreme Court sitting as a Court of Criminal Appeals. Judgement of 9 June 1968)

The accused, who was about to be extradited from Israel to Switzerland on charges of fraud, contested the validity of the extradition treaty concluded between the two countries. In the course of the appeal, arguments relating to questions of human rights were also heard.

1. The prosecution submitted to the Court a statement made by the Israel Foreign Minister to the effect that the extradition treaty with Switzerland was validly concluded. The court examined the legal effect of that statement.

Per *Cohn, J.* :

The Foreign Minister's statement which was... submitted to the District Court serves as conclusive evidence that the Government of Israel regards itself, in its relations with the Swiss Government, as bound by the treaty and obliged by it. But that is irrelevant: even without such confirmation we are aware that the Government of Israel is not only prepared, but willing to fulfil faithfully and without reserve the treaty concluded with the Swiss Government. Yet there remains the question as to whether the courts are also obliged or allowed to execute the treaty, and the decision on this question does not depend on the will of the Government or on its declarations. The Attorney-General maintains that in all matters concerning the relations of the State with other States, it is a rule of law that the Government and the courts shall speak the same language and take one and the same attitude [*The Fagernes* (1967) p. 311 to 324]; he submits that it would be a calamity if in foreign affairs the State should talk with different tongues, the one contradicting the other. I accept that ruling in those matters in which the power of final decision rests with the Government... It is different in a matter in which the decision is by its nature judicial, particularly in matters where the citizen has to defend himself against the claim or demand of his State or where he is pursuing a claim against it. In such matters, the Government is merely one of the parties before the court; it cannot lay down what is right but only claim its due—otherwise one litigant would become the Judge. As regards the "calamity", it seems to me that a common language and a permanent consensus of opinion on the part of the executive and judicial powers, even though restricted to foreign affairs, has an evil smell of totalitarianism; in so far as the courts are independent of the executive and speak their own language, so will the esteem

of the State rise in the eyes of the civilized nations of the world.

Agranat, Pres., added:

This is no litigation on the international plane and therefore the question whether the State of Israel is bound by the treaty has not arisen internationally. To put the matter in more detail: the contest which came before the District Court was not one between States—Israel and Switzerland—in which one of them denied the existence of the extradition treaty that they have concluded—but a dispute between the State of Israel and a citizen concerning the latter's extradition—in which the citizen contested, for the purpose of his defence, the validity of the treaty. It is clear that in these proceedings (which were conducted entirely on the local plane), the decision as to the validity of the treaty depends exclusively on the provisions of Israel Law.

... This local character of the litigation has the further effect of negating... the application of the doctrine of "ostensible authority" on which [the minority judgement was largely based]... For whilst that doctrine may have its place in the relations between two States which enter into mutual obligations (i.e., in the international field), it is not to be had recourse to on the local level where one of the parties is a third person who contests the validity of the treaty under review; this is particularly true of the case where the plea is raised by a citizen whose freedom depends on it.

2. *Landau J.*, reiterated the principle, expressed in prior decisions—of the Court¹¹

that a court in Israel will construe our statute law so as to prevent, as far as possible, conflicts between the internal law and the recognized rules of international law and to make internal law accord with the State's obligations under international law. Only where an open difference exists between them is the court obliged to give preferences to its own internal law.

3. A difference of Swiss and Israel laws, and a difference of opinion within the Supreme Court, was revealed with regard to the examination of the accused and the use of his replies for the purpose of the extradition proceedings. The Swiss examining judge had, before extradition proceedings were instituted, applied to the Israel court to have the suspect summoned and examined; the latter's statements in reply were later used as part of the material on which the extradition request was based. Like other European systems, Swiss laws see nothing wrong in the examination of a suspect or accused person, though it does not oblige him to answer incriminating questions. Israel law, as interpreted by *Cohn, J.*, is stricter in this respect; he considers the accused's right to remain silent as a fundamental right of man and does not permit him to be examined until the examiner has informed him of that right. The question arose as to

¹⁰ (1968) 22 *Piskei-Din* I. 85; English excerpts: *Jerusalem Post*, 11, 14, 16 and 18 July 1968.

¹¹ *Kurtz v. Kirshen* (1967) *Piskei-Din* II. 20; *Amer. Europ. Beth-El Mission v. Minister of Social Welfare* (1967) *Piskei-Din* II. 325; both in *Yearbook on Human Rights for 1967*, p. 167.

the law applicable to the examination of the accused, which has been conducted in Israel for purposes of a foreign criminal trial, yet submitted to the Israel court for the purpose of the accused's extradition from Israel.

Cohn, J., was of the view that the Israel magistrate ought to have warned the accused from the outset that he need not answer any questions or to have refused to comply with the foreign request, (since the law leaves the matter in his discretion); he considered it a matter of public policy that an accused in Israel shall be appraised of his right to remain silent, and therefore treated the accused's statement as inadmissible.

The other members of the Supreme Court did not go so far as to invalidate the examination of the accused. They considered the matter as a question of privilege against self-incrimination which had been waived when the accused answered the questions put to him. For the actual decision in this case, the matter remains *obiter dictum*, since even *Cohn, J.*, found sufficient other evidence to justify the accused's extradition.

4. RIGHT OF APPEAL

Goldenberg v. Attorney-General

(In the Supreme Court sitting as a High Court of Justice. ¹² Judgement of 10 March 1968)

Article 14 of the International Covenant on Civil and Political Rights stipulates a right of appeal for everyone "convicted of a crime". In the present case, the accused was not yet convicted; he objected to his trial by contending that his offence fell under an amnesty given by Law, but the court decided otherwise. Since the Criminal Procedure Law, 1965, knows no appeal against preliminary or interim decisions, but only an appeal against conviction and sentence (or acquittal), he applied to the High Court of Justice for an *order nisi* to stay the proceedings.

At first view, the accused seemed to have a good case. In one of its earliest judgements, *Lahisse v. Attorney-General*, ¹³ the Supreme Court had pronounced:

It would be unjust... to compel the petitioner first of all to stand trial, and later to be subject to the several stages of the proceedings with the serious charge carrying a heavy penalty hanging over him, and only after the trial has run its full course to appear here and show that all the proceedings are invalid. At that stage there is no place other than this Court to which the petitioner can turn for relief. ¹⁴

Accordingly, an *order nisi* was granted to the petitioner in the present case. But then it was found that the two cases differed at least in one decisive point. *Lahisse* had been accused before a

military court which is by law subject to the supervision of the High Court of Justice; *Goldenberg* stood his trial in the ordinary court, whose decision can be reviewed only by way of appeal, and a criminal appeal can be lodged only against the judgement. The decision points at a serious problem, but it is in agreement with the aforementioned provision of the International Covenant.

5. PROFESSIONAL RIGHTS AND FREEDOMS—PARLIAMENTARY AND EXECUTIVE LEGISLATION

Petah-Tiqva Municipality & ors. v. Minister of Agriculture ¹⁵

(In the Supreme Court sitting as a High Court of Justice. Judgement of 8 December 1968)

"This case differs from others which come before this Court sitting as a High Court of Justice. In ordinary cases we have to deal with complaints of the citizen... that his rights were violated by the respondent public authority exercising by virtue of law some public function; in the present case the petitioners too are public authorities, and their complaint is that the State interferes with their right to fulfil such public functions."

These opening sentences appear to take the cases out of the framework of the human rights jurisdiction of the High Court of Justice. In fact, however, human rights were involved therein as well. The case concerned the closing of a considerable number of municipal slaughterhouses—"a fundamental reform of country-wide dimensions, calculated to take away the employment, or self-employment, of persons till now engaged in that branch, or to compel them to find a new form of organization if they wish to continue therein". The questions was—Could such a fundamental reform be introduced by means of an Order of a Minister, or only through parliamentary legislation?

The Court had no doubts as to the need of reform. For years the question had been studied by official committees which were united in recommending a drastic reduction in the number of slaughterhouses operated in the country, in order to eliminate abuses, lower the price of meat and ensure modern standards of hygiene. Nor did the Court question that the reform enacted was a proper means to obtain its object—it had long ago decided that the choice of ways and means belongs to the sphere of decision of the Minister, provided the object itself is legitimate; and section 5 (a) of the Commodities and Services (Control) Law 5718-1957 empowers Ministers to regulate by Order "the production... of a particular commodity, including the slaughter of cattle". But section 2 of the same Law restricts its application to the period during which a state of emergency exists in the country, and section 3 prohibits the use of powers such as given (*inter alia*) in section 5 unless the Minister "has reasonable grounds for believing that it is necessary so to do for the

¹² (1968) 22 *Piskei-Din* I. 365.

¹³ (1949) 2 *Piskei-Din*. 153 159. English translation in *Selected Judgements of the Supreme Court of Israel*, I. 136 142.

¹⁴ In that case the Court heard the petitioner's objections and found them groundless.

¹⁵ (1968) 22 *Piskei-Din* II. 824; English excerpt: *Jerusalem Post*, 2 January 1969.

maintenance of an essential activity..." The condition of section 2 was satisfied, since a state of emergency was duly proclaimed by Parliament and, as decided in previous cases, it is not necessary that the measure be required in view of the emergency and not for any other reason. Thus the question of section 3 remained: what is it that is necessary for the maintenance of an essential activity—the measures taken in the Ministerial Order, in this case the reorganization of slaughterhouses throughout the country, or their enactment by way of an Ministerial Order?

One of the three members of the bench, on reading section 3 in its original and binding (Hebrew) version, came indeed to the conclusion that the Minister's powers were restricted to matters of such secondary importance or such urgency that delegated legislation was the proper instrument for their enactment. "In the present case the matter has too many side-effects—on labour relations, on vested rights and deep-rooted assumptions, on parallel and competing powers under various laws, on municipal and other interests and on other such matters as transcend the Minister's powers under the Law invoked." The majority of the Court, too, expressed their preference for the enactment of so far-reaching a reform by Parliament, lest the use of an enabling law should lead to a mere "formal democracy": But they found that the Minister had not transgressed the powers given to him by the Law and discharged the *order nisi*.

6. TRADE UNIONS—DISCRIMINATION

*Abramov v. Zlotnik*¹⁶

(In the Supreme Court, sitting as a Court of Civil Appeals. Judgement of 14 March 1968)

This case concerns the voting rights of members of a trade union and thus their general position within their organization. The following facts appear from the judgement.

The vast majority of workers in Israel are organized in the General Federation of Labour, which is divided into a number of trade unions according to the professions of their members. There are several smaller organizations outside the General Federation, as well as unorganized workers. While all workers' organizations are private bodies and independent of the Government, the General Federation enjoys quasi-official status, since various Laws grant rights to "the workers' organization representing the greatest number of workers in the State", e.g., a right to be consulted on matters concerning workers in general.

In addition to these general organizations, there exists a Union of State Employees which comprises virtually all State servants, and which is granted by various State Service Laws a status similar to that of the General Federation. This

Union was founded under the sponsorship of the General Federation and about 80 % of its members belong to both organizations; of the rest some are simultaneously members of the Union and of one of the smaller organizations mentioned above and some members of the Union only.

In 1968, the secretariat of the Union of State Employees intended to hold elections for a national congress of the Union. It considered the Union one of the trade unions of the General Federation and therefore recognized as entitled to vote only those members of the Union who belonged to both organizations. Representatives of the minority groups applied to the courts, and the District Court, together with the majority of the Supreme Court, decided in their favour. The case depended largely on the interpretation of the internal constitution of the two bodies, but in the course of the judgement of the Supreme Court several considerations of principle were expressed.

A. Sussman, J., who gave the leading judgement in the Supreme Court, relied on the fact that the State, in the afore-mentioned Laws, had given the Union recognition and legal status to support his conclusion that there can be no discrimination between full members and others who do not enjoy equal rights.

B. According to the constitution of the General Federation, trade unions within that body are to be composed of members of the Federation itself. Thus, the question arose as to the true nature of the State Employees' Union, 20 per cent of whose members do not belong to the Federation.

Per Sussman, J.:

Before I accept the conclusion that the heads of the Federation, who took an active part in founding the Union, violated their own constitution, founded an organization which cannot be a trade union and received therein persons who are not acceptable as members, and all that with intent to treat them on a footing of inequality, I wish to examine whether no other explanation can be found, so as to put those acts on a presumption of legality. I incline to the view that the Union is not a trade union in the meaning of the constitution, because it cannot be one; rather it was set up (by the initiative and with the active assistance of the Federation) as an organization *sui generis*, whose legal status was not determined at the time of its foundation and whose link with the Federation—which certainly was intended—was left to be defined in due course...

C. Sussman, J., continued his argumentation:

The conditions of the contractual relations between a member and his union are usually laid down in that body's constitution. But if I am right that this Union is no trade union in the meaning of the constitution in exhibit No. 1, then it does not possess a constitution. This, however, does not prevent us from giving legal force to the principle which, in absence of a different provision in the constitution, forms the basis of every association—equality among members.

¹⁶ (1968) 2 *Piskei-Din* I. 379.

The appellants view the respondents¹⁷ as a kind of second class members—members of the Union whom it protects as the rest of its members, but who lack the right to vote and to determine the composition of the Union's institutions. An allegation of such differentiation between member and member cannot be well-founded unless there be authority for it in the constitution... The absence of a constitution appears therefore to justify the respondents' claim...

D. Halevi, J. used even stronger language:

Representation of all State employees by the Union and denial of voting rights to one section of the community represented are self-contradictory. In a free community there is *no representation without the right to elect*; otherwise "representation" is turned into mere guardianship... The right of the State servant to participate in elections for the Union's institutions... flows from the very fact of his membership in the Union and constitutes an essential part thereof. Since the Union has attained its aim of representing the State servants in their entirety, it is not free to deny the right to vote to a section of its members.

7. JUST AND FAVOURABLE CONDITIONS OF WORK

*Independent Education Centre v. Loeb*¹⁸

(In the Supreme Court sitting as a Court of Civil Appeal. Judgement of 20 May 1968)

This judgement—a majority decision—illustrates the relativity of social rights and their dependence on general conditions of time and country.

The Severance Pay Law 1963¹⁹ entitles a worker who lost his employment without receiving an old-age pension or similar benefit to an indemnity in some cases even if he himself terminated the employment.

The plaintiff (the respondent in the present appeal) was a teacher. On return from extended maternity leave, she found herself transferred to another school and compelled to spend about ten additional hours per week on bus travel. She resigned and claimed severance pay. The judge of first instance and one of the three members of the Court of Appeal saw in the prolonged travel time an appreciable deterioration of a working mother's conditions of employment, but the majority came to a different conclusion.

Per Silberg Relieving President:

In the country of Israel we live in a dynamic State whose economic and cultural life is subject to a continual process of change, growth and expansion. This obliges us to adapt ourselves

to the mobility and the rhythm of modern age. If we infuse into [the relative provision of the Severance Pay Law 1963] notions similar to the "travel distance" of the Mejlle²⁰ or the "long journey" of the Ottoman Land Law, we paralyse the progress of economy and culture. No industrialist could transfer the work of his employees from one suburb to another, no central bank open a branch in [an outlying quarter of the town] for fear of mass resignation plus compensation. Or—to take an example arising out of our new reality: how should the Hebrew University execute its decision to transfer some of its faculties to Mount Scopus? It might well happen that some of the professors who live near the [present campus] would plead an appreciable deterioration of their conditions of work, and there would arise too much "contempt and wrath" and compensation. Thus let us say from now on: deteriorations such as found in the case before us do not fall within the protection of the provision of the Law invoked.

8. ACCESS TO PUBLIC SERVICE—VESTED RIGHTS OF STATE EMPLOYEE

*Simhi v. Civil Service Commissioner and others*²¹

(In the Supreme Court sitting as a High Court of Justice. Judgement of 29 October 1968)

The Civil Service Commissioner invited employees of the Treasury to apply for a vacant post in the Tax Assessment Officer's department. The petitioner submitted his candidature, and even though his application showed clearly that he did not possess the prescribed seniority in the State service, it was passed on to the selection committee, which considered him the most suitable candidate. On its recommendation, the petitioner was appointed to the post and informed that he was to work for some time on probation. Thereupon he left his previous post in the Treasury and began his probationary period in the new task.

Owing to the irregularity mentioned above, the works committee objected to the appointment, and the Civil Service Commissioner cancelled it. The petitioner applied to the Court, asking to be reinstated in his new office.

The trial turned upon the question of the relevance of error in acts of the State. On behalf of the respondents, it was pleaded that errors are always being excepted. The Court rejected this contention.

Per Cohn, J.:

I personally have doubts if the court may accede to an allegation of the authorities that something recorded in their official files remained unknown to them. The plea "We did not know" sounds rather like "We failed to pay attention", and a party who closes his eyes will not be heard with the plea that he did not see.

¹⁷ The appellants were the governing bodies of the Union of State Employees and the members of these bodies; the respondents were representatives of minority groups within the Union, i.e., members of the Union but not of the General Federation.

¹⁸ (1968) 22 *Piskei-Din* I. 648.

¹⁹ *Yearbook on Human Rights for 1963*, pp. 170-71 (paragraph 8).

²⁰ The Mejlle is a near obsolete codification of medieval Moslem law.

²¹ (1968) 22 *Piskei-Din* II. 673. English excerpt: *Jerusalem Post*, 1 and 3 December 1968.

Second, and this is the chief principle: there is no graver error than the proverbial clause "errors always excepted". Many are the cases and circumstances in which errors are not excepted, and the first among them are those where, in consequence or in spite of the error, acts were done, new situations created and rights acquired in good faith. Even assuming that an error occurred in this case, it lead to the committee sitting, entertaining the petitioner's application and recommending his appointment; to his being appointed and relinquishing his former post; and to his starting upon his probationary employment. No allegation was made that the committee or the petitioner acted in bad faith. Even should an error have occurred in one of the preliminary stages—for that reason one does not reserve the wheel of administrative proceedings.

The Court ordered the reinstatement of the petitioner in his new post.

9. RELIEF NOT REQUIRED "IN THE INTEREST OF JUSTICE"

*Balan v. Minister of Agriculture*²²

(In the Supreme Court sitting as a High Court of Justice. Order of 24 April 1968)

Order nisi, to show cause why petitioner should not be granted a hunting licence—discharged:

Order

The killing of animals for the sake of sport is not one of the matters which this Court considers itself obliged, for reasons of justice, to protect.

²² (1968) 22 *Piskei-Din* I. 617.

ITALY

NOTE ON THE DEVELOPMENT OF HUMAN RIGHTS (1968) ¹

I. LEGISLATION

1. In accordance with the provisions of Articles 25 and 41 of the Charter of the United Nations, the President of the Republic has issued Legislative Decree No. 1007 of 3 October embodying measures prohibiting economic relations with Southern Rhodesia and all activities designed to promote emigration to Southern Rhodesia. The said Legislative Decree, with amendments, was enacted into law by Act No. 1188 of 19 November 1968 (*Gazzetta Ufficiale*, No. 304, of 30 November 1968). The following amendment was made to the legislative decree: in Article 1 (*d*), the words "even if of Italian origin" are replaced by the words "even of non-Italian origin".

With the above-mentioned Act, the Italian Government has adopted all the measures necessary for full and due compliance with Security Council resolution 253 (1968). (The text of Legislative Decree No. 1007 is reproduced in United Nations document S/8786/Add.3.)

2. The right to individual and collective health is laid down in article 32 of the Italian Constitution and enshrined in Article 25 of the Universal Declaration of Human Rights has been provided for in Act No. 132 of 12 February 1968 (*G.U.* No. 68 of 12 March 1968), entitled Hospitals and hospital care (*Enti ospedalieri e assistenza ospedaliera*), which meets the need for large-scale adaptation of hospital structures to modern social requirements. The report accompanying the draft bill to the Senate (Report No. 2275-A of Standing Committee II) contains the following statement: "Under the social security system to which citizens of every civilized community aspire and at which the modern, democratic, responsible State must aim, out of respect for the dignity and liberty

of the human person, a comprehensive and co-ordinated health service, adapted to continuing advances in medicine as well as to needs, and available to all, is of fundamental importance and recognized as a primary and civilized requirement".

The main aims of the hospital reform provided for in the Act may be summarized as follows: (1) to provide a sufficient number of essential health centres throughout the national territory; (2) to ensure every hospital has the optimum minimum standards as regards structures, services, technical equipment and medical and ancillary health personnel, professional, general and executive; (3) to permit the timely adaptation by all hospitals of their buildings and technical equipment to suit the need for such facilities; (4) to make a rational classification and grading of hospitals, based on differences in qualifications and fields of competence and on existing and potential availability of technical installations and equipment; (5) to encourage maximum integration of and collaboration between hospitals and between hospitals and universities in the interests both of patients and scientific progress; (6) to provide a more modern and binding definition of the hospital's duties, to ensure that such duties are institutionally and exclusively concerned with health but also cover other sectors of the health service, particularly preventive and rehabilitative medicine, scientific research and health education; (7) to encourage and secure effective liaison between the hospital and all the various basic health structures (general medicine, specialized group surgeries, hygienic-preventive medicine, etc.); (8) to rid the hospital admissions system of bureaucracy, since speedy admission to hospital in case of verified need, without delay or difficulty relating to admission costs is regarded as the patient's basic right; (9) to promote conditions conducive to a more humane hospital service which, realizing that man's needs, particularly if he is sick, are not confined to health but are of a spiritual, moral and social nature as well, would seek to satisfy them; (10) to ensure basic institutional and administrative uniformity in existing public health institutions,

¹ Note prepared by Dr. Maria Vismara, Director of Studies and Publications of the Italian Association for the United Nations, Chief Editor of *La Comunità Internazionale*, a publication of that Association, and government-appointed correspondent of the *Yearbook on Human Rights*.

permitting the provision of equal assistance to all citizens and placing such institutions under the supervision of a responsible public health body; (11) to ensure equitable rules also for private nursing homes and hospitals, both religious and lay, under the effective supervision and control for the health authority, thus giving citizens a guarantee of the quality of the health services provided; (12) to promote the moral, economic, juridical and environmental conditions necessary to maintain the dignity, contentment and diligence of hospital staffs as a whole, and of doctors in particular, ensuring in the first place that doctors are appointed through a reliable and standard examination system from which favouritism and political interference would be excluded; (13) to encourage a new general atmosphere and outlook whereby, irrespective of legal requirements, doctors would feel obliged to devote all their energies to the hospital, of their own free will and as a matter of conscience.

The Act comprises seventy-one articles, divided into eight titles. *Title I* deals with the hospital itself: article 1 regulates the public hospital service which, it states, "is provided for the benefit of all Italian citizens and foreigners exclusively by hospitals"; article 2 defines the concept and relevant duties of the hospital; articles 3 to 6 lay down standards for the constitution of hospitals, the recognition of those already in existence, the separation of hospitals from public institutions and the constitution, fusion and concentration of new hospitals by the Regions.

Title II (articles 7 to 18) considers the structure of hospitals, their administrative bodies and respective functions, the participation of medical workers in the management of the hospital, the supreme authority of the Ministry of Health, regional supervision and control, the suspension and dissolution of administrative councils and Ministry of Health supervision of church bodies and institutions providing hospital services.

Title III (articles 19 to 25) establishes hospital requirements and classifications, by category. *Title IV* (articles 26 to 31) provides for "Hospital planning", which will be dealt with in an appropriate State law and a related "National Hospital Plan", establishing the procedures for implementing the law; it then outlines the essential elements of the regional hospital plan for which, by appropriate laws, every region will have to make provision.

Title V (articles 32 to 34) embodies financial provisions applicable to hospitals (confinement charges, national hospital fund, loan guarantees).

Title VI (articles 35 to 50) covers the organization of hospital services and personnel, including: the internal structure of general, specialized, long-confinement and convalescent hospitals; definition of hospital personnel, including medical, administrative, technical, ancillary and executive personnel and religious workers; provision for regulations—stating relevant principles and guiding criteria—covering hospital services and care in institutes and university clinics providing accommodation and treatment, and on the juridical status of hospital staffs; specialized hospital schools in

regional hospitals; compulsory professional training, etc.

Title VII (articles 51 to 53) specifies the requirements to be met by private nursing homes, their management, etc. *Title VIII* (articles 54 to 71) contains various final and transitional clauses designed to render the Act immediately effective pending the effective constitution of the Regions. The last article provides for the abrogation of any measure inconsistent with the regulations contained in the Act.

3. The hospital reform provided for in the above-mentioned Act has been supplemented by Act No. 431 of 18 March 1968 (*G.U.* No. 101 of 20 April 1968), which contains provisions for the psychiatric service (*Provvidenze per l'assistenza psichiatrica*). Articles 1 to 3 of this Act regulate the internal structure of psychiatric hospitals responsible to the Province or to other public agencies, the composition of the staff, including that of mental health centres. Article 4, relating to voluntary admission and to discharges, is particularly important for the protection of the patient: "Admission to a psychiatric hospital may be voluntary, at the request of the patient, for diagnosis and treatment, on the authorization of the doctor on duty. In such cases, the regulations governing the admission, confinement and discharge of committed patients do not apply. Notice of the discharge of persons suffering from psychic disorders and committed to psychiatric hospitals in accordance with the provisions in force, is sent to the police except in cases where the committed patient has become a voluntary patient. The communication is strictly confidential and may not be publicized except to provide information, also of a confidential nature, to another State authority requesting it for exclusively institutional purposes".

Articles 5 to 10 govern State and Provincial participation in the expenses of public institutions for psychiatric care; the purpose of State contributions to those Provinces which, having no psychiatric hospital of their own and availing themselves of the services of corporate, non-profit-making hospital institutions, is to improve care for mental patients in accordance with the criteria of the Act; Ministry of Health reimbursements; State contributions for the renewal of the technico-sanitary equipment of psychiatric hospitals and mental health services; the guarantee of loans for increased psychiatric hospital services. The provisions of article 11, entailing the abrogation of article 604 (2) of the Code of Criminal Procedure "in so far as it pertains to the compulsory recording of the admission of mentally sick persons and the removal of their names from criminal files", are worthy of note.

4. A very significant provision, relating to the principles laid down in article 25 (1) of the Universal Declaration of Human Rights, forms the subject of Act No. 313 of 18 March 1968 (*G.U.* No. 90 of 6 April 1968, Ordinary Supplement), reforming the legislation governing war pensions. An attempt was made in the 123 articles and accompanying tables of this complex and detailed Government-sponsored legal text satisfactorily to solve the war pensions question which had

recently assumed prominence partly because of the claims made by the parties concerned through parliamentary bills aimed at pension equalization and the systematic reform of all relevant measures in force. Such measures have in fact been included and co-ordinated in the new Act together with appropriate new rules which, in so far as pension revaluation is concerned, take account of the claims contained in the parliament-sponsored bills.

The purposes of this Act are: (1) technico-juridical improvements and the incorporation of existing rules in a consolidated text; (2) revision and improvement of disability classification tables; (3) revaluation of pensions. In so far as point (1) is concerned, all supplementary provisions conducive, from a substantive and procedural point of view, to an appropriate revision of the basic norms in accordance with ethical principles consistent with modern juridical and social requirements have been included in the legislation. Serious lacunae with respect to the practical application of the earlier laws have been filled and the various institutes improved with a view to achieving a more comprehensive body of rules that would take account of the great variety of cases that have arisen in practice. In addition, measures conducive to procedural flexibility with respect both to verification of pension entitlement and the initiation of appropriate action have been included; the purpose of this is to effect maximum executive decentralization and thus streamline work systems and service structures in order to satisfy the just claims of applicants as speedily as possible. For the purposes of point (2), new medico-legal criteria have been established, some disability classifications being reviewed in the light of modern therapeutic techniques and the relevant tables revised; the necessary revisions have thus been based on new scientific attainments. As to pension revaluations (point 3), the basic principles of the Act tend in the main to satisfy the aspirations of those who, owing to the seriousness of their disability, advanced age and economic hardship, are in need of adequate means to meet the exigencies of life. The pensions of other beneficiaries (widow, widower, legitimate and legitimized children unfit for work, minors, or in the absence of a widow or surviving children, and in specific circumstances, parents, brothers and unmarried sisters, brothers and sisters who are minors or unfit for work) have been substantially increased with a view to achieving a proper overall adjustment. In the matter of allowances, economic measures applicable to the particular situations of the various categories concerned have been adopted.

The subject-matter of the Act is dealt with under nine titles: *Title I*: Persons entitled to a war pension (articles 1 to 10); *Title II*: War pension, allowance or indemnity (articles 11 to 28); *Title III*: Centres for treatment, rehabilitation and training (articles 29 to 32); *Title IV*: Entitlement to and choice between war pension and other types of pension (articles 33 to 41); *Title V*: Rights of the widow, widower and orphans (articles 42 to 63); *Title VI*: Rights of parents, collateral relations and assimilated relations (articles 64 to 79); *Title VII*: Transfer of allowances for military decorations (articles 80 to 85); *Title VIII*: Procedures

(articles 85 to 115); *Title IX*: Transitional and final clauses (articles 116 to 123).

In defence of the right to work (article 23 of the Universal Declaration) of physically disabled and other handicapped persons, Act No. 482 of 2 April 1968 (*G.U.* No. 109 of 30 April 1968) lays down general regulations for compulsory employment in public administrative offices and private firms. The following categories of person have the right to compulsory employment: military and civilian war disabled, persons disabled in service, persons disabled at work, disabled civilians (including former tubercular patients), deaf mutes, orphans and widows of war dead, persons killed in service or at work, and refugees. The blind are included in the category of war, service or civilian disabled, depending on the cause of blindness. The total percentage of posts which must be reserved by private firms and public administrative offices is divided as follows among the various categories of person entitled to reserve employment: war disabled, 25 per cent; civilian war disabled, 10 per cent; deaf mutes, 5 per cent; service, work and civilian disabled, orphans and widows of war dead and persons killed in service or at work, 15 per cent for each category. In the absence of direct beneficiaries, the reserved posts may be filled by persons from the other categories. Persons hired under the provisions of this Act receive the usual financial, legal and administrative treatment (articles 1 to 10).

Article 11 provides that 15 per cent of staff in private firms with over 35 employees must be recruited from workers belonging to the above categories. Under article 12, public offices with over 35 employees are required, subject to certain conditions, to reserve for these categories a quota of 15 per cent of their staff of manual workers, 15 per cent of their executive staff, and 40 per cent of their auxiliary staff. Provisions are made for exemptions and exceptions depending upon the particular type of work (article 13). Other regulations govern the procedure for job placement (articles 16 to 22), and penalties (article 23) for employers who fail to comply with the provisions of the Act.

6. Act No. 444 of 18 March 1968 (*G.U.* No. 103 of 22 April 1968) entitled Regulations concerning the State nursery school is a legislative measure in keeping with two principles of the Universal Declaration: the right to education (article 26) and the right of childhood to special care and assistance (article 25(2)). The establishment of a State nursery school was considered vitally necessary for the humane and civilized development of society, not only because of the new requirements of the family (mothers working outside the family; different structure of the family unit, which is nuclear rather than extended; commuting by parents who are compelled to travel long distances to work and return home the same day; different school time-tables, etc.) but, first and foremost, because of the new formative requirements of the child from his earliest years in the industrial and technological society vis-à-vis his family, the community and the State, which have the right and duty of ensuring that he grows up protected from the tensions inherent in modern

society. While the new Act does not yet provide an adequate solution to the problems raised by the vital need for assistance and education of children between the ages of three and six, it is of considerable institutional significance in itself; and the five-year programme on which it is based represents the first positive step for this new educational and social institution. Hitherto, the *non-State* nursery school was the only effective institution in existence in the poorer and more depressed communities of Italy (Report No. 3990-A of the Eighth Committee, Chamber of Deputies).

The Act contains thirty-eight articles. Article 1 defines the characteristics and aims of the State nursery school as follows: "The State nursery school, which admits children of pre-school age (three to seven years old), is regulated by the provisions of the present Act. The aims of the school are to educate, to develop the young personality, to provide care and preparation for compulsory school attendance, supplementing the work of the family. Enrolment is voluntary; attendance is free of charge". Special sections have been established in the State nursery schools for children between the ages of three and six who are suffering from mental or behavioural disorders, or physical or sensory handicaps; special nursery schools are provided for more serious cases (article 3). The hours of the State nursery school may not be less than seven per day; the schools are open for a period of not less than ten months of the year, and free transport is arranged to facilitate attendance (article 4). Assistance to the State nursery school, including health and insurance provisions, is governed by the regulations applicable to the elementary school (article 5). Articles 6, 7 and 8 deal with building regulations, the charges incumbent on the Communes, the representation of the nursery school on the Higher Board of Education (*Consiglio superiore della pubblica istruzione*). The school staff is wholly female and consists of inspectors, directors, teachers and assistants (article 9). The teachers assigned to the special sections for handicapped children must hold a special diploma (article 10). Other articles deal with the individual categories of staff appointed to the school and their respective health records, their careers and their legal status. Article 20 calls for the establishment of a "Board of teachers" in each school, for which appropriate regulations will be laid down. Other regulations have to do with contributions by the State and Commune, the conversion of existing *kindergartens* into State nursery schools, etc. The many "transitional provisions" are concerned with the inspection of nursery schools in the process of being constituted, competitive examinations for administrative staff and, above all, the financing of the schools.

II. TREATIES AND CONVENTIONS RELATING TO HUMAN RIGHTS WHICH WERE MADE EFFECTIVE IN ITALY IN 1968

1. Treaty between the Italian Government and the Intergovernmental Committee for European Migration (ICEM), done at Rome on 23 June 1967. Approved and made effective in Italy by

Act No. 441 of 22 February 1968 (*Gazzetta Ufficiale* No. 103 of 22 April 1968).

2. Amendments to the International Convention of 17 June 1960 for the Safety of Life at Sea, adopted in London on 30 November 1966. Accepted and made effective in Italy by Act No. 1235 of 19 November 1968 (*G.U.* No. 322 of 19 December 1968).

3. Exchange of notes between the Italian Government and the United Nations concerning the establishment in Rome of a United Nations Social Defence Research Institute, with enclosure, effected at Rome on 15 January 1968. Approved and made effective in Italy by Act No. 414 of 28 March 1968 (*G.U.* No. 99 of 18 April 1968).

III. JUDICIAL DECISIONS

1. Two Constitutional Court decisions establish, in penal and civil law respectively, the equal responsibility of spouses in the matter of adultery, the principle of the equality of men and women in marriage proclaimed in article 16 of the Universal Declaration being applied to such cases.

(a) The Constitutional Court has consolidated in a single decision (No. 126, issued on 16 December 1968) judgements relating to four remands, all concerned with the constitutionality of article 559, paragraph 1, of the Penal Code, with reference to articles 3 and 29 of the Constitution. According to the first paragraph of article 559, the adulterous wife is punishable by a term of imprisonment of up to one year; by virtue of the second paragraph, the same punishment is inflicted on her accomplice. Article 3 of the Constitution affirms the "equal social dignity" and the "equality before the law" of all citizens "without distinction as to sex..."; according to article 29 of the Constitution, "Marriage is based on the moral and legal equality of both spouses, within the limits prescribed by the law for safeguarding family unity".

Seven years ago, the Constitutional Court, by decision No. 64 of 1961, declared unfounded the question of the constitutionality of article 559, first paragraph, of the Penal Code, in reference to articles 3 and 29 of the Constitution. The four remands re-opened the question, on the grounds that, in recent years, the society's views on the matter have changed considerably. It was the Court's duty, therefore—the decision stated—to ascertain whether, at the present historical and social juncture, the objective diversity of situation which, in the earlier decision, the Court claimed to find, still existed and thus justified the different treatment accorded by the penal legislator to the wife's adultery as compared with that of the husband. The Court notes: "The principle that the husband may violate the obligation of conjugal fidelity with impunity while the wife must be punished... dates back to distant times when the woman, then regarded as legally incapable and deprived of many rights, was subject to her husband's authority. Since then much has changed in social life: the woman has acquired full rights and her participation in the economic and social life of the family and of the community as a whole

has greatly increased, to the point of achieving full equality with the man; whereas the different treatment in the matter of adultery has remained unchanged..."

The Court states that it considers the reference to article 3 of the Constitution inappropriate, since difference of sex is mentioned therein "with reference to the rights and duties of the citizen in social life and not with reference to family relationships as well". Conjugal relations, on the other hand, are governed by article 29 of the Constitution which, in upholding both the equality of the spouses and family unity, certainly gives family unity precedence over the principle of equality "but only if and when it is endangered by equality of treatment for the spouses". And since the discrimination exercised by the penal law in the matter of the punishability of adultery, "violates the principle of the equality of the spouses—which still remains the general rule—it is necessary to consider whether it is essential to family unity. In fact, only in that event would the sacrifice of that basic principle of our system be admissible".

According to the Court, in the light of the existing social situation, the discrimination in question seriously harms family harmony and unity. "The law, by not attaching relevance to the husband's adultery and yet punishing the wife's, places the latter in a position of inferiority so that, with her dignity impaired, she is obliged to tolerate infidelity and abuse and has no protection under the law. Adultery by the husband or the wife undoubtedly endangers family unity, but when the law metes out different treatment this danger is more serious both because of its effects on the behaviour of the two spouses and because of the psychological consequences to the parties. The Court therefore holds that the discrimination allowed by the first paragraph of article 559 of the Penal Code does not safeguard family unity but actually constitutes a privilege for the husband and, like all privileges, violates the principle of equality".

Having stated that the finding concerning the first paragraph applies to the second paragraph of article 559 as well, the Court "declares the first and second paragraphs of article 559 of the Penal Code to be unconstitutional".

(b) The Court's second decision (No. 127, issued on 16 December 1968) concerns the question of the constitutionality of article 151 of the Civil Code, raised in a ruling concerning the legal separation of spouses.

The first paragraph of article 151 of the Civil Code places adultery first among the various reasons for which a legal separation may be requested; the second paragraph, however, excludes the possibility of action against the husband for adultery in the absence of "such circumstances that the act constitutes a serious affront to the wife". This latter provision was denounced in the remand order, with reference to article 20 of the Constitution, on the ground that the husband's adultery was treated differently from that of the wife.

The Court refers to its previous decision (No. 126) concerning the unconstitutionality of

paragraphs 1 and 2 of article 559 of the Penal Code, and states that the same reasons which had led it to declare the unconstitutionality of those paragraphs now applied to the present question of constitutionality. The legislature, the Court observed, is free to establish whether and in what circumstances conjugal infidelity is a ground for legal separation but he may not cause any discrimination between the husband and wife which is not justified in the interests of family unity. The provision of article 151 of the Civil Code, whereby the wife's adultery is always a ground for a legal separation while the husband's infidelity, save in the case provided for in the second paragraph of the article, goes unpunished, creates a situation of real privilege in favour of the husband: "Here too, therefore, as in the criminal law governing adultery, the husband and the wife are treated differently despite the fact that the law (article 143 of the Civil Code) places an equal obligation of fidelity on both. Nor can it be argued that, by making an exception for the husband, the second paragraph of article 151 derogates from the equality of the spouses in the interests of family unity. Since it would be unreasonable to assume that legal irrelevance of the husband's infidelity helps to maintain family unity, the impugned provision cannot but be regarded as the source of unwarranted discrimination in favour of the man and against the woman... The conclusion would be no different if it were assumed that article 151, in the part here under consideration, protects not the right to fidelity but the honour of the spouse and if it were held that the legislator had conformed to a differing social assessment of the husband's and wife's adultery. The Constitution, in fact, affirms the principle of the moral equality of the spouses, as well and thus directly recognises the equal dignity of both, providing that the juridical structures of matrimony must be based on that equality: the State cannot, therefore, endorse or directly reinforce with the protection of the law (which, moreover, itself helps in some measure to form the social conscience) a custom incompatible with the moral values towards which the Constitution wishes to guide our society."

For this reason, the Court declares the second paragraph of article 151 of the Civil Code to be unconstitutional.

2. The principle of equal rights for men and women in the matter of employment, a principle proclaimed in the Universal Declaration, and specifically in articles 21 (2) and 23 (1) and (2), has been further confirmed by the Court of Cassation in its decision No. 3675 of 6 November 1968 (*Massimario di giurisprudenza del lavoro*, No. 6, November-December 1968).

This long and circumstantiated decision by the Court of Cassation confirms a decision handed down by the Rome Appeals Court on 15 December 1966 (*Massimario di giurisprudenza del lavoro*, 1967, p. 79) concerning an appeal by a female worker against a public agency which, on the basis of a clause in a collective labour contract, had set an age-limit for employment of sixty years in the case of men and fifty-five in the case of women. The Supreme Court stated first of all that the general principle of private autonomy even

with regard to contracts, although guaranteed by the Constitution, had, as a result of other provisions of the Constitution, been specifically limited to meet the fundamental requirements of the protection of labour. These other provisions include article 36 (concerning a fair minimum wage, working hours, weekly leisure time, holidays, etc.) and article 37. ("working women have the same rights as men and are entitled to equal pay for equal work") which, with article 35 (which solemnly proclaims the principle of the protection of workers), introduce into labour/management relations "the principle of the equality of all citizens before the law, without distinction as to sex, established by the general constitutional precept contained in article 3".² And by virtue of article 37, "women, already freed by the aforementioned article 3 from any trace of inferior social or legal status as compared with men, have directly acquired, as working women, ... a subjective right, constitutionally guaranteed, to legal equality and to equality of wages with working men".

The decision then goes into a lengthy interpretation of the aforementioned article 37, at the conclusion of which the Supreme Court affirms "the mandatory validity" of this provision even where there is autonomy in the matter of contracts, just as article 36 of the Constitution is mandatory in such cases. Having said that, there would be no reason to reduce the binding force of article 37 and make it applicable only to those matters which are subject to contractual autonomy and which relate to equality of remuneration and to exclude any other matter "such as the setting of a different retirement age for men and women". The Court of Cassation also observes, in that connexion, that it would "indeed be particularly inconsistent if the legislature, after having affirmed in article 3 of the Constitution the principle of social and legal equality for citizens of both sexes and after having proclaimed in article 35 the fundamental duty of the State to protect labour "in all its forms and manifestations", had in article 37 of the same Constitution left many of the rights of working women subject to free private negotiation, thus permitting, in the name of contractual autonomy, the most serious forms of legal and economic inequality which might flow from such autonomy to the disadvantage of women in labour/management relations".

The Supreme Court then goes on to analyse the significance of the part of article 37 which makes equal pay for women contingent upon "equal work". In essence, the Court affirms that the part of article 37 which establishes "equal work" as a condition for equal pay refers to the natural physiological difference between men and women which is apt to produce objectively differing situations; it might in fact be assumed that in certain cases women are not fit to do work equal in quantity and quality with that of men (hence, as the decision points out, the special legislation regarding the protection of women workers). "But

it is also undeniable that those physiological differences assume juridical importance... only if they actually have a direct effect on the person's fitness or aptitude for work and on the quantity and quality of work done or on any other means of fulfilling the contract between employer and employee which specifically results in an objective situation such as to justify the difference in regulations, since otherwise the mere consideration of the difference of sex would be sufficient in itself to validate any legal inequality and any inequality with regard to remuneration between working men and working women, entirely frustrating the purpose of the precept contained in article 37 of the Constitution."

The decision goes on at length to show (as did the decision of the appeal court which was challenged) how in the case in question there were no factors relating to the aforementioned physiological difference. No evaluation regarding the special nature of the work done by women and that done by men in the public agency concerned had been discovered by the judge in the relevant clause of the contract which might justify an earlier retirement age for women than for men. Even assuming that there are scientific grounds for believing that a physical decline occurs earlier in women, it would still have to be proved "that the gradual physical decline also entails an intellectual and mental decline which is not necessarily connected with a physical decline and which alone is of preponderant importance as far as those occupations are concerned which... primarily require the use of the intellect". And since the clause challenged is included in a collective contract applicable to employees engaged on work involving responsibilities and to those with managerial functions, of whom mainly intellectual work is required, one can see "the arbitrary nature of a contract which does not in any way distinguish between women employed on physical work and those who work with their minds but classes them all together in an assessment assuming that they are physically and mentally inferior to men, an assessment... based on a completely abstract criterion which does not correspond... to a real and objective state of inaptitude for work and which in itself creates a legal and economic inequality".

After pointing out that under Italian legislation women now have access to all occupations, professions and government posts, including the judiciary, without any restrictions as to functions or career advancement, the Supreme Court states: "In this legislative trend, initiated by the Constitution and directed increasingly towards extending the application of those constitutional precepts to women, any presumption that women are on the average not capable of working up to the same age as men becomes increasingly arbitrary and cannot, in every case, be based solely on the consideration that women have a dual function as workers and as mothers since it is evident that with advancing age her maternal functions diminish and she is thus increasingly able to develop her function as a worker".

3. Similarly inspired by the principle of the equality of all citizens before the law is decision

² Constitution, article 3: "All citizens are of equal social dignity and are equal before the law, without discrimination as to sex, ...".

No. 104 handed down by the Constitutional Court on 2 July 1968.

The *pretore* of Iseo, in a judgement handed down in a criminal case in July 1966, found Mrs. T. B. guilty of contravening the fishing laws by having discharged the waste from her industrial undertaking into a lake without the prescribed authorization and sentenced her to a fine equivalent to three times the maximum established by the law because he held that, in view of her economic situation, the increased penalty provided for under article 26 of the Penal Code³ should be applied. Mrs. T. B. opposed the judgement, holding that article 26 was unconstitutional since it was contrary to the principle of equality established in article 3 of the Constitution, and asked that the proceedings should be referred to the Constitutional Court. Complying with that request, the *pretore* transmitted the relevant order to the Court. In its statement, the State Advocate General's Office, which entered an appearance as the representative of the Council of Ministers, explained why the question of constitutionality which had been raised did not appear to have any foundation.

In its judgement, the Constitutional Court stated that it was a constant feature of its own jurisprudence that "the principle of equality proclaimed in article 3 of the Constitution required not only that equal treatment should be meted out in objectively equal situations but also that different treatment should be meted out in objectively different situations". The judgement accordingly refers to the "discretionary" powers of both the legislator and the judge, particularly in penal cases. The legislator exercises this discretionary power in regulating offences and penalties "where, faced with the varying complexity of unlawful conduct by individuals, the administration of expiatory justice requires a differentiated approach rather than a uniform approach". The judge, when exercising his discretionary powers in penal cases, "must in evaluating the seriousness of the offence and the guilty party's ability to break the law, take into account factors relating to the offender's personality deduced from his character, his life and his conduct, even before the offence was committed, and even from the circumstances of his individual, family and social life (article 133 of the Penal Code)". (In earlier judgements, the Court had on more than one occasion affirmed the constitutional legality of that article.) And the *ratio* of this system undoubtedly coincides with that of article 26, second paragraph, of the Penal Code. The purpose of giving the judge the power to increase monetary penalties to as much as three times the amount in the case of more prosperous offenders was to "make those penalties proportionate to the situation of the guilty party by enabling them to have the necessary punitive and deterrent effect on such persons, which is the principal, if not the only, purpose of penalties of

all kinds and which is an effect which those penalties might otherwise not have on account of the more prosperous economic situation of the persons concerned. This is a purpose which cannot be described as contrary to logic or to reason and which therefore does not offend against, but rather safeguards, the principle of equality".

The Court accordingly declared unfounded the question of the constitutional legality of article 26, second paragraph, of the Penal Code, in relation to article 3 of the Constitution.

4. The right of every person to "equal protection of the law" (Universal Declaration, article 7) has been fully recognized by the Constitutional Court (decision No. 74 of 20 June 1968), in connexion with the inviolable right to defence in all legal proceedings, in so far as a special category of person, namely, the mentally disordered, is concerned.

5. The question of the constitutionality of the second and third paragraphs of Act No. 36 of 14 February 1904 concerning the mentally sick, in relation to certain articles of the Constitution, had been raised in four court orders—subsequently consolidated into a single judgement of the Court—issued at separate proceedings for confinement on grounds of suspected insanity.

The Court considered the constitutionality of the second paragraph of article 2 of the Act in question from various angles but found it to be unconstitutional only in one respect, namely, in so far as it "impairs the right of defence guaranteed by the second paragraph of article 24 of the Constitution".⁴ It is worth recalling that the Court had first explained how the procedure provided for in article 2 of the Act enters into the "notion of judgement"; "The above-mentioned rule gives the court the power to dispose of the invalid's personal liberty and the competence to regulate his legal status, it being possible to appoint a provisional legal representative for him...; the confinement order then obliges the *Pubblico Ministero* to request the court to declare the invalid incapable... or to request his interdiction... so that it can also be described as the conclusion of a preliminary and deliberative phase of legal procedure for establishing the invalid's capacity to act".

After stating that the above-mentioned procedure, even though it takes place in chambers (*camera di consiglio*), always closes with an decisive judgement, the decision continues thus: "...one need only consider the effect of this alone on the state of the invalid until such time as his incapacity or interdiction is declared to conclude that the constitutional guarantee that the court invokes in favour of invalids is not respected: it is particularly unacceptable that definitive confinement should be ordered on the basis of inquiries that the invalid is not permitted to attend or challenge. It is true that the person concerned may not be fit to arrange personally for his own defence it can not be argued from this, however, that the right to defence should not be granted to

³ Penal Code, article 26, second paragraph: "When, in view of the economic situation of the guilty party, the fine provided for under the law may be presumed to be ineffectual, even if the maximum fine is imposed, the judge has the power to increase it to as much as three times the amount".

⁴ Second paragraph of article 24 of the Constitution: "The right of defence at every stage and level of juridical proceedings is inviolable".

the person who is fit to arrange for it despite his infirmity and that this right may not, in every case, be safeguarded by protection measures issued *ex officio* by the court having regard to the circumstances of the case". Nor does the fact that, after the measures decided on in chambers, the court may make inquiries (article 738, Code of Civil Procedure) with a view to verifying the truth of the evidence "satisfy the requirement in the second paragraph of article 24 of the Constitution, since this power does not imply a duty to inform the invalid of the inquiry and allow him to make a defence even for the purpose of acquiring possible new or contrary evidence".

The Court considered the question of the constitutionality of the third paragraph of article 2 of the Act under consideration to be only partly founded. According to this paragraph, the local public security authorities may, in case of emergency, order provisional confinement, on the basis of a medical certificate, but "are obliged to refer the matter within three days" to the Procurator of the Republic. The Court points out that the third paragraph of article 13 of the Constitution permits that in exceptional cases of need or urgency—as in the case of mental illness—the public security

authorities may adopt provisional regulations restricting personal liberty; but, in this particular case, the provision allowing the above-mentioned authorities to refer the matter to the Procurator of the Republic within a period longer than forty-eight hours conflicts with the third paragraph of article 13 of the Constitution which provides that regulations restricting personal liberty taken by the public security authorities must be confirmed within forty-eight hours by the judicial authority or be rescinded: this is a rule which cannot but apply also to measures for the confinement of the mentally sick.

For the above reasons, the Court "declares unconstitutional that part of the second paragraph of article 2 of Act No. 36 of 14 February 1904, on mental hospitals and the mentally sick, which does not permit the defence of sick persons in court proceedings prior to the issue of the definitive confinement order;—declares unconstitutional that part of the third paragraph of article 2 of the same Act which provides that the public security authorities, when ordering provisional confinement, may refer the matter to the Procurator of the Republic within a period exceeding forty-eight hours".

IVORY COAST

MOTION SUBMITTED BY THE REPUBLIC OF THE IVORY COAST TO THE INTERNATIONAL CONFERENCE ON HUMAN RIGHTS AT TEHERAN IN 1968 ¹

The International Conference on Human Rights, currently meeting within the framework of United Nations activities for the further promotion of the principles embodied in the Universal Declaration of Human Rights, has a twofold task to perform:

First, to take stock of what has been achieved in that field since the establishment of the United Nations, and

Secondly, to determine the methods and techniques to be used in future action.

The Republic of the Ivory Coast intends to concentrate on the search for potentially effective solutions for the future. It will do so simply and solely because it finds that while admittedly there is much on the credit side where economic, social and cultural matters are concerned, mainly as a result of the activities of the United Nations and its specialized agencies: UNESCO, WHO, FAO and UNICEF; and while in recent years many nations the world over have attained independence thanks to the recognition of the principle of self-determination by the former colonial Powers, the security and equality of them have never been so unprotected as in the last few years.

Starting out from this promise, the Republic of the Ivory Coast is of the opinion that it would be utopian to attempt to organize in a short space of time a system which would ensure the uniform and universal application of all the rules contained in the Universal Declaration of Human Rights. The fact is that the political, economic and social factors underlying the application of these principles are not universal, nor, unfortunately, do they lend themselves in present circumstances to the formulation of an international law structure in any real sense, in other words to the formulation of rules carrying the weight of an international judiciary authority.

In that context, the difficulties encountered in attempting to establish regional systems of jurisdiction speak for themselves, though so far such systems have been confined to Europe, where the more serious obstacles are not found.

The Ivory Coast nevertheless believes that positive action is feasible, once it is recognized that throughout the world, all nations and all Governments unanimously censure certain acts and practices. This represents a common denominator on which all nations should be able to reach agreement, with a view to establishing an embryonic international law governing human rights, backed by the prestige of an international judiciary authority.

Such an embryonic international law governing human rights would have to be binding on all Member States as an automatic consequence of their membership of the Organization. Is it not true that at the present time action is paralysed by the fact that well-drafted conventions are produced which certain States do not ratify?

There is a twofold problem to be solved:

First, the practical task of listing the acts and practices which the world considers should be solemnly censured and punished.

Secondly, the need to evolve a procedure which, while effective, does not conflict unduly with the sovereignty of individual States.

With regard to procedure, the Ivory Coast believes that a judicial system could be evolved which would take due account of political factors.

Such a system might comprise the following elements:

A political organ set up either within the framework of the Commission on Human Rights as at present constituted, or in a framework such as that proposed by the International League for the Rights of Man, to be known as the Council for Human Rights.

At the regional level, representatives of the central organization selected among those trained as judges.

¹ Text furnished by the Government of the Republic of the Ivory Coast. Owing to lack of time, the Conference was unable to consider the motion. The text of the motion appears in the *Final Act of the International Conference on Human Rights*, pp. 46-47, United Nations publication, Sales No.: E.68.XIV.2.

The final instance would be the International Court of Justice at The Hague.

From a legal point of view, the system would function as follows:

The central organ would have cases referred to it either by States or by individuals. The preliminary investigation would be carried out by local officers of the central committee on the request of the latter. On the conclusion of the preliminary investigation, it would be for the central organization to decide whether or not the case should be brought before the International Court of Justice at The Hague.

Once a case was referred to it as outlined above, the International Court would be called upon to pass judgement on the persons charged, in accordance with a procedure to be established. In view of the present circumstances, it would not, however, pronounce a sentence since there is no international police force which could carry it out. The Court would pronounce a general verdict of guilty on the individuals concerned. A central consolidated file of all these condemnations would be kept at United Nations Headquarters for dissemination to all Member countries, which would then be responsible for bringing proceedings against such persons for application of domestic penal law to the acts of which they had been found guilty by the International Court of Justice at The Hague.

The political aspects of the system derive mainly from the political nature of the central organ, which would bear the basic responsibility for deciding whether an inquiry should be held, and whether a case ought to be referred to the Hague Court.

There would be no lack of difficulties, both technical and political, in evolving such a system; nevertheless, if it materialized, it would be the starting-point for a genuine international system of justice governing human rights which could extend its competence gradually in step with advances made in the evolution of the implementation of human rights. The object of the procedure so laid down is of course to condemn, not States, but individuals who commit acts which lie within the competence of the new organs. Its advantage, depending naturally on the extent to which it was applied in practice, would be to deliver up for universal censure certain individuals specified by name, who would become liable to receive due punishment for their misdeeds.

An inevitable consequence would be to exercise a measure of intimidation on the strong-arm type of person who more often than not goes beyond

the powers given him by a Government over the persons placed in his charge.

The Ivory Coast does not expect the Teheran Conference to adopt the system outlined above. It merely requests that the question be considered and that two study groups be formed, with instructions:

(1) To draw up a list of the acts and practices unanimously censured by all nations;

(2) To work out the procedure for judging individuals convicted of such acts and practices.

Having regard to the foregoing, the Ivory Coast delegation submits the following resolution for a decision by the Teheran Conference:

"The International Conference on Human Rights,

"Considering that the application of the principles contained in the Universal Declaration of Human Rights calls, as an essential prerequisite, for the institution of a judicial procedure for imposing sanctions in the event of violations of those principles, as the only means of establishing them as genuine rules of law;

"Considering, moreover, that in the present state of affairs, deriving mainly from the political, economic and social differences between nations, a judicial procedure for the application, in their entirety, of the principles contained in the Declaration of Human Rights cannot be contemplated owing to the different conditions governing such application;

"Considering, however, that certain acts or practices constitute such serious violations of human rights as to incur the unanimous censure of nations, peoples and rulers, a list of such acts and practices should be drawn up in order to bring their perpetrators before an international judicial authority to be organized under the International Court of Justice at The Hague, the Commission on Human Rights or such body as may succeed it;

"Desires that two study committees should be set up:

"The first study committee to be responsible for drawing up the list of acts and practices considered by the concert of nations as being so serious that they must be made subject to the sanctions of an international court of law;

"The second committee to carry out a study of the organization of the international judicial system competent to pass judgement on such acts and to establish the means of implementation, including the procedure to be followed before the various organs and court of judgement".

JAMAICA

THE PUBLIC ORDER (PROHIBITION OF PUBLIC MEETINGS AND PUBLIC MARCHES) (No. 3) ORDER, 1968 ¹

...

2. All public meetings and all public marches in the urban and suburban districts of the parishes of Kingston and St. Andrew (as defined in the Kingston and St. Andrew Corporation Law) are hereby prohibited, save in any case where a permit is issued in accordance with the provisions of Section 15 of the Law.

3. No person shall organize, hold, speak at or attend any public meeting or any public march in the area mentioned in paragraph 2, save in any case where a permit is issued in accordance with the provisions of Section 15 of the Law.

¹ *The Jamaica Gazette*, vol. XCI, No. 184, of 20 December 1968, Supplement, Proclamations, Rules and Regulations. The Government of Jamaica has indicated that the Order was valid only for one month and was made in the public interest pursuant to Section 22 of the Jamaica Constitution which, *inter alia*, provides as follows:

“(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes the freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence and other means of communication.

“(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) which is reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health; ...”.

JAPAN

NOTE ¹

I. LEGISLATION

1. AIR POLLUTION PREVENTION LAW (LAW No. 97 OF 10 JUNE 1968)

While Japan is showing remarkable economic growth in recent years, the occurrence of the so-called industrial and urbanizational public nuisance is on the trend of rapid increase, aggravating the people's living circumstances and becoming a serious social problem.

In order to promote comprehensive and systematic measures counter to such public nuisance, the Fundamental Law for Countermeasures to Public Nuisance was established in 1967. And this time, the Air Pollution Prevention Law was legislated for the purpose of preserving the health of the people and maintaining sound living circumstances for them by means of controlling air pollution, that is by controlling soot exhausted as the result of business activities in factories and other working places and providing for the allowance margins of poisonous gas contained in the exhausts from automobiles, in accordance with the fundamental requirements set forth in the said Fundamental Law.

The Law is composed of 6 Chapters and 37 Articles, which are outlined as follows:

Firstly, as for the control of exhaust of soot, provisions are made for the designation of the areas within which such control is enforced, and for the allowance margins of exhaust of soot for respective areas which soot exhausters should abide by.

Secondly, as for the regulation of exhaust from automobiles, provisions are made for specifying the margin of poisonous gas allowed to be contained in the exhaust from automobiles and the Minister of Transportation is required to see to it

that, in controlling the exhaust of gas, the said allowance margin be observed.

Besides the above, provisions are made for the mediation by the prefectural governor for the compromise for the settlement of civil disputes concerning air pollution and the co-operation of administrative agencies concerned for the end of achieving the purpose of this Law and other matters.

2. NOISE CONTROL LAW (LAW No. 98 OF 10 JUNE 1968)

This Law also forms a link of a chain of legislations for the countermeasures to public nuisance. Its purpose is to provide for the necessary control of noises coming from business activities and construction work in factories and other working places, and by this means to contribute to the maintenance of people's sound living condition and the protection of their health, keeping harmony between the measures under this Law and the sound development of the industry.

This Law is composed of 6 Chapters and 33 Articles, which are outlined as follows:

Firstly, provisions are made for the designation of areas with crowded population which is deemed to require measures for maintenance of people's sound living circumstances, as noise control areas, for the standards for control of noise in the designated areas and for the obligation of the persons who have established factories, etc., within the designated areas to observe the said standards.

Secondly, provisions are made for the obligation of notification to public authorities concerned and other matters with respect to specified construction work performed within the areas which especially require measures for prevention of noise, such as areas in which the residential circumstances are good.

Besides the above, provisions are made for the mediation by the prefectural governor for the compromise for the settlement of civil disputes concerning noises and for the co-operation of the administrative agencies concerned and other matters for the attainment of the purpose of this Law.

¹ Note furnished by Mr. Tsuneo Horiuchi, Director, Civil Liberties Bureau, Ministry of Justice, government-appointed correspondent of the *Yearbook on Human Rights*.

3. LAW FOR PARTIAL AMENDMENTS OF THE CRIMINAL COMPENSATION LAW (LAW NO. 75 OF 30 MAY 1968)

This Law provides for the partial amendments to the Criminal Compensation Law which was established under the provision of Article 40 of the Constitution of Japan, which reads: "Any person, in case he is acquitted after he has been arrested or detained, may sue the State for redress as provided by law." The purpose of the amendments is to amplify the compensation provided for in the Law by increasing the maximum amount of compensation.

II. JUDICIAL DECISIONS

1. A decision on the relation between the trade union's right of control and the freedom of its member to run for public office election (Decision of the Supreme Court on 4 December 1968).

This decision holds that while, on the one hand, the right of the trade union to control its members admitted by Article 28 of the Constitution covers the political activities necessary for the attainment of the purpose of the trade union, on the other hand, in order to realize the full exercise of the right of the people to elect public officials which is provided for in Article 15 of the Constitution, it is necessary to guarantee the freedom of a person to run for election, and that when the trade union's right to control and a person's freedom to run for election conflict, e.g., when a member of a trade union who has been left out of selection of the candidates for public office who are to be given the unified support of the union, independently runs for election, it is permissible that the union advises or persuades such member to give up running for election, but if the union goes further than such permissible limits and demands him to give up running for election and punishes him as a violator of its control on the ground that he disobeys its demand, it must be said to be illegal.

2. A decision stating that a dismissal of a person on his or her own request is null and void when such dismissal is based on the written pledge which he or she submitted at the time of his or her employment to the effect that "if he or she will get married with another employee of the same city office, either he or she will resign" (Decision of Chiba District Court on 20 May 1968).

This decision holds that if the authorities of a local public body demand an employee of the office of such body to resign and make him consent thereto on the ground that he or she has got married with another employee of the same office, it constitutes a restriction on the freedom of marriage which the State guarantees to the people, and also violates the principle of equal treatment provided for in the Local Public Service Law.

III. MAIN TRENDS

1. SYSTEM OF CIVIL LIBERTIES COMMISSIONERS

The system of Civil Liberties Commissioners was established in 1948 and last year (1968) was

its 20th anniversary. The Civil Liberties Commissioners are posted respectively in the cities, towns and villages, throughout the country, and perform activities of protection of human rights within the area of respective communities. The actual number of the Civil Liberties Commissioners as of 31 December 1968 is 9,227, including 1,019 female Commissioners.

The activities of Civil Liberties Commissioners in 1968 are represented by 4,655 cases of reports and investigations concerning cases of violation of human rights, and 106,970 cases of counseling concerning human rights, and besides these, they held from time to time lecture meetings and round-table talks at "Kominkan", schools, etc., throughout the country in order to cultivate respect for human rights among the population of the areas concerned. While along with the development of the society of Japan, the human rights problems are on the trend to become complicated and divergent, it is expected that the Civil Liberties Commissioners will henceforth develop more positive activities.

2. EVENTS IN COMMEMORATION OF THE INTERNATIONAL YEAR FOR HUMAN RIGHTS

Throughout the period of the International Year for Human Rights, various events in its commemoration were observed actively. The details are reported separately to the Secretary-General of the United Nations, of which the main activities are explained as follows:

A. Ceremony in commemoration of the International Year for Human Rights

The ceremony in commemoration of the International Year for Human Rights was held in Tokyo with solemnity and splendour on 10 December 1968, which was Human Rights Day, with the co-operation of the Prime Minister's Office, the Ministry of Justice, the Ministry of Foreign Affairs and other government agencies and the National Federation of Consultative Assemblies of Civil Liberties Commissioners and others.

B. All Japan Grand Meeting of Civil Liberties Commissioners in commemoration of the International Year for Human Rights

The ceremony in commemoration of the International Year for Human Rights held in the forenoon of 10 December 1968 was followed by the All Japan Grand Meeting of Civil Liberties Commissioners in commemoration of the International Year for Human Rights in the afternoon of the same day. In this meeting, with a view to the protection of human rights, many declarations and resolutions were adopted concerning the problems of education for cultivating respect for human rights, the prevention of public nuisance and traffic accidents, the establishment and equipment of institutions for the protection of mentally or physically handicapped persons and so on.

C. Issuance of commemorative publications

The Ministry of Justice and the National Federation of Consultative Assemblies of Civil

Liberties Commissioners issued the following commemorative publications:

(a) "Retrospection of the Twenty Years of Human Rights Service", compiled and published by the Ministry of Justice.

This book contains an explanation of the establishments and amendments of the laws and ordinances relating to the protection of human rights during the course of the last twenty years, an outline of the vicissitude of the activities for the protection of human rights, and treatises on human rights problems and others.

(b) "International Year for Human Rights", compiled by the Civil Liberties Bureau of the Ministry of Justice and published by the National Federation of Consultative Assemblies of Civil Liberties Commissioners.

This book contains detailed explanations of the purport of the International Year for Human Rights, the meaning of the Universal Declaration of Human Rights and the human rights activities of the United Nations.

(c) "Collection of Essays in Commemoration of the International Year for Human Rights", compiled by the Civil Liberties Bureau of the Ministry of Justice and published by the National Federation of Consultative Assemblies of Civil Liberties Commissioners.

Twenty-five essays on special matters relating to human rights contributed by scholars in specialized fields are collected in this book with the assistance of various universities throughout the country, dealing with the history of human rights, concrete problems concerning human rights, systems and practices involving human rights problems, systems for remedy for violation of human rights and other various matters relating to human rights.

(d) "Your Human Rights are Protected in these Methods", compiled by the Civil Liberties Bureau of the Ministry of Justice and published by the National Federation of Consultative Assemblies of Civil Liberties Commissioners.

This is a pamphlet in which the systems and activities of organizations for the protection of human rights are explained so as to be easily understood by the general public.

D. Sale of postage stamps and cigarettes with designs commemorating the International Year for Human Rights

The Ministry of Postal Services began to sell, on 10 December 1968, simultaneously in the whole country eight million sheets of 50 yen commemoration postage stamps with a design symbolizing the International Year for Human Rights.

Also the Japan Monopoly Public Corporation sold 2.5 million packs of commemorative cigarettes (one pack containing 20 cigarettes) with the same design as mentioned above printed on the pack since 10 December 1968 in the main cities throughout the country.

E. Other public information activities

Besides the above, many posters, stickers, seals, etc., with the design mentioned above were prepared and the posters were displayed at offices of

the State government and local public entities, schools, railway stations, etc., stickers attached to buses and automobiles, and seals distributed among offices concerned of the State government and public entities throughout the country. And special essays dealing with human rights were inserted in such periodicals issued by the Government as the "Official Gazette", "Window of the Government", "Human Rights Bulletin", "Reports of Civil Liberties Bureau", and various private magazines, and besides these means information activities were developed through programmes of television and radio and various newspapers emphasizing the meaning of the International Year for Human Rights.

F. Designation of Commemorative Month and enlightenment activities on the level of local organs

While in ordinary years a week ending on 10 December is designated as "Human Rights Week", during which various events are observed all over the country, for the purpose of disseminating and cultivating the idea of human rights, in 1968 which was designated as the International Year for Human Rights, the whole month of December was specially designated as the "Month in Commemoration of the International Year for Human Rights", and during this month, under the initiative of 49 Legal Affairs Bureaux and District Legal Affairs Bureaux, and Prefectural Federations of Consultative Assemblies of Civil Liberties Commissioners, nation-wide and large-scale activities were developed, surpassing by far the activities in ordinary years, by such means as holding lecture meetings, round-table talks, concerts, film show meetings, debate meetings, parades, exhibitions, etc., and investigating actual conditions of systems and practices involving human rights problems, and thus achieved remarkable results in disseminating the idea of human rights among the people.

3. TENDENCY OF HUMAN RIGHTS PROBLEMS

On the one hand, the remarkable economic progress in recent years in Japan has made a great contribution to the development of the welfare and substantial furtherance of the guarantee of human rights of the people, while on the other it has engendered new types of human rights problems, e.g., such nuisance as the rapid increase of traffic accidents due to the popularization of automobiles, the pollution of air and the contamination of water caused by gas, soot, waste liquid, etc., discharged from factories and automobiles, and the noises produced by them. In order to meet these complicated human rights problems, the State and local autonomous governments are pushing forward strong all-round systematic measures in co-operation among them.

The number of cases of infringement upon human rights received in the 1968 fiscal year by the Civil Liberties Bureaus of the Ministry of Justice and the Civil Liberties Commissioners all over the country was 9,657, and the number of cases of human rights counselling received in the same fiscal year was 231,268, which shows an

increase of 24,772 cases compared with the cases in the previous year, and where the number of cases of counselling concerning traffic accidents was 9,716.

4. SYSTEM OF LEGAL AID

The actual results of legal aid service rendered by the Legal Aid Association, an incorporated foundation, are on a trend of increase with the years under the co-operation of the Ministry of Justice and Civil Liberties Commissioners and the number of cases of its receipt of application for legal aid in the 1968 fiscal year was 5,029, and in 1,951 cases of these applications legal aid was

given, as the conditions for giving it were found met. The results show that especially the stress was laid on the relief of victims of traffic accidents. Besides this, the same Association developed vigorous activities of legal counseling in cases of traffic accidents at various places all over the country in co-operation of other organs concerned.

The subsidy from the National Treasury defrayed for the legal aid service in the 1968 fiscal year was 104,752,000 yen (291,000 dollars; breakdown: about 75,000,000 yen (208,000 dollars) for aid in lawsuits; and about 29,752,000 yen (83,000 dollars) for legal counseling), which was an increase of about 18,974,000 yen (53,000 dollars) over the amount in the previous fiscal year.

KENYA¹

THE EDUCATION ACT 1968

Act No. 5 of 1968, assented to on 6 February 1968²

...

PART II

PROMOTION OF EDUCATION

3. (1) It is the duty of the Minister to promote the education of the people of Kenya and the progressive development of institutions devoted to the promotion of such education, and to secure the effective co-operation, under his general direction or control, of all public bodies concerned with education in carrying out the national policy for education.

(2) For the purposes of carrying out his duties under subsection (1) of this section, the Minister may from time to time formulate a development plan for education consistent with any national plan for economic and social development of Kenya.

4. (1) The Minister may, by order, establish an advisory council to advise him on any matter concerning education in Kenya or in some part of Kenya, and may establish different councils for different areas or for different aspects of education.

...

PART VII

THE KENYA INSTITUTE OF EDUCATION

23. (1) There is hereby established the Kenya Institute of Education with responsibility for the co-ordination of institutions devoted to the training of teachers, the conduct of examinations to enable persons to become qualified teachers, the conduct and promotion of educational research, the preparation of educational materials and other matters connected with the training of teachers and the development of education and training.

...

PART VIII

MISCELLANEOUS

...

26. (1) If the parent of a pupil at a public school requests that the pupil be wholly or partly excused from attending religious worship, or religious worship and religious instruction, in the school, the pupil shall be excused such attendance until the request is withdrawn.

(2) Where the parent of a pupil at a public school wishes the pupil to attend religious worship or religious instruction of a kind which is not provided in the school, the school shall provide such facilities as may be practicable for the pupil to receive religious instruction and attend religious worship of the kind desired by the parent.

...

¹ Extracts emanate from specific legislation.

² *Kenya Gazette Supplement No. 16 (Acts No. 3)*, 16 February 1968.

THE OFFICIAL SECRETS ACT 1968

Act No. 11 of 1968, assented to on 6 February 1968 and entered into force on 16 February 1968³

...

PART II

PROTECTION OF THE SAFETY AND INTERESTS OF THE REPUBLIC

3. (1) Any person who, for any purpose prejudicial to the safety or interests of the Republic—

(a) Approaches, inspects, passes over, is in the neighbourhood of or enters a prohibited place; or

(b) Makes any plan that is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or disaffected person; or

(c) Obtains, collects, records, publishes or communicates in whatever manner to any other person any code word, plan, article, document or information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power or disaffected person, shall be guilty of an offence.

(2) Any person who takes a photograph of a prohibited place, without having first obtained the authority of the officer in charge of the prohibited place, shall be guilty of an offence.

(3) Any person who has in his possession or under his control any code word, plan, article, document or information which—

(a) Relates to or is used in a prohibited place or anything in a prohibited place; or

(b) Has been made or obtained in contravention of this Act; or

(c) Has been entrusted in confidence to him by any person holding office under the Government; or

(d) Has been entrusted in confidence to him owing to his position as a person who holds or has held a contract made on behalf of the Government or a contract the performance of which in whole or in part is carried out in a prohibited place, or as a person who is or has been employed under a person who holds or has held such an office or contract,

and who for any purpose or in any manner prejudicial to the safety or interests of the Republic—

(i) uses the code word, plan, article, document or information; or

(ii) retains the plan, article or document in his possession or under his control when he has no right so to retain it or when it is contrary to his duty so to retain it, or fails to comply with all directions issued by lawful authority with regard to its return or disposal, shall be guilty of an offence.

(4) Any person who, having in his possession or under his control any plan, article, document or information that relates to munitions of war, communicates it directly or indirectly to any foreign power, or to any other person for any purpose or in any manner prejudicial to the safety or interests of the Republic shall be guilty of an offence.

(5) Any person who receives any code word, plan, article document or information, knowing or having reasonable grounds for believing at the time when he receives it, that the code word, plan, article, document or information is communicated to him in contravention of this Act, shall be guilty of an offence, unless he proves that the communication to him of the code word, plan, article, document or information was contrary to his wishes.

(6) Any person who has in his possession or under his control any code word, plan, article, document or information of a kind or in the circumstances mentioned in paragraphs (a) to (d) inclusive of subsection (3) of this section, and who—

(a) Communicates the code word, plan, article, document or information to any person, other than a person to whom he is authorized to communicate it or to whom it is his duty to communicate it; or

(b) Retains the plan, article or document in his possession or under his control when he has no right so to retain it or when it is contrary to his duty so to retain it, or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(c) Fails to take reasonable care of, or so conducts himself as to endanger the safety of, the code word, plan, article, document or information, shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

(7) Any person who—

(a) Allows any other person to have possession of any official document issued for his use alone, or communicates to any other person any code word so issued; or

(b) Without lawful authority or excuse, has in his possession any official document or code word issued for the use alone of some person other than himself; or

(c) On obtaining possession of any official document by finding or otherwise neglects or fails to restore it to the person or authority by whom or for whose use it was issued or to a police officer,

shall be guilty of an offence and liable to imprisonment for a term not exceeding five years.

...

³ *Ibid.*

9. An act, omission or thing that would, by reason of this Act, be punishable as an offence if committed in Kenya shall, if committed outside Kenya, be an offence under this Act, triable and punishable in Kenya, in the following cases, namely—

(a) Where the offender at the time of the commission was a citizen of Kenya;

(b) Where any code word, plan, article, document, information or other thing whatsoever in respect of which an offender is charged was obtained by him, or depends upon information obtained by him, while owing allegiance to the Republic.

PART III

PROCEEDINGS FOR OFFENCES

10. (1) A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General.

(2) A person charged with an offence under this Act may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

11. For the purposes of the trial of a person for an offence under this Act, the offence shall be deemed to have been committed either at the place in which it was actually committed or at any place in Kenya in which the offender may be found.

12. In addition and without prejudice to any powers that a court may possess to order the exclusion of the public from any proceedings, if in the course of proceedings before the court against any person for an offence under this Act or of the proceedings on appeal, application is made by the prosecution, on the grounds that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the interests of the Republic, that all or any portion of the public shall be excluded during the whole or any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

13. (1) On a prosecution for an offence under section 3 of this Act, the fact that the accused person has been in communication with, or has attempted to communicate with, an agent of a foreign power, whether within or outside Kenya, shall be evidence that he has, for a purpose prejudicial to the safety or interests of the Republic, obtained or attempted to obtain information which is calculated to be might be or is intended to be directly or indirectly useful to a foreign power.

14. Where, on a prosecution of a person for an offence under this Act, it is alleged that he did some act for a purpose prejudicial to the safety or interests of the Republic, it shall not be necessary to show that he committed the act for that pur-

pose if, from the circumstances of the case, or from his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the Republic.

15. Where any code word, plan, article, document or information relating to or used in any prohibited place, or anything in such a place, is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the Republic, unless the contrary is proved.

16. For the avoidance of doubt, it is hereby declared that the burden of proving lawful authority or excuse shall be upon the person alleging it, and accordingly in any proceedings for prosecution for an offence under this Act it shall not be incumbent on the prosecution to prove the lack of any such authority or excuse.

PART IV

SUPPLEMENTAL

17. (1) Any person who is found committing an offence under this Act, or who is reasonably suspected of having committed, or of having attempted to commit, or of being about to commit, an offence under this Act, may be arrested by a police officer without a warrant.

(2) Any person arrested under subsection (1) of this section shall be brought before a court within twenty-four hours whether or not the police inquiries are completed.

18. (1) If a court is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, it may issue a search warrant authorizing any police officer named therein to enter at any time any premises or place named in the warrant, if necessary by force, and to search the premises or place and every person found therein, and to seize any plan, article, or document, or anything that is evidence of an offence under this Act having been or being about to be committed, that he may find on the premises or place or on any such person, and with regard to or in connexion with which he has reasonable grounds for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a police officer of or above the rank of Assistant Superintendent that the case is one of great urgency and that in the interests of the Republic immediate action is necessary, he may by a written order under his hand give to any police officer the like authority as may be given by a warrant of a court under this section.

19. (1) Where the Attorney-General is satisfied that there is reasonable ground for suspecting that an offence under this Act has been, or is about to be, committed and for believing that some person is able to furnish information with regard thereto, he may authorize a gazetted police officer to require that person to give any information in his

power relating to the offence or suspected offence and, if so required and on tender of his reasonable expenses, to attend at such reasonable time and place as may be specified by the gazetted police officer.

(2) Any person who, having been required in pursuance of an authorization given under subsection (1) of this section to give information or

to attend at a specified time and place, fails to comply with the requirement, or knowingly gives false information, shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding five thousand shillings, or to both such imprisonment and such fine.

...

THE PUBLIC ORDER (AMENDMENT) ACT 1968

Act No. 12 of 1968, assented to on 8 April 1968 and entered into force on 8 April 1968⁴

...
2. The Public Order Act is amended by inserting therein, immediately after Past 1V thereof a new Past as follows—

PART V

FLAGS, BANNERS AND EMBLEMS

10. (1) No person shall—

(a) Display or wear in a public place, at a public meeting, in a public procession or at a school any flag, banner, badge or other emblem signifying association with or support for the promotion of a political object; or

(b) Being the owner, tenant, occupier or person in charge of any premises, knowingly permit the display of any such flag, banner, badge or other emblem on or at those premises—

(i) in contravention of paragraph (a) of this subsection; or

(ii) in such a manner that it is visible from a public place.

(2) In subsection (1) of this section, "association with or support for the promotion of a political object" includes association with or support for a political organization, or a member of a political organization, or a person associated with the promotion of a political object, whether or not that organization or person is, or that object originates, abroad.

(3) Any person who displays or wears or permits to be displayed any flag, banner, badge or other emblem in contravention of this section shall be guilty of an offence.

(4) A certificate under the hand of the Minister for the time being responsible for foreign affairs certifying that a particular person who is abroad is a person associated with the promotion of a political object shall be prima facie evidence thereof in all legal proceedings.

(5) No prosecution for an offence under this section shall be instituted except with the consent of the Attorney-General.

⁴ Kenya Supplement Gazette No. 29. (Acts No. 4), 8 April 1968.

THE CONSTITUTION OF KENYA (AMENDMENT) ACT 1968⁵

...
3. The provisions of the Constitution specified in the first column of the Schedule to this Act are

⁵ Kenya Gazette Supplement No. 61 (Acts No. 11), 12 July 1968. For extracts from the Constitution of 12 December 1963 and the amendments thereto of 1964, see *Yearbook on Human Rights for 1964*, pp. 171-181.

amended in the manner specified in relation thereto in the second column of that Schedule.

4. (1) Upon the commencement of this Act, the persons who immediately before the commencement of this Act were specially elected members of the National Assembly shall be nominated members of the Assembly, and they shall

be deemed to have been appointed as such in accordance with the Constitution as amended by this Act and they shall hold their seats in the Assembly accordingly.

(2) Any order made under section 29 of the Constitution and in force immediately before the commencement of this Act shall be deemed to have been made under and in accordance with the Constitution as amended by this Act and shall have effect and continue in force accordingly.

SCHEDULE

Amendment

CHAPTER II — SECTION 29

(a) In subsection (4), delete all the words following the words "majority of all the members of the Assembly".

(b) Delete subsections (5) and (7).

CHAPTER III — SECTION 33 A

Delete whole section and substitute five new sections as follows—

33 A. (1) The President shall be elected in accordance with this Chapter and, subject thereto, with any Act of Parliament regulating the election of a President.

(2) A person shall be qualified to be nominated for election as President if, and shall not be so qualified unless, he—

(a) Is a citizen of Kenya; and

(b) Has attained the age of thirty-five years; and

(c) Is registered in some constituency as a voter in elections to the National Assembly.

(3) Whenever Parliament is dissolved, an election of a President shall be held at the ensuing general election, and at that election—

(a) One candidate for President shall be nominated, in such manner as may be prescribed by or under an Act of Parliament, by each political party taking part in the general election;

(b) The nomination of a candidate for President shall not be valid unless it is supported, in such manner as may be prescribed by or under an Act of Parliament, by not less than one thousand persons registered as voters in elections to the National Assembly;

(c) Where only one candidate for President is validly nominated, and that candidate is elected as a member of the National Assembly, he shall be declared to be elected as President;

(d) Where more than one candidate for President is validly nominated, a poll shall be taken in each constituency for the election of a President (whether or not a poll is required to be taken for an election to the National Assembly in that constituency);

(e) In every constituency in which a poll is required to be taken, whether for the election of a President or for the election of a member

of the National Assembly or for both, only one poll shall be taken, and the ballot paper shall be in such form as to pair each candidate for President who is nominated by a particular political party with the candidate (if any) for the National Assembly who is nominated by that political party, and so as to permit the voter to cast one vote for one of the pairs (which shall be taken to be a vote for each member of the pair who is a candidate in a contested election);

(f) The candidate for President who is elected as a member of the National Assembly and who receives a greater number of valid votes cast in the Presidential election than any other candidate for President who is elected as a member of the National Assembly shall be declared to be elected as President.

(4) A fresh election of a President shall be commenced and held in the manner prescribed by subsection (5) of this section where—

(a) No candidate for President has been validly nominated before the expiration of the time for the delivery of nominations in a Presidential election;

(b) A candidate for President who is validly nominated dies on or before any of the days on which the poll is taken in a Presidential election;

(c) A candidate for President, who would but for his death have been entitled to be declared elected as President under this section, dies after the taking of the poll has begun in the Presidential election and before he has been declared elected as President.

(5) In the election of a President otherwise than at a general election—

(a) Every candidate for President shall be nominated by a political party, in the manner prescribed by or under an Act of Parliament, from amongst the elected members of the National Assembly;

(b) The nomination of a candidate for President shall not be valid unless it is supported, in such manner as may be prescribed by or under an Act of Parliament, by not less than one thousand persons registered as voters in elections to the National Assembly;

(c) Where only one candidate for President is validly nominated he shall be declared to be elected as President;

(d) Where more than one candidate for President is validly nominated, a poll shall be taken in each constituency for the election of a President;

(e) The candidate for President who receives a greater number of valid votes cast in the Presidential election than any other candidate shall be declared to be elected as President.

...

CHAPTER III — SECTION 33 B

Delete whole section and substitute a new section as follows—

33 B. (1) Subject to this section, section 50 of this Constitution shall apply to the hearing

and determination of a question whether a person has been validly elected as President, as it applies to the hearing and determination of a question whether a person has been validly elected as a member of the National Assembly.

(2) Where a person applies to the High Court for the determination of more than one of the following questions, namely, whether a person was qualified to be nominated for election as President, or was validly elected as President, or being President was validly elected as a member of the National Assembly, he shall make one application only to the High Court.

(7) At any time when the office of Speaker of the National Assembly is vacant or the holder of that office is unable for any reason to exercise the functions vested in him by this section, those functions may be exercised by the Deputy Speaker of the Assembly.

CHAPTER IV — SECTION 37

Substitute for the words "specially Elected Members elected" the words "Nominated Members appointed".

CHAPTER IV — SECTION 38 (3)

Insert immediately after the words "National Assembly shall, unless he is" the words "detained in lawful custody, or is".

CHAPTER IV — SECTION 39

Delete whole section and substitute a new section as follows—

39. There shall be twelve Nominated Members of the National Assembly who shall be

appointed by the President from amongst persons who, if duly nominated, would be qualified to be elected as members of the Assembly.

CHAPTER IV — SECTION 40

Delete whole section and substitute a new section as follows—

40. Subject to section 41 of this Constitution a person shall be qualified to be elected as a member of the National Assembly if, and shall not be qualified unless, at the date of his nomination for election—

(a) He is a citizen of Kenya who has attained the age of twenty-one years;

(b) He is registered in some constituency as a voter in elections to the National Assembly;

(c) He is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language well enough to take an active part in the proceedings of the National Assembly; and

(d) He is nominated, in the manner prescribed by or under an Act of Parliament, by a political party.

CHAPTER XV—SECTION 247 (1)

Insert, in the correct alphabetical sequence, the following definition—

"political party" means a political party which is duly registered under any law which requires political parties to be registered, and which has complied with the requirements of any law as to the constitution or rules of political parties nominating candidates for the National Assembly;

THE LAND ACQUISITION ACT 1968

Act No. 47 of 1968, assented to on 14 August 1968 and entered into force on 23 August 1968⁶

PART II

PROCEDURE FOR COMPULSORY ACQUISITION OF LAND

A. PRELIMINARIES TO ACQUISITION

3. Whenever the Minister is satisfied that the need is likely to arise for the acquisition of some

particular land under section 6 of this Act, the Commissioner⁷ may cause notice thereof to be published in the *Gazette*, and shall deliver a copy of such notice to every person who appears to him to be interested in the land.

4. The Commissioner may in writing authorize any person, together with servants and workmen, to enter upon any land specified in a notice published under section 3 of this Act and to survey

⁶ *Kenya Gazette Supplement No. 70 (Acts No. 12)*, 23 August 1968.

⁷ As indicated in section 2 of this Act, "Commissioner" means the Commissioner of Lands, or any person authorized by the Minister in writing in any particular case to exercise the powers conferred on the Commissioner by this Act.

the land and to do all things which may be reasonably necessary to ascertain whether the land is suitable for the purpose for which it may be required:

Provided that the authorization shall not empower any person to enter any building, or any enclosed court or garden attached to a dwelling house, unless—

- (i) he has first obtained the consent of the occupier; or
- (ii) failing such consent, he has served on the occupier not less than seven days' notice in writing of his intention so to enter.

5. As soon as practicable after entry has been made under section 4 of this Act, the Commissioner shall make good or pay full compensation for any damage resulting from the entry.

B. ACQUISITION OF LAND

6. (1) Where the Minister is satisfied that any land is required for the purposes of a public body, and that—

(a) The acquisition of the land is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and

(b) The necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person interested in the land;

and so certifies in writing to the Commissioner, he may in writing direct the Commissioner to acquire the land compulsorily under this Part.

(2) On receiving a direction under subsection (1) of this section, the Commissioner shall cause a notice that the Government intends to acquire the land to be published in the *Gazette*, and shall serve a copy of the notice on every person who appears to him to be interested in the land.

7. The Commissioner may cause the land which is to be acquired to be marked out and measured (if this has not already been done), and shall cause a plan of the land to be prepared.

C. AWARD OF COMPENSATION

8. Where land is acquired compulsorily under this Part, full compensation shall be paid promptly to all persons interested in the land.

9. (1) The Commissioner shall appoint a date, not earlier than twenty-one days after the publication of the notice of intention to acquire, for the holding of an inquiry for the hearing of claims to compensation by persons interested in the land, and shall—

(a) Cause notice of the inquiry to be published in the *Gazette* at least fifteen days before the inquiry; and

(b) Serve a copy of the notice on every person who appears to him to be interested or who claims to be interested in the land.

(2) The notice of inquiry shall call upon the persons interested in the land to deliver to the

Commissioner, not later than the date of the inquiry, a written claim to compensation.

...

(5) For the purposes of an inquiry, the Commissioner shall have all the powers of the Court to summon and examine witnesses, including the persons interested in the land, to administer oaths and affirmations and to compel the production and delivery to him of any documents of title to the land.

(6) The public body for whose purposes the land is being acquired, and every person interested in the land, is entitled to be heard, to produce evidence and to call and to question witnesses at an inquiry.

10. (1) Upon the conclusion of the inquiry, the Commissioner shall prepare a written award, in which he shall make a separate award of compensation to each person whom he has determined to be interested in the land.

...

PART III

TEMPORARY POSSESSION OF LAND

24 (1) Where the Minister is satisfied that the possession of any land is required for a particular period not exceeding five years by a public body, and that—

(a) The possession of the land is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and

(b) The necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property, and so certifies in writing to the Commissioner, he may direct the Commissioner to take possession of the land for that period under this Part.

(2) On receiving a direction under subsection (1) of this section, the Commissioner shall serve on every person interested or who claims to be interested in the land, or on such of them as after reasonable inquiry are known to him, a notice that he has been directed to take possession of the land for the period in question.

(3) At the end of seven days after service of notices has been completed under subsection (2) of this section, the Commissioner may take possession of the land by entering, personally or by his officers or agents, on the land and posting on the land a notice in the prescribed form that possession has been taken of the land, and shall serve a copy of the notice on the occupier.

25. (1) Where possession is taken of land under this Part, full compensation shall be paid promptly to all persons interested in the land.

...

26. On the expiration of the period for which possession is taken, or upon the land being sooner vacated, the land shall be restored by the Commissioner to the condition it was in before such

occupation or use, and failing such restoration compensation in addition to that provided for in section 25 of this Act shall be paid for any damage done to the land, or for the reduction in the value of the land by reason of the occupation or use.

27. Whenever the Minister is satisfied that any land of which the occupation or use has been secured under this Part is needed solely as a means of access to any other land, then—

(a) The use of the land shall extend to the passage of vehicles of all kinds, including heavy machinery, whether owned or operated by the public body occupying or using the land or by any contractor or servant employed by that body; and

(b) The compensation to be paid under section 25 of this Act shall be limited to the damage done to trees, plants, growing crops and permanent improvements on the land, together with a periodical sum for diminution in the profits of the land and of adjoining land by reason of such use.

PART IV

DETERMINATION OF QUESTIONS BY THE COURT

28. (1) The Commissioner may at any time of his own accord, by application in the prescribed form, refer to the Court for its determination any question as to—

(a) The construction, validity or effect of any instrument;

(b) The persons who are interested in the land concerned;

(c) The extent or nature of their interest;

(d) The persons to whom compensation is payable;

(e) The shares in which compensation is to be paid to tenants in common;

(f) The question whether or not any part of a building is reasonably required for the full and unimpaired use of the building; or

(g) The condition of any land at the expiration of the term for which it is occupied or used.

...

29. (1) The right of access to the High Court conferred by section 19 (2) of the Constitution of an interested person shall be by way of appeal (exercisable as of right at the instance of the person interested) in so far as respects—

(a) The determination of his interest or right in or over the land; or

(b) The amount of compensation awarded to him under section 10 of this Act;

(c) The amount of compensation paid or offered to him under section 5, section 23, section 25 or section 26 of this Act.

(2) The public body for whose purposes the land is acquired may appeal of the Court against—

(a) The amount of compensation awarded under section 10 of this Act; or

(b) The amount of compensation paid or offered under section 5, section 23, section 25 or section 26 of this Act.

3. If, on an appeal to the Court, the sum which in the opinion of the Court ought to have been awarded as compensation is greater than the sum which the Commissioner did award as compensation, the award of the Court may direct that the Commissioner shall pay interest on the excess at the rate of six per cent per annum from the date on which the Commissioner took possession of the land to the date of payment of the excess into court or to the person entitled.

PART V

GENERAL

30. The Commissioner and any officer or person authorized by him under section 4 of this Act shall have the right at all reasonable times to enter upon any land in furtherance of any of the purposes of this Act.

31. If the Commissioner is opposed or impeded in taking possession of any land under this Act, he may apply to a police officer for assistance in taking possession, and the police officer shall thereupon take such steps as he may consider necessary to put the Commissioner in possession of the land.

32. Any person who wilfully hinders or obstructs the Commissioner or any officer or person mentioned in section 30 or section 31 of this Act in doing any of the acts authorized or required by this Act, or who wilfully fills up, destroys, damages or displaces any trench, post or mark made or put on any land under this Act, shall be guilty of an offence and liable to imprisonment for a term not exceeding one month or to a fine not exceeding one thousand shillings, or to both such imprisonment and such fine.

...

THE EXTRADITION (COMMONWEALTH COUNTRIES) ACT 1968⁸

...
 3. (1) The Attorney-General may, by order, designate for the purposes of this Act any country that is, at the date of such order within the Commonwealth.

...
 4. (1) For the purposes of this Act, an offence is an extradition offence if—

(a) It is an offence against the law of a requesting country which, however, described in that law, falls within any of the descriptions contained in the Schedule to this Act, and is punishable under that law with imprisonment for a term of twelve months or any greater punishment; and

(b) The act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Kenya if it took place within Kenya or, in the case of an extra-territorial offence, in corresponding circumstances outside Kenya.

PART II

RETURN OF FUGITIVES

5. Every fugitive is liable, subject to this Act and to any limitations, exceptions, conditions or modifications to which the application of this Act in relation to the requesting country is subject, to be arrested, detained, and surrendered in the manner provided by this Act and is so liable whether the offence in respect of which the surrender is sought is alleged to have been committed, or was committed, before or after the commencement of this Act or the application of this Act to the requesting country.

6. (1) A fugitive shall not be surrendered, or committed to or kept in custody for the purposes of surrender, if it appears to the court of committal, or to the High Court on an application for habeas corpus, or to the Attorney-General, that—

(a) The offence of which the fugitive is accused or was convicted is an offence of a political character; or

(b) The request for his surrender (though purporting to be made on account of an extradition offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or

(c) That he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

(2) A fugitive accused of an offence shall not be surrendered, or committed to or kept in custody

for the purposes of surrender, if it appears to the court of committal, or to the High Court on an application for habeas corpus, or to the Attorney-General, that he would, if charged with that offence in Kenya, be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(3) A fugitive shall not be surrendered, or committed to or kept in custody for the purposes of surrender, unless provision is made by the law of the requesting country, or by an arrangement made with that country, for securing that he will not, unless he has first been restored or had an opportunity of return to Kenya, be dealt with in that country for or in respect of any offence committed before his surrender, other than—

(a) The offence in respect of which his surrender is requested; or

(b) Any lesser offence proved by the facts proved before the court of committal; or

(c) Any other extradition offence in respect of which the Attorney-General may consent to his being so dealt with.

(4) An arrangement of the kind mentioned in subsection (3) of this section may be an arrangement made for the particular case or an arrangement of a more general nature; and for the purposes of that subsection a certificate issued by or under the authority of the Attorney-General confirming the existence of an arrangement with any country and stating its terms shall be conclusive evidence of the matters contained in the certificate.

7. (1) Subject to the provisions of this Act relating to provisional warrants, a fugitive shall not be dealt with in any manner under this Act except in pursuance of the written authority of the Attorney-General, issued in pursuance of a request made to the Attorney-General by or on behalf of the government of the designated Commonwealth country in which such person is accused or was convicted.

(2) There shall be furnished with any request—

(a) In the case of a fugitive accused of an extradition offence, an overseas warrant issued in the requesting country;

(b) In the case of a fugitive unlawfully at large after conviction of an extradition offence, a certificate of the conviction and sentence in the requesting country, and a statement of the amount (if any) of that sentence which has been served, together (in each case) with particulars of the fugitive concerned and of the facts upon which and the law under which he is accused or was convicted, and evidence sufficient to justify the issue of a warrant of arrest.

(3) On receiving a request, the Attorney-General may issue an authority to proceed, unless it appears to him that a warrant of surrender in that case could not lawfully be made, or would not in fact be made, under this Act.

⁸ Kenya Gazette Supplement No. 105 (Acts No. 20), Special Issue, 30 December 1968.

8. (1) A warrant for the arrest of a fugitive may be issued by a magistrate—

- (a) On receipt of an authority to proceed; or
- (b) Without an authority to proceed, upon information that the fugitive is or is believed to be in or on his way to Kenya.

(2) A warrant of arrest may be issued upon such evidence as would, in the opinion of the magistrate, authorize the issue of a warrant for the arrest of a person accused of committing a corresponding offence or, as the case may be, of a person alleged to be unlawfully at large after conviction of an offence, in Kenya.

(3) Where the warrant of arrest in respect of a fugitive is a provisional warrant—

(a) The magistrate who issues it shall forthwith give notice to the Attorney-General, and transmit to him the information and evidence, or certified copies of the information and evidence, upon which the warrant was issued; and

(b) The Attorney-General may in any case, and shall if he decides not to issue an authority to proceed, cancel the warrant, and discharge the fugitive from custody if he has been arrested under the warrant.

(4) Where a warrant of arrest is issued in respect of a fugitive accused of an offence of stealing or receiving stolen property or any other offence in respect of property, a magistrate shall have the like power to issue a warrant to search for the property as if the offence had been committed in Kenya.

(5) A warrant of arrest may be executed in any place in Kenya by any person to whom it is directed or by any police officer.

9. (1) A person arrested in pursuance of a warrant of arrest shall (unless previously discharged under subsection (3) of section 8 of this Act) be brought as soon as practicable before the court.

(2) If any person is arrested in pursuance of this Act and brought before a magistrate who has no power to exercise jurisdiction under this Act, that magistrate shall have power to order such person to be brought before some magistrate having such jurisdiction, and to remand or admit such person to bail, and effect shall be given to any such order.

(3) For the purposes of proceedings under this section, the court shall have the like jurisdiction and powers, as nearly as may be, as it has in connexion with the holding of a preliminary inquiry under Part VIII of the Criminal Procedure Code.

(4) Where a fugitive arrested in pursuance of a provisional warrant is in custody and the court has not received an authority to proceed, it may fix a reasonable period (of which it shall give notice to the Attorney-General) after which it will discharge the fugitive from custody if it has not received an authority to proceed.

(5) Where the court has received an authority to proceed in respect of a fugitive arrested, and it is satisfied, after hearing any evidence tendered in support of the request for the surrender or on behalf of the fugitive, that the offence to which the authority to proceed relates is an extradition offence, and if further satisfied—

(a) Where the fugitive is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if it had been committed in Kenya; or

(b) Where the fugitive is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large,

the court shall, unless his committal is prohibited by any other provision of this Act, commit him to custody to await his surrender, but if the court is not so satisfied, or if the committal is so prohibited, the court shall discharge him from custody.

(6) Any property in the possession of a fugitive committed to custody under this section at the time of his apprehension that may be material as evidence in proving the offence for which his surrender is requested shall, if the court so directs, be delivered up with him on his surrender.

10. (1) Where a fugitive is committed to custody under section 9 of this Act, the court shall inform him of his right to make an application for habeas corpus and shall forthwith give notice of the committal to the Attorney-General.

(2) A fugitive shall not be surrendered—

(a) In any case, until after the end of fifteen days beginning with the day on which the order for his committal to custody was made;

(b) If an application for habeas corpus is made in his case, so long as proceedings on that application are pending.

(3) On an application for habeas corpus, the High Court may, without prejudice to any other jurisdiction vested in it, order the fugitive to be discharged from custody if it appears to the High Court that—

(a) By reason of the trivial nature of the offence of which he is accused or was convicted; or

(b) By reason of the passage of time since he is alleged to have committed the offence or to have become unlawfully at large, as the case may be; or

(c) Because the accusation against him is not made in good faith in the interests of justice, it would, having regard to all the circumstances, be unjust or oppressive to surrender him.

(4) On an application for habeas corpus, the High Court may receive additional evidence relevant to the exercise of its jurisdiction under section 6 of this Act or under subsection (3) of this section.

11. (1) Where a person is committed to await his surrender and is not discharged by order of the High Court, the Attorney-General may by warrant order him to be surrendered to the requesting country, unless—

(a) Such surrender is prohibited, or prohibited for the time being, by any of the provisions of this Act; or

(b) The Attorney-General decides under this section not to issue such warrant in his case.

(2) A warrant of surrender shall not be issued in respect of a fugitive if he is serving a sentence

of imprisonment, or is charged with an offence, in Kenya—

(a) In the case of a fugitive serving such a sentence, until the sentence has been served;

(b) In the case of a fugitive charged with an offence, until after the charge has been disposed of or withdrawn and, if it results in a sentence of imprisonment (not being a suspended sentence), the sentence has been served.

(3) The Attorney-General shall not issue a warrant of surrender if it appears to him, on the grounds specified in subsection (3) of section 10 of this Act, that it would be unjust or oppressive to surrender the fugitive concerned.

(4) The Attorney-General may decide not to issue a warrant of surrender if—

(a) The fugitive is accused or convicted of an extradition offence not punishable with death in Kenya, and could be or has been sentenced to death for that offence in the requesting country;

(b) Another country, besides the country in consequence of whose request the fugitive was committed, has made a request for his surrender, or has made a requisition for his surrender under Part II of the Extradition Act, or has applied for the endorsement of a warrant or the issue of a provisional warrant under Part III of that Act, and it appears to the Attorney-General, having regard to all the circumstances of the case and in particular—

- (i) the relative seriousness of the offences in question; and
 - (ii) the date on which each such request, requisition or application was made; and
 - (iii) the nationality or citizenship of the fugitive and his ordinary residence,
- that preference should be given to the other request, requisition or application.

(5) Where the Attorney-General is of the opinion that it would be dangerous to the life or prejudicial to the health of a fugitive to surrender him, he may, in lieu of ordering that he be surrendered, by warrant, order that he be held in custody at the place where he is for the time being, or at any other place to which the Attorney-General considers that he can be removed without danger to his life or prejudice to his health, until such time as he can without such danger or prejudice be surrendered.

(6) Notice of the issue of a warrant under this section shall forthwith be given to the fugitive who is to be surrendered or held in custody under it and such warrant may be executed according to its tenor.

12. (1) If a fugitive committed to await his surrender is in custody in Kenya under this Act after the expiration—

(a) In any case, of two months beginning with the first day on which, having regard to subsection (2) of section 10 of this Act, he could have been surrendered;

(b) Where a warrant of surrender has been issued, of one month beginning with the day of such issue,

he may, after giving at least one week's notice to

the Attorney-General, apply to the High Court for his discharge.

(2) Where the High Court hears an application under subsection (1) of this section, and is satisfied that due notice has been given to the Attorney-General, it may, unless sufficient cause is shown to the contrary, order that the applicant be discharged from custody and, if a warrant of surrender has been issued, quash that warrant.

13. (1) A fugitive who is remanded or committed to custody under section 9 of this Act shall be committed to the like institution as a person charged with an offence before the court.

(2) If any person who is in custody by virtue of any warrant issued under this Act escapes out of custody, he may be retaken in any part of Kenya in like manner as a person escaping from custody under a warrant for his arrest issued in respect of an offence committed therein.

(3) A warrant of surrender shall be sufficient authority for all persons to whom it is directed and all police officers to receive the fugitive, keep him in custody and convey him into the jurisdiction of the requesting country.

PART III

TREATMENT OF PERSONS RETURNED TO KENYA

14. A person who is accused or convicted of an offence under the law of Kenya, and who is returned to Kenya from a designated Commonwealth country under a law of that country corresponding with this Act, shall not be dealt with in Kenya for or in respect of any offence committed before he was returned to Kenya, other than—

(a) The offence in respect of which he was returned; or

(b) Any lesser offence proved by the facts proved for the purposes of securing his return; or

(c) Any other offence in respect of which the government of the country from which he was returned may consent to his being dealt with, during the period beginning with the day of his arrival in Kenya on his return and ending forty-five days after the first subsequent day on which he has the opportunity to leave Kenya.

15. Where a person accused of an offence under the law of Kenya is returned to Kenya from a designated Commonwealth country under a law of that country corresponding to this Act, and either—

(a) Proceedings against him for the offence for which he was returned are not begun within the period of six months beginning with the day of his arrival in Kenya on his return; or

(b) On his trial for that offence he is acquitted or is discharged under section 35 of the Penal Code,

the Attorney-General may, if he thinks fit, on the request of the person, arrange for him to be sent back free of charge and with as little delay as possible to that country.

...

KUWAIT

NOTE ¹

1. The Kuwait Labour Law No. 38 for the year 1968 contains provisions on the right to free choice of employment; the right to just and favourable conditions of work; the right to protection against unemployment; the right of everyone who works to just and favourable remuneration ensuring a decent living for himself and his family; the right of everyone, without discrimination of any kind, to equal pay for equal work; the right to rest and leisure and reasonable limitation of working hours and periodic holidays with pay; the right to form trade unions and to join the trade union of one's choice; and the right to strike. With regard to the right to strike, it is important to note that Kuwaiti legislation does not prohibit strikes. The system of compulsory arbitration is applied in the case of collective labour disputes. The following procedure is applied in disputes between the employer and all his workers or some of them. Direct negotiations between the employer or his representative and the workers or their representative. If an agreement is reached, it should be registered at the Ministry of Social Affairs and Labour within seven days from its signature. If the negotiations fail, one or both

parties may ask the Ministry of Social Affairs and Labour to intervene in order to settle the dispute. If the Ministry of Social Affairs and Labour fails to settle the dispute within fifteen days from the date the request is made, the dispute will be referred to a panel of arbitrators composed as follows:

(a) One of the divisions of the Supreme Court appointed for this purpose on annual basis;

(b) A representative of the Attorney-General;

(c) A representative appointed by the Minister of Social Affairs and Labour; not more than three persons representing each; the employer and the workers may appear before the panel. The findings of the panel are final and binding on the two parties.

2. With regard to the right to social security, the Law of Public Aid No. 5 for the year 1968 provides financial aid extending from 15 to 50 dinars to poor and needy families. Beneficiaries under this law are: widows; divorced and pregnant women; women suckling children; persons totally or partially disabled from work; old persons; disabled persons; parents or students; orphans; unmarried women; families of prisoners; women deserted by their husbands; victims of private and public disasters; Kuwaiti women married to non-Kuwaitis.

Thus the new developments comprise: unmarried women; families of prisoners, disabled persons; women deserted by their husbands; Kuwaiti women married to non-Kuwaitis.

¹ Note based upon report on economic, social and cultural rights received from the Government of Kuwait under Economic and Social Council resolution 1074 C (XXXIX) and published in the Secretary-General's *Periodic Reports on Human Rights, 1966-1969* (E/CN.4/1011).

LAOS

CODE OF CRIMINAL PROCEDURE

Entered into force on 1 July 1967¹

...

Article 53. If, for the purposes of the investigation, the officer of the criminal police considers it necessary to hold one or more of the persons mentioned in articles 51 and 52 at his disposal, he may not hold them for more than twenty-four hours.

If there is substantial and consistent evidence which is likely to result in the bringing of charges against a person, the officer of the criminal police must bring him before the *procureur du Roi* and may not hold him at his disposal for more than twenty-four hours.

The time-limit laid down in the preceding paragraph may be extended by a further period of twenty-four hours on written authorization from the *procureur du Roi* or the examining judge.

After twenty-four hours, medical examination cannot be denied if the detained person requests it and if there is a physician within twenty kilometres of the place of detention.

The officer of the criminal police shall advise the person under surveillance of this right.

If the place of surveillance is more than thirty kilometres from the place where the *procureur du Roi* has his office, the time-limits prescribed in this article may be multiplied by five.

Article 54. Officers of the criminal police shall include in the record of statements taken from any person placed under surveillance an entry indicating the length of time for which he was questioned, the duration of the rest periods between interrogations, the date and hour at which he was placed under surveillance and the date and hour at which he was either released or brought before the competent judicial officer (*magistrat*).

The said entry shall be specially initialled by the persons concerned, and, if they refuse, it shall

be so indicated. The entry must include a statement of the reasons for the surveillance.

A like entry shall be made in a special register kept for the purpose at any police station capable of accommodating a person placed under surveillance.

The *procureur du Roi* may, if he considers it necessary, even on the application of a member of the family of the person under surveillance, appoint a physician who shall examine the latter at any time within the time-limits laid down in article 53.

Article 55. Reports made out by the officer of the criminal police pursuant to articles 44 to 52 shall be drawn up immediately and signed by him on each page.

Article 56. The provisions of articles 44 to 55 shall apply to *flagrante delicto* correctional offences wherever the law prescribes a penalty of imprisonment.

...

Article 59. In the case of a *flagrante delicto* crime which has not yet been referred to the examining judge, the *procureur du Roi* may issue a warrant to compel the attendance of any person suspected of having taken part in the offence.

The *procureur du Roi* shall immediately interrogate any person so brought before him. If the person comes forward spontaneously, accompanied by counsel, he may be interrogated only in the presence of his counsel.

Article 60. In the case of a *flagrante delicto* correctional offence punishable by a term of imprisonment which has not been referred to the examining judge, the *procureur du Roi* may order the accused person committed to prison, after questioning him as to his identity and the acts he is alleged to have committed.

He shall then refer the case to the court in the manner laid down in book II of this Code concerning proceedings before trial courts.

¹ Extract from the Code communicated by the Government of the Kingdom of Laos.

The provisions of this article shall not apply to press offences, political offences or offences prosecutable under a special law, or where the persons suspected of having taken part in the offence are under the age of eighteen years.

Article 61. If the examining judge is in the locality, the authority vested in the *procureur du Roi* and in officers of the criminal police shall automatically pass to him.

The examining judge shall then perform all functions of the criminal police provided for in this chapter.

He may also order any officer of the criminal police to continue the operations.

When the operations are completed, the examining judge shall transmit the documents in the case to the *procureur du Roi* for such action as may be necessary.

If the *procureur du Roi* and the examining judge are both in the locality, the *procureur du Roi* may make applications for a normal judicial inquiry, which shall, notwithstanding the provisions, where applicable, of article 72, be held by the examining judge who is in the locality.

Article 62. In the case of a *flagrante delicto* crime or a *flagrante delicto* correctional offence punishable by a term of imprisonment, any person shall be entitled to apprehend the perpetrator and to bring him before the nearest officer of the criminal police.

...

Article 64. Officers of the criminal police shall make preliminary investigations on the instructions of the *procureur du Roi* or *ex officio*. Such operations shall be under the supervision of the *procureur général*.

Article 65. Searches of dwellings and other premises shall not be carried out, and items of evidence shall not be seized, without the express assent of the person on whose premises the operation takes place.

Such assent shall be given in a statement made in writing by the person concerned, or, if he is unable to write, the fact and the fact of his assent shall be stated in the report.

The provisions of article 46 and article 49 (first paragraph) shall be applicable.

Article 66. If, for the purpose of the preliminary investigation, the officer of the criminal police considers it necessary to hold a person at his disposal for more than twenty-four hours, the person concerned must be brought before the *procureur du Roi* before the expiration of that period.

After hearing the person so brought before him, the *procureur du Roi* may grant written authorization to extend the period of surveillance for another twenty-four hours.

After twenty-four hours, medical examination cannot be denied if the detained person requests it and if there is a physician within twenty kilometres of the place of detention.

The officer of the criminal police shall advise the person under surveillance of this right.

If the place of surveillance is more than twenty kilometres from the place where the *procureur du Roi* has his office, the time-limits prescribed in this article may be multiplied by five.

Article 67. Cases of surveillance shall be recorded in the manner laid down in articles 53 and 54.

...

Article 81. The examining judge may visit the scene in order to establish any necessary facts or to make a search. He shall notify the *procureur du Roi*, who shall be entitled to accompany him.

The examining judge shall always be accompanied by a clerk of court.

He shall draw up a report of his operations.

Article 82. If the purposes of the judicial inquiry so require, the examining judge may, after notifying the *procureur du Roi* of his court, go with his clerk of court into the areas of jurisdiction of courts adjacent to that in which he officiates in order to perform any examining functions in such areas, provided that he notifies, as soon as possible, the *procureur du Roi* for the area of jurisdiction into which he goes. He shall indicate in his report the reasons for his going into the said area.

Article 83. Searches shall be carried out in all places in which objects likely to be of assistance in ascertaining the truth may be found.

Article 84. If the search is made at the accused person's dwelling, the examining judge must comply with the provisions of articles 47 and 49.

Article 85. If the search is made at the dwelling of a person other than the accused, the person at whose dwelling it is to be made shall be invited to be present. If this person is absent or refuses to attend, the search shall be made in the presence of two of his relatives by blood or marriage who are present on the spot or, in the absence of such persons, in the presence of two witnesses.

The examining judge must comply with the provisions of article 47 (second paragraph) and article 49.

It shall, however, be incumbent on him to have all necessary measures taken in advance to ensure that professional secrecy and the rights of the defence are respected.

Article 86. If the occasion arises during the judicial inquiry to search for documents, and subject to compliance, where necessary, with the obligation laid down in the third paragraph of the preceding article, only the examining judge or the officer of the criminal police delegated by him shall have the right to scrutinize the documents before seizing them.

All objects and documents seized shall be immediately inventoried and placed under seal.

The seals may be opened and the documents examined only if the accused person assisted by his counsel is present or if they have been duly invited to attend. A third party on whose premises the seizure was made shall also be invited to be present at this operation.

The examining judge shall keep in official custody only those objects and documents which are likely to be of assistance in ascertaining the truth or the communication of which might be detrimental to the judicial inquiry. The persons concerned may, unless the purposes of the judicial inquiry require otherwise, obtain at their own expense, as promptly as possible, copies or photocopies of the documents which are kept in official custody.

If the seizure is one of cash, bullion, negotiable instruments or securities, which need not be retained as such in order to ascertain the truth or safeguard the rights of the parties, he may authorize the clerk of court to deposit them at an office of the national Treasury.

Article 87. Any communication or disclosure without the authorization of the accused person or his representatives or of the signatory or addressee of a document secured in a search to a person not qualified by law to receive it shall be punishable by a fine of 51,000 to 200,000 kip and by imprisonment for two months to two years.

Article 88. The accused person, a civil claimant or any person claiming to have a right to an object which has been placed in judicial custody may apply to the examining judge for its return.

If the application is made by the accused person or by a civil claimant, it shall be communicated to the other party and to the *ministère public*. If it is made by a third party, it shall be communicated to the accused person, the civil claimant and the *ministère public*.

Any observations thereon must be produced within three days of such communication.

An appeal against the ruling of the examining judge may be taken to the *chambre des mises en accusation*, on a simple motion in writing, within ten days of the date on which the parties concerned are notified of the ruling, provided that the judicial inquiry is not thereby delayed.

A third party shall have the same right as the other parties to be heard by the *chambre des mises en accusation* with regard to his observations, but he shall not be entitled to have access to the records of the proceedings.

Article 103. At the first appearance of the accused person, the examining judge shall verify his identity, shall expressly inform him of each of the acts he is alleged to have committed, and shall advise him that he is free not to make any statement. The fact that the accused person has been so advised shall be indicated in the record.

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

The judicial officer shall advise the accused person of his right to select a counsel from among the duly registered and approved advocates and defence counsel. If the accused person fails to select a counsel, and if there are approved advocates and defence counsel residing within the area of jurisdiction of the examining judge who interrogates him, the president of the court shall, at the request of the accused person, appoint one for him *ex officio*.

This formality shall be mentioned in the record.

A civil claimant shall also be entitled to the assistance of a counsel as from the time when he is first heard.

Counsel selected by the accused person and counsel for a civil claimant must establish an address for service in the locality where the examining judge sits, unless they are already resident there.

At the first appearance of the accused person, the judge shall caution him that he must inform the judge of all changes of address; the accused person may also establish an address for service in the locality where the examining judge sits.

Article 104. Notwithstanding the provisions of the preceding article, the examining judge may undertake an immediate interrogation and confrontations in case of urgency resulting from the fact that a witness is in danger of death or that certain evidence is about to disappear, or in the case provided for in the last paragraph of article 61.

The reasons for urgency must be indicated in the record.

Article 105. An accused person under detention may communicate freely with his counsel immediately after his first appearance before the examining judge.

The examining judge shall have the right to order a prohibition on communication for a period of ten days. He may renew this prohibition, but only for a further period of ten days.

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

Article 106. The accused person and the civil claimant may at any time during the judicial inquiry inform the examining judge of the names of the counsel they select; if they appoint more than one counsel, they must indicate to which one of them invitations and notices should be addressed.

The aforementioned counsel must establish an address for service as provided for in the sixth paragraph of article 103.

Article 107. Unless they expressly waive their rights in that respect, the accused person and the civil claimant may be heard or confronted only if their respective counsel are present or have been duly invited to attend.

Counsel shall be invited to attend by officers of the law enforcement service or through the administrative channel at least two days before the interrogation.

The papers in the case must be placed at the disposal of counsel for the accused person at least twenty-four hours before each interrogation. They must also be placed at the disposal of counsel for the civil claimant at least twenty-four hours before the latter is heard. Counsel for the accused person and for the civil claimant must consult the papers at the office of the clerk of court.

Article 108. The *procureur du Roi* may be present when the accused person is interrogated and confronted and when the civil claimant is heard.

Whenever the *procureur du Roi* has notified the examining judge that he intends to be present, the examining judge's clerk of court must, on pain of a civil fine of 100 kip to be imposed by the president of the court, give him simple notice in writing at least two days before the interrogation.

Article 109. The *procureur du Roi* and counsel for the accused person and for the civil claimant may speak only in order to put questions after being authorized to do so by the examining judge.

If they are refused such authorization, the text of the questions shall be reproduced in or annexed to the record.

Article 110. Records of interrogation and confrontation shall be drawn up in the manner laid down in articles 95 and 96.

If an interpreter is employed, the provisions of article 91 shall apply.

Article 111. The examining judge may issue a summons to appear, a warrant to compel attendance, an order for committal to prison or a warrant for arrest, as the case requires.

The purpose of a summons to appear is to serve notice on the accused person that he is required to come before the judge at the date and hour stated in the summons.

A warrant to compel attendance is an order issued by the judge directing the law enforcement services to bring the accused person before him immediately.

An order for committal to prison is an order issued by the judge directing the warden of the place of detention to receive and detain the accused person. Where notice of the order has previously been given to the accused person, the order also permits a search for him or his transfer.

A warrant for arrest is an order directing the law enforcement services to find the accused person and take him to the place of detention indicated in the warrant, where he shall be received and detained.

Article 112. All such summonses, warrants and orders shall specify the identity of the accused person and shall be dated, signed and sealed by the issuing judicial officer.

In the case of warrants to compel attendance, orders for committal to prison and warrants for arrest, the nature of the charge and the applicable legal provisions shall also be stated.

Notice of a summons to appear shall be given to the person named therein by an officer of the criminal police or of the law enforcement services, who shall hand him a copy of the summons.

Notice of a warrant to compel attendance or a warrant for arrest shall be given, and the warrant shall be executed, by an officer of the criminal police or of the law enforcement services, who shall exhibit the warrant to the accused person and shall hand him a copy thereof.

If the person concerned is already under detention for another reason, notice shall be given to

him by the warden of the place of detention, who shall likewise hand him a copy of the warrant.

Warrants to compel attendance and warrants for arrest may, in case of urgency, be communicated through any medium. In such a case, the essential particulars given in the original, and especially the identity of the accused person, the nature of the charge and the name and title of the judicial officer issuing the warrant, must be specified. The original warrant must be transmitted to the officer responsible for its execution as soon as possible.

Notice of an order for committal to prison shall be given to the accused person by the examining judge; the fact that such notice has been given must be indicated in the record of the interrogation.

Article 113. Summonses, orders and warrants shall be enforceable throughout the territory of the Kingdom.

Article 114. An accused person to whom a summons to appear has been issued shall be interrogated forthwith by the examining judge.

An accused person arrested by virtue of a warrant to compel attendance shall be interrogated in like manner; however, if the interrogation of a person so arrested cannot take place immediately, the accused person shall be taken to a place of detention, where he may not be held for more than twenty-four hours.

At the expiration of that period, he shall automatically be brought by the warden before the *procureur du Roi*, who shall request the examining judge, or, in his absence, the president of the court or a judge designated by the latter, to conduct the interrogation forthwith, failing which the accused person shall be released.

Article 115. Any accused person arrested by virtue of a warrant to compel attendance who has been held in a place of detention for more than twenty-four hours without being interrogated shall be deemed to be arbitrarily detained.

Any judicial officer or other official who has ordered or knowingly permitted such arbitrary detention shall be liable to imprisonment for six months to five years.

Article 116. If an accused person sought by virtue of a warrant to compel attendance is found at a distance of more than 200 kilometres from the place where the examining judge who issued the warrant officiates, he may be brought before the *procureur du Roi* of the place nearest that of his arrest.

Article 117. The said *procureur du Roi* shall interrogate him on his identity, receive his statements, after advising him that he is free not to make any statements, and ask him whether he agrees to be transferred or whether he prefers the warrant to compel attendance to remain in effect while he awaits, at the place where he is, the decision of the examining judge in charge of the case. If the accused person declares that he is opposed to the transfer, he shall be taken to a place of detention and the competent examining

judge shall be notified forthwith. The record of the appearance before the *procureur du Roi*, including a complete description of the accused person, shall be forwarded without delay to the competent examining judge, together with any particulars that may facilitate identification.

The record must indicate that the accused person has been advised that he is free not to make any statement.

Article 118. The examining judge in charge of the case shall decide, immediately after receipt of the aforementioned documents, whether there is reasonable ground for ordering the transfer.

Article 119. If an accused person against whom a warrant to compel attendance has been issued cannot be found, the warrant shall be submitted to the *chaomuong* or one of his deputies, or to the local head of police or the police officer in charge of public safety in the *muong* where he resides.

The *chaomuong*, the deputy, the local head of police or the police officer in charge of public safety shall countersign the warrant, which shall be returned to the judicial officer who issued it with a report that the search was unsuccessful.

An accused person who refuses to comply with a warrant to compel attendance or who, after having declared that he is prepared to comply, attempts to escape must be restrained by force.

In such a case, the bearer of the warrant to compel attendance shall make use of the law enforcement services of the nearest place. The said services must comply with the order contained in the warrant.

Article 120. If an accused person has fled or if he resides outside the territory of the Kingdom, the examining judge may, after consulting the *procureur du Roi*, issue a warrant for his arrest if the act is punishable by a penalty of correctional imprisonment or a more serious penalty.

Article 121. An accused person apprehended by virtue of a warrant for arrest shall be taken forthwith to the place of detention indicated in the warrant, subject to the provisions of article 122, second paragraph.

The warden shall deliver to the officer responsible for executing the warrant a paper acknowledging that the accused person has been handed over.

Article 122. The accused person shall be interrogated within forty-eight hours of his incarceration. If the interrogation has not taken place by the end of that period, the provisions of article 114 (third paragraph) and article 115 shall apply.

If an accused person is arrested outside the area or jurisdiction of the examining judge who issued the warrant, he shall be brought forthwith before the *procureur du Roi* of the place of the arrest, who shall receive his statements after advising him that he is free not to make any statement. The fact that the accused person has been so advised shall be indicated in the record.

The *procureur du Roi* shall without delay inform the judicial officer who issued the warrant and shall apply for a transfer. If the transfer

cannot be effected immediately, the *procureur du Roi* shall so report to the judge who issued the warrant.

Article 123. The officer responsible for executing a warrant for arrest may not enter the dwelling of a citizen before 6 a.m. or after 8 p.m.

He may be accompanied by a force sufficient to ensure that the accused person cannot evade the law. The said force shall be levied in the place nearest to that in which the warrant for arrest is to be executed, and it must comply with the orders contained in the warrant.

If the accused person cannot be apprehended, notice of the warrant for arrest shall be given at his last place of residence and a report of the search shall be drawn up.

The said report shall be drawn up in the presence of the two nearest neighbours of the accused person that the bearer of the warrant for arrest is able to find. They shall sign the report, or, if they are unable to write their names or are unwilling to sign, that fact and the questions put to them shall be indicated.

The bearer of the warrant for arrest shall then have his report countersigned by the *chaomuong* or one of his deputies, or by the local head of police, or, in his absence, the police officer in charge of public safety in the locality, and shall leave a copy of it with him.

The warrant for arrest and the report shall then be forwarded to the judge who issued the warrant and to the office of the clerk of court.

Article 124. The examining judge may issue an order for committal to prison only after an interrogation and only if the offence is punishable by a penalty of correctional imprisonment or a more serious penalty.

The officer responsible for executing an order for committal to prison shall hand over the accused person to the warden of the place of detention, who shall deliver to him a paper acknowledging that the accused person has been handed over.

Article 125. Failure to observe the formalities prescribed with respect to summonses to appear, warrants to compel attendance, orders for committal to prison and warrants for arrest shall be punishable by a civil fine of 100 kip to be imposed on the clerk of court by the president of the court, and may furnish grounds for disciplinary penalties or legal action for denial of justice against the examining judge or the *procureur du Roi*.

These provisions shall be extended to any violation of the measures for the protection of individual liberty laid down in articles 46, 47, 49, 86, 87, 127, 128 and 130 of this Code, save where a more serious penalty applies and is imposed.

Article 126. Detention pending trial is an exceptional measure. When an order is made for such detention, the following rules must be observed.

Article 127. In correctional cases, where the maximum penalty prescribed by the law is less than two years' imprisonment, an accused person

domiciled in Laos may not be detained for more than six days after his first appearance before the examining judge unless he has been previously convicted of a crime or sentenced to a term of imprisonment exceeding three months, without suspension of sentence, for a correctional offence under ordinary law.

Article 128. In cases other than those referred to in the preceding article, detention pending trial may not exceed two months. At the end of that period, if continued detention appears necessary, the examining judge may extend it by means of an order containing a statement of reasons, issued upon an application, similarly specifying reasons, by the *procureur du Roi*. The period of each such extension shall not exceed two months.

Article 129. In all cases, where it is not granted as of right, provisional release may be ordered *ex officio* by the examining judge after consultation with the *procureur du Roi*, provided that the accused person undertakes to appear immediately at all proceedings when he is summoned thereto, and to keep the examining judge informed of all his movements.

The *procureur du Roi* may also request provisional release at any time. The examining judge shall rule on such requests within five days from the date thereof.

Article 130. An accused person or his counsel may at any time make an application for provisional release to the examining judge, subject to the obligations laid down in the preceding article.

The examining judge must immediately transmit the papers in the case to the *procureur du Roi* so that he may prepare his statement. At the same time, he shall give notice to the civil claimant, who may submit observations.

The examining judge shall rule on the application, by means of an order containing a statement of reasons, no later than five days after the transmission of the papers to the *procureur du Roi*.

Where a civil claimant is a party to the action, the examining judge may not issue the order until forty-eight hours after notice has been given to the civil claimant.

Should the examining judge not rule within the time-limit laid down in the third paragraph, the accused person may submit his application directly to the *chambre des mises en accusation*, which, on the basis of the written conclusions of the *procureur général*, accompanied by a statement of reasons, shall rule on the matter within fifteen days of such application, failing which the accused person shall be granted provisional release, unless examinations have been ordered with respect to his application. The *procureur du Roi* shall also have the right to bring the matter before the *chambre des mises en accusation* in the same manner.

Article 131. Any accused person may also apply for provisional release at any stage or level of the proceedings.

Where the case is before a trial court, that court shall rule on the application for provisional release; if the case has not yet been referred to the Criminal Court, or if the Criminal Court is not in

session, this authority shall be vested in the *chambre des mises en accusation*.

In case of an appeal on points of law, until the Court of Cassation has rendered its decision the court which last considered the case on its merits shall rule on the application for provisional release. If the appeal is against a decision of the Criminal court, the *chambre des mises en accusation* shall rule on the matter of detention.

Where there has been a decision that a court lacks jurisdiction and generally wherever no court has the case before it, the *chambre des mises en accusation* shall consider applications for release.

Wherever an accused person who is an alien is left at liberty or granted provisional release, the competent court alone may assign a place of residence which he must not leave without permission until a finding is made that no action should follow or an absolute decision is rendered, on pain of imprisonment from six days to one year.

The necessary measures for the application of the preceding paragraph, including supervision of the prescribed residence and the issue of temporary permits to leave, shall be established by an order of the Minister of Justice.

Article 132. Where a trial court is called up to rule in the cases mentioned in the preceding article, the parties and their counsel shall be invited to attend by officers of the law enforcement service or through the administrative channel. The decision shall be rendered after the *ministère public* and the parties or their counsel have been heard.

Article 133. Prior to release with or without security, the applicant must by means of a document deposited with the registry of the place of detention establish and address for service, which shall be in the place where judicial inquiry is being conducted if he has not yet been committed for trial and in the place where the court dealing with the merits of the case sits if he is awaiting trial. The officer in charge of the place of detention shall notify the competent authority accordingly.

After provisional release has been granted, the examining judge or the trial court which has the case before it may issue another warrant if the accused person does not appear when invited to do so or if new or serious circumstances render his detention necessary.

Where there has been a decision that a court lacks jurisdiction, the *chambre des mises en accusation* shall have the same right until such time as the case comes before the competent court.

Where the *chambre des mises en accusation* has reversed an order of the examining judge and has granted provisional release, the examining judge may issue another warrant only if the *chambre des mises en accusation*, on the basis of the written application of the *ministère public*, has revoked its ruling in favour of the accused person.

Article 134. Provisional release, in all cases in which it is not granted as of right, may be made subject to the deposit of security.

This security shall guarantee:

(1) The presence of the accused person at all the proceedings and for execution of the judgment;

(2) Payment, in the following order, of:

(a) Costs advanced by a civil claimant;

(b) Costs of the prosecution;

(c) Fines;

(d) Restitution and damages.

The decision granting provisional release shall determine the amount allocated to each of the two parts of the security.

Article 135. Where provisional release has been made subject to the deposit of security, such security shall be furnished in the form of cash, banknotes, certified cheques or securities issued or guaranteed by the State. It shall be paid over to the clerk of court.

Upon presentation of the receipt, the *ministère public* shall see that the decision granting release is executed forthwith.

The manner in which the security is to be paid over to the clerk of court shall be determined by an order of the Ministry of Justice.

Article 136. The first part of the security shall be returned if the accused person has attended all the proceedings and has presented himself for execution of the judgement.

It shall be immediately forfeited to the State if the accused person fails, without legitimate excuse, to attend any part of the proceedings or to present himself for execution of the judgement.

Nevertheless, the examining judge in the event of a finding that no action should follow, and the trial court in the event of dismissal or acquittal, may order the return of this part of the security.

Article 137. The second part of the security shall always be returned in the event of a finding that no action should follow, dismissal or acquittal.

In the event of a conviction, it shall be allocated to costs, to the fine, and to restitution and damages awarded to the civil claimant, in the order set out in article 134. Any surplus shall be returned.

Article 138. An accused person who has been granted provisional release or who was never detained during the judicial inquiry must submit to detention at least one day before the hearing.

A writ of *capias* shall be executed if the accused person, having been duly summoned through the administrative channel to the office of the clerk of the Criminal Court, fails without legitimate excuse to come forward on the day appointed by the president of the Criminal Court for his interrogation.

LIBERIA

ACT OF 9 AUGUST 1968 TO INCORPORATE THE SOCIAL SERVICES ASSOCIATION OF LIBERIA ¹

Section 1. Creation, Name and Style. There is hereby created a corporate entity under the name and style of the "Social Services Association of Liberia" (hereinafter referred to as the "Association") . . .

Section 2. Powers and Functions. The Association shall have the following powers and functions:

(a) The Association shall carry out social welfare programmes to be of maximum value to the Nation and Communities, to serve people in all walks of life, and to render assistance to already existing recognized welfare programmes;

(b) The Association shall, in co-operation with its appropriate Government agencies, be responsible for the rehabilitation of disabled persons through recognized charitable and voluntary institutions handling cases involving people with mental or physical retardation, mental illness, amputation and orthopedic impairments, speech and hearing disorders, blindness, epilepsy, stroke, tuberculosis, congenital deformities, assistance for the aged and other social services;

(c) In collaboration with the National Public Health Service, the Association aims to build a national, voluntary agency programme for the disabled; to improve rehabilitating knowledge and its application; to increase the nation's service supply of trained rehabilitation manpower; and to

promote public understanding about the needs and abilities of handicapped people;

. . .

Section 3. Aims and Purposes. The Association shall be a charitable association with aims and purposes as follows:

(a) To contribute to the establishment and maintenance of social service centres; to enhance the continuous progress of such services in the community; to effectively assist existing medical and social services and any related official Bureau or Department of Government that may subsequently be established;

(b) To be responsible for aid and services to the needy of all ages including the mentally or physically incapacitated, widows and orphans;

(c) To act as consultants to help communities within each County and Territory to engage in social reform activities for the elimination of juvenile delinquency;

(d) To contribute to the promotion of research, experiments, investigations and studies in the development of scientific methods for the diagnosis and prevention of social problems;

(e) To arrange for scholarships for training of workers in all fields of social service activities;

. . .

(g) To maintain a close co-operation with the United Nations and other international agencies concerned with welfare programmes and problems for mutual exchange of information and assistance.

. . .

¹ *The Liberia Official Gazette*, September and October 1968, vol. XCVI, Nos. 9 & 10.

LIBYA

NOTE ¹

I. ADULT EDUCATION AND ERADICATION OF ILLITERACY ACT

Under Law No. 13, 1968, regarding adult education and the eradication of illiteracy, the Ministry of Education of Libya intends, on the basis of a plan the details of which are still to be developed, to eradicate illiteracy in the country within 15 years. For this purpose, a high level committee of that Ministry will be responsible for setting the general policy and for proposing a concrete plan to implement it. This plan will determine the age of those who should receive education; it provides that such people should be notified in writing, or should be informed of this obligation through various information media. It would determine the time and place of the courses given, and will draw up the necessary strategy for an annual campaign aiming at the eradication of illiteracy; it will also provide for books, recruitment of teachers and the establishment of education centres. Furthermore, the plan will provide that once the student is no longer illiterate, he should graduate and be granted an official certificate to that effect.

Under the present law, the illiterate person is defined as one who passed the age of 12 years and has not received an education equivalent to the fourth year of primary education, in the subjects of reading, writing, arithmetic and the concomitant general knowledge in the fields of religious, social hygiene and vocational studies.

Individuals notified of the fact that they should receive education, have either to prove they are not illiterate or be under obligation to receive such education.

Furthermore, the law provides that education shall be compulsory for each Libyan citizen between the ages of 12 and 45, in the above subjects offered during the statutory period.

Compulsory education shall be applied gradually and in stages, and shall be expanded until it has covered all the illiterates within fifteen years. Such education shall be given free of charge.

Sick persons and persons mentally or physically disabled shall be exempt from compulsory education. However, such an exemption will cease to apply when such persons have become free of illnesses or disabilities.

The education of illiterates shall proceed continuously and uninterrupted except in rural districts during agricultural seasons and in compelling circumstances.

The law will place an obligation upon private institutions, firms and commercial and industrial establishments to provide education for the illiterates among their workers. The Department of Prisons should also provide education to any illiterate who is imprisoned for a period longer than six months.

In order to promote education and eradicate illiteracy, appointments and promotions in government and public institutions shall, as a matter of priority, be given to literates. The same priority, will apply to many services and assistances granted by the Government. The private sector, should, upon notification by the Ministry of Education, give literates the priority in promotions and appointments.

As the plan to combat illiteracy should be implemented earnestly and vigorously, a fine will be imposed on any person, who, without reasonable excuse abstains from enrolling in or attending courses of education. Executives of private firms and establishments shall also be fined if they fail to provide the Ministry with a complete statement on the conditions of illiteracy in their establishments, or do not give in recruitments and promotions, priority to literates. This law will apply to women only as much as feasible and socially appropriate. Women and other organizations working for the progress of women shall be requested to assist in the education of women whenever possible.

II. REVISION OF THE SOCIAL SECURITY ACT

Law No. 14, 1968, contained amendments to some provisions of the Social Security Act. Under these amendments, the salary categories subject to

¹ Note furnished by the Government of Libya.

Social Security increased from three to five, in view of the economic development of the country whose wealth was enhanced by the discovery of oil. A major purpose of the amendments was to expand the coverage by the Social Security Act to the majority of the working population. The amendments also resulted in the increase of cash assistance given to the workers during illness or disability caused by their work, as well as in the increase of the old-age pension, sickness indemnities, and the assistance given to insured individuals and their pregnant wives (maternity delivery) and others.

The cash assistance to workers during illness increased in some instances four-fold. Assistance for category I of workers rose from 100 mills to 350; for category II, from 160 to 550 mills; for category III from 240 to 1 000 mills. The amendments furthermore established a fourth category providing a financial assistance of 1,800 mills to the worker during his sickness; also a fifth category was established providing financial assistance to the sick worker for the duration of his illness, which may reach 3,500 mills per day.

Financial assistance to the worker during absence from work due to work injury has also been amended and was increased from 150 mills for category I workers, from 240 to 750 mills for category II and from 360 to 1,350 mills for category III. A new category, category IV, was established providing an assistance of 2,500 mills to the worker during his unemployment as a result of work injuries. A category V was established providing an assistance of 5,000 mills per day to the unemployed of his category. Workers unemployed and incapacitated because of injuries sustained during their work shall receive such assistance as may be determined under each of the above-mentioned categories, irrespective of the weekly contributions made by the worker.

The Revision of the Act amended the maximum and the minimum of both the old-age and disability pensions. Thus, for category I workers, the minimum pension was raised from 150 piastres to 8 Libyan pounds, while in category V it was raised from 20 to 70 pounds. Pension in other categories varied between the two extremes, depending on

the level of the category and the contribution of the worker.

A revision was made in the aggregate of maternity assistance paid to the pregnant insured female worker, or the delivery of the pregnant wife of the insured worker. The assistance, as amended, amounts to 7 pounds for each new-born baby of the insured worker; prior to this change, the insured worker was paid 2 pounds for each 7-year old child.

The term "work injury" was redefined. Under the previous system, the conditions required for work injuries to justify indemnity were that it should result from and during work, including injuries received during transportation from and to work, provided transportation is offered by the employer. The amendment eliminated this condition, stipulating that work injury is considered as such even if transportation was not provided by the employer. The purpose being to enable the workers to receive the proper indemnities in cases where they would not have received it under the previous system.

The amendments also provide that if the insured worker was entitled to a pension or to a financial assistance as a result of work injuries, then dies leaving no children under 18, or leaving unmarried daughters, his parents shall receive either 25 % of the monthly pension he was receiving or to which he was entitled; or half of his entitlement for financial assistance.

Regarding the pension paid to the orphan, the revision raised from 16 to 18 years the legal age when the pension payment to the orphan is discontinued. The female orphan will remain entitled to pension indefinitely or until she marries.

Under the previous system, the members of the family of the insured worker who are eligible to receive medical assistance were the wife and unemployed children under 16 if they live with the insured or the pension recipient. The amendments state that the members of the family who are entitled to receive medical assistance are the wife, children under 18 and unmarried daughters who are dependents of the insured worker or the pension recipient.

LIECHTENSTEIN

DECREE OF 1 APRIL 1968 CONCERNING THE GRANTING OF PERMITS FOR THE FAMILIES OF FOREIGN EMPLOYED PERSONS¹

Article 1

(1) Permits for the families of foreign employed persons shall be granted only on the following conditions:

(a) The employed person must show proof of a law-abiding and uninterrupted stay of five years in the Principality of Liechtenstein;

(b) The personal and professional conduct of the employed person must be such as to justify his being joined by his family;

(c) Prior to entry, proof must be furnished that suitable accommodation is available;

(d) The employed person's circumstances with respect to residence and employment must be established as adequate and continuously liable to inspection;

(e) Prior to their entry, a medical examination by a public health officer must show that the members of the employed person's family have a clean bill of health;

(f) Family members joining an employed person must be adequately insured against accidents and sickness;

(g) Provision must be made for supervision of the immigrating children in accordance with the usual *Land* regulations, and facilities for their education must be available.

(2) The commune in which the employed person is resident shall, upon request, give its opinion as to the entry of the family. Article 22 of the by-laws (*Gemeindegeseztz*) still applies.

Article 2

A family permit shall be granted irrespective of the length of residence in the Principality of Liechtenstein if the wife of the foreign employed person was born in Liechtenstein or has a residence permit, and the conditions laid down in Article 1, paragraph 1, (a) to (f), are fulfilled.

Article 3

For the purpose of this Decree, members of the family shall be the wife and the children under eighteen years of age.

Article 4

(1) Proof of adequate accommodation shall be furnished in the form of a certificate from the commune of residence. The certificate shall specify whether the accommodation

(a) Complies with the building, fire and statutory health requirements and,

(b) Except where the premises are new, that they were obtained without detriment to the previous tenant.

(2) No detriment to the previous tenant shall be deemed to have been caused if he has given notice of termination or has agreed to give such notice, or if he has terminated his tenancy for a lawful reason.

Article 5

Family permits for foreign seasonal workers shall be granted only on the following conditions:

(a) The foreign seasonal worker must furnish proof that, in the course of five consecutive years, he has been a law-abiding resident working in the Principality of Liechtenstein for at least forty-five months.

(b) The requirements laid down in article 1, paragraph 1, (b) to (g), must be met.

Article 6

Foreign married women employed in the Principality of Liechtenstein shall not be granted a permit for their husband and children to join them.

Article 7

(1) The Government is authorized to grant a family permit before expiry of the residence period

¹ *Liechtensteinisches Landesgesetzblatt*, No. 11, of 4 April 1968.

laid down in this Decree, provided that all the other conditions are fulfilled,

(a) In circumstances deserving of special consideration, especially

(aa) In the event of the death of the owner of a business or the manager of a business or department;

(bb) Where there is proof of the protracted illness of the owner of a business or of the manager of a business or department, which is nevertheless of limited duration;

(b) If it is established that a specially skilled worker has to be engaged for an important position in an industrial or other enterprise (e.g., in industry, a physicist, chemist, or engineer with university education); for such personnel, family permits already granted can be exchanged for new ones when they expire, if this is shown to be necessary from the point of view of the enterprise.

(c) If, in a purely agricultural enterprise, a farm worker whose employment throughout the year is guaranteed is urgently needed and if it is proved that no local manpower is available.

(2) Foreign women who are single or widowed or legally divorced (released from the marriage bond) and are employed in Liechtenstein may, as an exceptional measure, be granted a permit for their children to join them, provided that the conditions laid down in article 1, paragraph 1, (a) to (g), are fulfilled.

Article 8

The family permit does not entitle the members of the family to take employment.

Article 9

(1) Proof of compliance with the conditions required for the family permit shall be furnished annually.

(2) Family permits shall lapse if the requirements prescribed in this Decree for their issuance are no longer fulfilled.

(3) Family permits may be revoked if obtained by false declarations.

...

DECREE OF 29 JULY 1968 CONCERNING THE ADMITTANCE OF MINORS TO PUBLIC FILM PERFORMANCES ²

Article 1

Children of pre-school age shall not be admitted to public film performances.

Article 2

(1) Children and young persons shall be admitted to public film performances as follows:

(a) Children from the beginning of school age up to the completion of their fourteenth year, if the age of admittance prescribed for the film is within these limits and the performance ends not later than 7 p.m.;

(b) Young persons from the end of their fourteenth to the end of their sixteenth year, if the age of admittance prescribed for the film is within these limits and the performance ends not later than 9 p.m.;

(c) Young persons from the end of their sixteenth to the end of their eighteenth year, if the age of admittance prescribed for the film is within these limits and the performance ends not later than 11 p.m.

(2) The officially prescribed age of admittance must be clearly indicated by the cinema manager simultaneously with the announcement of the film.

Article 3

(1) Persons who have not yet completed their twenty-first year (minors) must, upon demand,

show proof of their age when attending public film performances. In addition to official identity papers, school identity cards, which are issued by the public school authorities, shall also be accepted.

(2) Minors unable to furnish proof of age shall not be admitted to the cinema.

Article 4

Cinema managers shall be required

(a) To publicize the provisions of this Decree in their business premises in a clearly recognizable form;

(b) To ensure, by checking identity papers, compliance with the provisions of article 2 of this Decree.

Article 5

The local police authorities, the security corps and the youth welfare office shall supervise compliance with the provisions of this Decree.

Article 6

Violators of this Decree shall be liable to prosecution and shall be punished by the government authorities in accordance with article 140 of the Act concerning the general *Land* administration. All contraventions shall be reported to the youth welfare office.

...

² *Ibid.*, No. 27, of 3 August 1968.

DECREE OF 26 NOVEMBER 1968 CONCERNING THE POWERS
OF THE ALIENS POLICE³*Article 1*

The aliens police (Headquarters) is authorized, to the extent that the aliens police regulations permit, to deal independently with the following matters:

(a) Entry, discretionary sojourn (*Toleranz*) and temporary residence permits for a limited stay of up to six months for persons not engaging in a gainful occupation;

(b) Entry and temporary residence permits for domestic servants, farm workers and hotel employees;

(c) Entry and temporary residence permits for seasonal workers and employees;

(d) Discretionary sojourn, temporary residence and permanent residence permits for Swiss citizens;

(e) The extension of discretionary sojourn and temporary residence permits in categories (a) to (d);

(f) The exclusion of undesirable persons in categories (a) to (d);

(g) Permits for employed persons to change their employment, place of residence and occupation;

(h) The imposing of penalties for violations of aliens police regulations, except in matters for which the *Land* court is the competent authority.

Article 2

The Government shall have exclusive jurisdiction in all aliens police matters not specified in article 1 of this Decree. In such cases, the aliens police (Headquarters) shall conduct the preliminary investigation.

Article 3

Appeals against orders of the aliens police (Headquarters) may be made to the government authorities within fourteen days of notification.

...

³ *Ibid.*, No. 32, of 19 December 1968.

LUXEMBOURG

ACT OF 22 FEBRUARY 1968 ON LUXEMBOURG NATIONALITY ¹

I. LUXEMBOURG NATIONALS BY BIRTH

Article 1. The following persons shall be Luxembourg nationals:

1. A legitimate child whose father is a Luxembourg national on the day of the child's birth, even if the child is born in a foreign country;

A legitimate child whose mother is a Luxembourg national on the day of the child's birth and whose father is stateless, even if the child is born in a foreign country;

2. A child born in the Grand Duchy of parents whose legal status is unknown, unless the birth certificate shows that, according to the statements made to the civil registry officer, the mother is an alien.

A child found in the Grand Duchy shall be presumed to have been born in Luxembourg territory in the absence of any evidence to the contrary.

Article 2. An illegitimate child whose filiation is legally recognized during his minority and before his emancipation shall acquire Luxembourg nationality if the parent with respect to whom filiation was first established is a Luxembourg national on the date of the act of recognition or the declaratory judgement concerning the filiation.

If filiation is established with respect to the father and the mother in the same act or judgement, it shall be deemed to have been established first with respect to the father.

Luxembourg nationality shall also be acquired by an illegitimate child whose filiation has been legally recognized during his minority and before his emancipation, if the parent with respect to whom filiation was established in the second instance is a Luxembourg national on the date of the act of recognition or of the declaratory judgement concerning filiation and if the other parent was stateless on the date on which filiation with respect to him was established.

If the declaratory judgement concerning filiation is not handed down until after the death of the mother or father, the child shall acquire Luxembourg nationality if the parent concerned was a Luxembourg national on the date of his death.

Article 3. An illegitimate child who is legitimated during his minority and before his emancipation shall acquire Luxembourg nationality if his father is a Luxembourg national.

Article 4. Birth in the Grand Duchy before the first of January, eighteen hundred and fifty, shall establish the status of a Luxembourg national by birth.

The status of a Luxembourg national by birth shall also be adequately established by evidence showing that the person from whom the applicant derives his nationality is a Luxembourg national. Any person shall be entitled to produce evidence to the contrary.

Possession of Luxembourg nationality shall be acquired by the exercise of the rights which such status confers.

II. ACQUISITION OF LUXEMBOURG NATIONALITY

Article 5. Luxembourg nationality shall be acquired by naturalization or by option.

A. NATURALIZATION

Article 6. In order to qualify for naturalization, the person concerned must, on the date of submission of his application, have attained the age of twenty-five years and have resided in the Grand Duchy for fifteen years, subject to such residence having been uninterrupted during the five years immediately preceding the application.

Subject to the same conditions, the mandatory period of residence shall be reduced to ten years when the person applying for naturalization:

(a) Was born in Luxembourg; or

(b) Has previously possessed the status of a Luxembourg national by birth and has lost it; or

¹ *Mémorial*, No. 7, of 4 March 1968.

(c) Is married to a Luxembourg national by birth, or is a widow or widower of a Luxembourg national by birth by whom he has one or more living children, one of whom at least is resident in the Grand Duchy; or is a divorced spouse of a Luxembourg national by birth, if there are one or more living children of the marriage of whom he has custody and at least one of them is resident in the Grand Duchy; or

(d) Is a stateless person who has performed his military service in the Grand Duchy.

Naturalization may be granted, with no residence qualification, to an alien who has rendered exceptional services to the State.

Article 7. Naturalization shall be withheld from an alien:

1. When the national legislation of the applicant allows him to retain or to obtain authorization to retain his nationality if he acquires another nationality, unless the applicant furnished certificates or affidavits issued by the competent authorities which prove that he has not availed himself of such right and will lose or has lost his original nationality irrevocably;

2. When naturalization is incompatible with his obligations to his own State, and when difficulties might arise therefrom;

3. When he cannot show himself to be adequately assimilated;

4. When he has received a sentence, either in the Grand Duchy or abroad, which under Luxembourg law entails the loss of electoral rights, until such time as such loss no longer applies;

5. When he has received a definite sentence for a violation, or attempted violation, of the legal provisions concerning the internal or external security of the country.

Article 8. A woman who makes a joint application for naturalization with her husband shall not be required to fulfil the age and residence qualifications laid down in article 6.

Article 9. A person wishing to qualify for naturalization must:

1. Send to the Minister of Justice a written, signed application:

2. Attach to the application, in addition to the documents referred to in articles 7 and 12 hereof, the following:

(a) His birth certificate;

(b) An accurate biographical statement; ;

(c) A certificate stating the amount of tax payable to the State and to the communes and an extract from the register of mortgages on real property (*extrait hypothécaire*);

(d) A certificate stating the length of residence and a certificate of good behaviour issued by the mayor and municipal magistrate of the communes in which he has lived during the period of his residence in the Grand Duchy;

(e) An extract from his court record;

(f) A health certificate issued by one or more doctors, the form and terms of which shall be laid down by regulation issued by the public administration.

Article 10. The Minister of Justice shall consider the opinion submitted by the communal council of the last place of residence of the alien and by the *Procureur général d'Etat*, which shall be accompanied by a statement of reasons. The opinion of the communal council shall be given in a closed meeting.

Article 11. In the absence of an application from an individual, naturalization may also be proposed by the Government.

Article 12. Naturalization may be free of charge when granted for exceptional services to the State.

In other cases, it shall be subject to a registration fee of not less than two thousand francs and not more than one hundred thousand francs, to be determined by a decree of the Grand Duchy.

Every application for naturalization must be accompanied by a receipt issued by the cashier of the registry office confirming the payment to him of the sum of five hundred francs on account of the registration fee that will become due if naturalization is granted. This payment shall in no circumstances be refundable.

Article 13. Every application for naturalization and every proposal of like nature made by the Government shall be submitted to the Chamber. The latter shall decide in a closed meeting and, if necessary, after discussions, whether or not to approve the application or proposal for naturalization.

Article 14. Within one week of the assent of the Grand Duke, the Minister of Justice shall send the applicant a certified copy of the act of naturalization.

Article 15. When the applicant has formally registered the certified copy, he shall appear before the civil registry officer of his place of residence and declare that he accepts the naturalization granted to him.

This declaration shall immediately be recorded in one of the registers referred to in article 35.

Article 16. The declaration prescribed in the preceding article must be made within three months from the date of the assent of the Grand Duke, failing which the naturalization shall lapse.

Article 17. The municipal authority shall within one week send a duly certified copy of the act of acceptance to the Minister of Justice.

Article 18. An extract of the Act conferring naturalization shall be published in the *Mémorial*, together with the date of the act of acceptance.

The naturalization shall not take effect until three clear days after its publication in the *Mémorial*.

A reference to its publication must be made in the margin of the act of acceptance.

B. OPTION

Article 19. The following may acquire Luxembourg nationality by option:

1. (a) A child born in the Grand Duchy of an alien parent;

(b) A child born abroad, one of whose parents is a Luxembourg national by birth;

(c) A legitimate child born abroad whose mother is a Luxembourg national at the time of his birth;

2. A child whose parent has custody of him and has during the child's minority voluntarily acquired or recovered Luxembourg nationality;

3. An alien woman who marries a Luxembourg national or whose husband acquires by option or recovers Luxembourg nationality;

4. A child who is adopted by a Luxembourg national or by a person who during the child's minority voluntarily acquires or recovers Luxembourg nationality; if the child is adopted by a married couple, the nationality of the husband shall be applicable.

Article 20. The admissibility of the option referred to in article 19 (1), (2) and (4) shall be subject to the following conditions:

1. The person concerned must have habitually resided in the Grand Duchy during the year preceding the declaration of option and must have habitually resided there for at least twelve consecutive years.

However, the residence qualification may be reduced to one year preceding the declaration of option and to a period of habitual residence in the Grand Duchy of at least six consecutive years in the case of:

(a) A child born in the Grand Duchy one of whose parents was also born there and had resided there until the birth of the child;

(b) A child born of a parent who has custody of him and during the child's minority has voluntarily acquired or recovered Luxembourg nationality;

(c) A child adopted by a Luxembourg national or by a person who during the child's minority has voluntarily acquired or recovered Luxembourg nationality;

(d) A stateless person who has performed his military service in the Grand Duchy;

2. The person concerned must state that he intends to establish his domicile in the Grand Duchy;

3. The declaration of option must be made between the ages of eighteen years and twenty-two years.

A person who proves that he was prevented from making such a declaration within the statutory period may have his forfeiture of nationality annulled by the *arrondissement* court of his place of domicile. The procedure to be followed shall be that laid down for the rectification of entries in the civil register.

Article 21. In the cases referred to in article 19 (3), the declaration of option must be made within six months from the date of the marriage or the date on which the husband acquired or recovered Luxembourg nationality.

A woman who proves that she was prevented from making such a declaration within the statutory period may have her forfeiture of nationality annulled by the *arrondissement* court of the place where the declaration should have been made in

accordance with article 35. The procedure to be followed shall be that laid down for the rectification of entries in the civil register.

Article 22. In all cases, the right to acquire Luxembourg nationality by option shall be inadmissible:

1. When the national legislation of the applicant allows him to retain or to obtain authorization to retain his nationality if he acquires another nationality, unless the applicant furnishes certificates or affidavits issued by the competent authorities which prove that he has not availed himself of such right and will lose or has lost his original nationality irrevocably;

2. When the acquisition of Luxembourg nationality by option is incompatible with his obligations to his own State, and when difficulties might arise therefrom;

3. When he cannot show himself to be adequately assimilated;

4. When he has received a sentence, either in the Grand Duchy or abroad, which under Luxembourg law entails the loss of electoral rights, until such time as such loss no longer applies;

5. When he has received a definite sentence for a violation, or attempted violation, of the legal provisions concerning the internal or external security of the country. Furthermore, the provisions of article 9 (2) must also be applied.

Article 23. The declarations of option referred to in article 19 shall be subject to the approval of the Minister of Justice, which shall be given on the basis of opinions submitted by the communal council of the last place of residence and by the *Procureur général d'Etat*, which shall be accompanied by a statement of reasons. The opinion of the communal council shall be given in a closed meeting.

Article 24. The acquisition of Luxembourg nationality by means of a declaration of option shall be subject to a registration fee of not less than two hundred francs and not more than forty thousand francs. This fee shall be determined in each case by a decision of the Minister of Justice. However, the fee may be reduced to twenty francs if it is duly proved that the person concerned is poor. Save in the aforementioned cases of poverty, every declaration of option must be accompanied by a receipt issued by the cashier of the registry office confirming the payment to him of the sum of one hundred francs on account of the registration fee that will become due if the Minister of Justice approves the declaration. This payment shall in no circumstances be refundable.

The decision of the Minister of Justice to approve the declaration must be registered within a period of three months from the date of notification, failing which the declaration shall be nullified. The notification shall be made through the administrative channel and confirmed by a receipt to be signed by the person concerned, or alternatively through a *huissier* in accordance with article 68 of the Code of Civil Procedure. The costs thereof, which are to be borne by the person concerned, shall be recovered by the registry office.

The declaration of option shall not take effect until three clear days after its publication in the *Mémorial*.

A reference to its publication or to the refusal to approve the declaration or to the nullity resulting from the failure to register the approval of the declaration within the statutory period must be made in the margin of the declaration of option.

III. LOSS OF LUXEMBOURG NATIONALITY

Article 25. The following persons shall lose Luxembourg nationality:

1. A person who, having attained the age of eighteen years, voluntarily acquires a foreign nationality;

2. A woman who marries an alien of specified nationality, if she necessarily acquires her husband's nationality under the legislation of her husband's country;

3. A woman whose husband voluntarily acquires a foreign nationality, if she necessarily acquires her husband's nationality under the legislation of her husband's country.

Luxembourg nationality shall not be lost in the cases referred to in the preceding paragraphs (2) and (3) by a woman who under the legislation of her husband's country declines to accept the foreign nationality within a period of six months from the date of the marriage or the date on which the husband ceased to be a Luxembourg national.

In the cases referred to in the preceding paragraphs (2) and (3), a woman may retain Luxembourg nationality by making a declaration within six months from the date of the marriage or the date on which the husband ceased to be a Luxembourg national.

The declaration to retain Luxembourg nationality shall be inadmissible in the cases referred to in article 22 (1), (2) and (4).

A woman who proves that she was prevented from making such a declaration within the statutory period may have her forfeiture of nationality annulled by the *arrondissement* court of the place where the declaration should have been made in accordance with article 35. The procedure to be followed shall be that laid down for the rectification of entries in the civil register.

The declaration to retain Luxembourg nationality shall not take effect until three clear days after its publication in the *Mémorial*. When published, it shall be deemed to be retroactive to the date of the marriage or to the date on which the husband ceased to be a Luxembourg national;

4. The unemancipated minor child of a Luxembourg national who has become an alien by the application of this article and who has custody of the child, if the child acquired the foreign nationality at the same time as his parent;

5. A Luxembourg national over the age of eighteen years who, by the operation of law and without any expression of intent on his part possesses foreign nationality which he is entitled to renounce, if he has not taken advantage of that option within the time allowed by the foreign

legislation or at the latest within five years from the date on which he became entitled to renounce the foreign nationality.

The loss of Luxembourg nationality shall be established if the person concerned states to the competent civil registry officer that he does not intend to renounce the foreign nationality;

6. A Luxembourg national over the age of eighteen years who, either by the operation of law and without any expression of intent on his part or as a result of a statement made by his legal representative, possesses a foreign nationality which he cannot renounce and who files documents either accepting or claiming that foreign nationality.

The loss of Luxembourg nationality shall be established if the person concerned states to the competent civil registry officer that he intends to accept or to claim the foreign nationality.

IV. RECOVERY OF LUXEMBOURG NATIONALITY

Article 25. The following persons may recover Luxembourg nationality by declaration:

1. A Luxembourg national by birth who has lost his Luxembourg nationality;

2. A woman who is a Luxembourg national by birth and has lost her Luxembourg nationality by virtue of article 25 (2) or (3):

(a) If the marriage is dissolved;

(b) When her husband has voluntarily acquired or recovered Luxembourg nationality.

The admissibility of the declaration of recovery provided for in paragraph (1) of this article shall be subject to the condition that the person concerned must have habitually resided in the Grand Duchy during the two years immediately preceding his application, and renounces any distinctions which are contrary to Luxembourg law.

The admissibility of the declaration of recovery provided for in paragraph (2) of this article shall be subject to the condition that the person concerned must have habitually resided in the Grand Duchy during the year preceding the declaration.

The declarations provided for in paragraphs (1) and (2) of this article shall be subject to the approval of the Minister of Justice, which shall be given on the basis of opinions submitted by the communal council of the last place of residence and by the *Procureur général d'Etat*, which shall be accompanied by a statement of reasons. The opinion of the communal council shall be given in a closed meeting.

The declaration shall be subject to a registration fee of not less than two hundred francs and not more than forty thousand francs. This fee shall be determined in each case by a decision of the Minister of Justice. However, the fee may be reduced to twenty francs if it is duly proved that the person concerned is poor.

Every declaration of recovery must be accompanied by a receipt issued by the cashier of the registry office confirming the payment to him of the sum of one hundred francs on account of the

registration fee that will become due if the Minister of Justice approves the declaration. This payment, which shall be reduced to twenty francs if the person concerned is poor, shall in no circumstances be refundable.

The decision of the Minister of Justice to approve the declaration must be registered within a period of three months from the date of notification, failing which the declaration shall be nullified. The notification shall be made through the administrative channel and confirmed by a receipt to be signed by the person concerned, or alternatively through a *huissier* in accordance with article 68 of the Code of Civil Procedure. The costs thereof, which are to be borne by the person concerned, shall be recovered by the registry office.

The declaration of recovery shall not take effect until three clear days after its publication in the *Mémorial*.

A reference to its publication or to the refusal to approve the declaration within the statutory period must be made in the margin of the declaration of recovery.

3. A child who has lost Luxembourg nationality by application of article 25 (4) may recover it by making a declaration between the ages of eighteen years and twenty-three years, provided he has been habitually resident in the Grand Duchy during the year preceding his declaration. After the age of twenty-three years, he may invoke the provision of paragraph (1) of this article.

The provisions of articles 7 and 9 shall be applicable to all the cases referred to in this article.

V. FORFEITURE OF LUXEMBOURG NATIONALITY

Article 27. A Luxembourg national who did not acquire his nationality from a Luxembourg parent on the date of his birth may be declared to have forfeited his nationality after proceedings initiated by the *ministère public*:

(a) If he has obtained Luxembourg nationality by false statements, fraud or by concealing important facts;

(b) If he fails seriously in his duties as a Luxembourg citizen;

(c) If he exercises the rights or fulfils the duties of a foreign national;

(d) If he has received in the Grand Duchy or abroad, either as principal or as accessory, a sentence involving a criminal penalty or an unsuspended sentence of imprisonment for murder, manslaughter, theft, receiving, fraud, breach of trust, misappropriation or extortion, forgery, uttering of forged instruments or documents, perjury, subornation of witnesses or experts, indecent assault, rape, prostitution or corruption of youth, violation of the laws and decrees on brothels, keeping a gaming house, conspiring against persons or property, abortion, abandoning or neglecting a child, abducting minors, bankruptcy, violation of the legal provisions concerning the external and internal security of the country, or for having attempted to commit any of the aforementioned offences.

The provisions of sub-paragraphs (b), (c) and (d) of this article shall also apply to a woman who is a Luxembourg national by birth, is married to an alien and has retained her Luxembourg nationality by application of article 25.

Article 28. Forfeiture proceedings shall be brought in the *arrondissement* civil court of the defendant's domicile or, if he has no known domicile, of his last place of residence. If he has no known domicile or residence in the Grand Duchy, the *arrondissement* civil court of Luxembourg shall have competence.

Appeals shall be brought before the Supreme Court of Justice.

The procedure to be followed in these courts shall be the subject of a regulation issued by the public administration.

Article 29. When the judgement or decree pronouncing the forfeiture of nationality becomes final, the operative part shall be recorded in one of the registers referred to in article 35 by the civil registry officer at the domicile or residence of the defendant or, if the latter does not reside in the Grand Duchy, by the civil registry officer who received the act of option or naturalization.

Mention thereof shall also be made in the margin of the defendant's act of option or of naturalization, his birth certificate and his marriage certificate.

An extract thereof shall be published in the *Mémorial* with a reference to the registration.

The forfeiture of nationality shall take effect on the date of the registration.

Article 30. The wife and children of a Luxembourg national who has forfeited his nationality may decline Luxembourg nationality within three months from the date of registration of the judgement pronouncing the forfeiture of nationality.

In the case of minor children, this time-limit shall be extended to a date three months after they have come of age. However, after the age of eighteen years, they may decline Luxembourg nationality in the conditions specified in article 35 of this Act.

Renunciations of nationality shall be made in the manner prescribed in article 35.

Article 31. No person who has been declared to have forfeited Luxembourg nationality or who has renounced that nationality by application of the preceding article may recover Luxembourg nationality.

VI. THE EFFECTS OF ACTS OF NATURALIZATION

Article 32. The acquisition of Luxembourg nationality by naturalization or option shall confer on the alien all the civil and political rights inherent in such status.

Article 33. The acquisition, loss, recovery or forfeiture of Luxembourg nationality, for whatever cause, shall in no circumstances be retroactive.

VII. THE CAPACITY OF MINORS

Article 34. After the age of eighteen years, minors shall be entitled to make the declaration provided for in articles 19, 26 and 30 with the assistance of the persons whose consent is necessary for their marriage to be valid according to their personal status.

Consent shall be given either in the act of declaration or in a separate act received by the civil registry officer. Persons resident abroad may make known their wishes by means of a special, authenticated, power of attorney. The separate act must be annexed to the act of declaration.

...

ACT OF 1 APRIL 1968 TO ABOLISH THE OFFICIAL REGULATION OF PROSTITUTION AND INTENSIFY THE CAMPAIGN AGAINST PROSTITUTION AND PROCURING ²

Article 1

Article 379 of the Penal Code is hereby repealed and replaced by the following provisions:

Article 379. Any person who commits an offence against morals by causing, facilitating or encouraging the debauchery, corruption or prostitution of a young person of either sex under the age of twenty-one years whom he knows to be a minor in order to gratify the passions of another person shall be liable to imprisonment for not less than one or more than five years.

He shall be liable to imprisonment for not less than six months or more than three years if he was, through his own negligence, unaware that the young person concerned was a minor.

Any person who attempts to commit such an offence shall be liable to imprisonment for not less than six months or more than three years or not less than three months or more than two years, according to whether he knew that the young person concerned was a minor or was, through his own negligence, unaware of that fact.

Any person who commits such an offence against a minor under the age of fourteen years shall be liable to imprisonment for not less than two or more than five years, and any person who commits such an offence against a minor under the age of eleven years shall be liable to rigorous imprisonment with forced labour.

Any person who attempts to commit such an offence against a minor under the age of fourteen years shall be liable to imprisonment for not less than six months or more than four years, and any person who attempts to commit such an offence against a minor under the age of eleven years shall be liable to imprisonment for not less than six months or more than five years.

Article 2

The following provisions shall be inserted in volume II, title VII, chapter VI, of the Penal Code:

Article 379 bis. The following shall be liable to imprisonment for not less than six months or more than three years:

1. Any person who, in order to gratify the passions of another person, procures, entices, or leads away another person, even with that person's consent, for the purpose of prostitution or debauchery, either in the Grand Duchy or abroad.

Any person who attempts to commit such an offence shall be liable to imprisonment for not less than three months or more than two years.

If the victim has been procured, enticed or led away by fraud, violence, threats, undue influence or any other form of coercion, or if he has actually been delivered to prostitution or debauchery, the offender shall be liable to imprisonment for not less than one or more than five years.

Any person who commits such an offence in two of the aforementioned circumstances shall be liable to rigorous imprisonment with forced labour.

2. Any person who, directly or through an agent, owns, manages, directs or maintains a house of debauchery or prostitution.

3. Any landlord, hotel-keeper, lodging-house-keeper, inn-keeper, or any other person who sells, lets, makes available, or tolerates the use of all or part of a building, knowing that the premises sold, let or made available are used to exploit the prostitution of another person.

4. Procurers.

The following persons shall be considered procurers:

(a) Any person who in any way knowingly aids, abets, or protects the prostitution of another person or soliciting for the purpose of prostitution;

(b) Any person who shares in any way the proceeds of the prostitution of another person or receives payment from a person engaging in prostitution;

(c) Any person who knowingly lives with a person habitually engaging in prostitution;

(d) Any person who, having regular relations with one or more persons engaging in prosti-

² *Ibid.*, No. 17, of 17 April 1968.

tution, cannot show that he has means corresponding to his level of living;

(e) Any person who procures, entices or maintains another person for the purpose of prostitution, even if that person is of full age and gives his consent or delivers that person to prostitution or debauchery;

(f) Any person who acts in any way as an intermediary between persons engaging in prostitution or debauchery and persons who exploit or remunerate the prostitution or debauchery of another person;

(g) Any person who by threats, pressure, intrigue or any other means hinders the prevention, control, assistance or rehabilitation measures undertaken by the competent bodies on behalf of persons engaging in prostitution or in danger of becoming prostitutes.

When sentencing the procurer, the judge may place him at the disposal of the Government for a period of not less than one or more than five years, with effect from the end of his sentence.

Any person who attempts to commit such an offence shall be liable to imprisonment for not less than three months or more than two years.

Each of the offences referred to in paragraphs (1) to (4) of this article shall be punishable by imprisonment for not less than one or more than five years if committed against a minor under the age of twenty-one years, by imprisonment for not less than two or more than five years if committed against a minor under the age of fourteen years and by rigorous imprisonment with forced labour if committed against a minor under the age of eleven years.

Any person who attempts to commit such an offence shall be liable to imprisonment for not less than six months or more than three years if the offence was committed against a minor under the age of twenty-one years, or not less than six months or more than four years if the offence was committed against a minor under the age of fourteen years and for not less than six months or more than five years if the offence was committed against a minor under the age of eleven years.

Article 3

Article 380 of the Penal Code is hereby repealed and replaced by the following provisions:

Article 380. The minimum penalties laid down in articles 379 and 379 *bis* shall be increased in accordance with article 266:

If the guilty persons are the ascendants of the person prostituted or corrupted;

If they exercised authority over that person;

If they are the teachers or the hired servants of that person or servants of the persons mentioned above;

If they are civil servants or ministers of religion.

In the cases provided for in articles 379 and 379 *bis*, the penalties shall be imposed even when the several acts constituting the offence were committed in different countries.

Article 4

Article 381 of the Penal Code is hereby repealed and replaced by the following provisions:

Article 381. In the cases provided for in articles 379 and 379 *bis*, the guilty persons shall also be liable to a fine of not less than five hundred and one francs or more than thirty thousand francs and to forfeiture of the rights specified in article 31, paragraphs 1, 3, 4, 5 and 7.

The courts may prohibit any guilty persons sentenced to imprisonment for more than one month from owning, continuing to own, managing, or being employed in any capacity in, a hotel, a boarding house or an employment agency for a period of from one to ten years. Any person who fails to comply with such a prohibition shall be liable to imprisonment for not less than eight days or more than one month and/or to a fine of not less than five hundred and one francs or more than ten thousand francs.

If in the cases mentioned in paragraph (1), the offence was committed by the father or the mother, the guilty person shall also be deprived of the rights and privileges relating to the person and property of the child granted to him by the Civil Code, volume 1, title IX, on "Parental Authority".

The guilty persons may, in addition, be placed under special surveillance by the police for not less than five or more than ten years.

Article 5

Article 382 of the Penal Code is hereby repealed and replaced by the following provisions:

Article 382. Any person who by gestures, spoken or written words or any other means publicly solicits persons of either sex with a view to inciting them to engage in debauchery shall be liable to imprisonment for not less than eight days or more than six months and/or a fine of not less than five hundred and one francs or more than ten thousand francs.

Article 6

There shall be added to article 563 of the Penal Code a paragraph 9 worded as follows:

Article 563. 9. Any person whose behaviour in public places is such as to incite others to engage in debauchery.

Article 7

There shall be added to volume 1, chapter V, of the Code of Criminal Procedure an article 49 *bis* worded as follows:

Article 49 bis. Members of the national police force, the local police forces or the security policy who are officers in the criminal police under article 9 of the Code of Criminal Procedure, may enter at any time premises known to be used for the purpose of debauchery.

Article 8

Article 1, paragraph 18, of the Act of 13 March 1870 on extradition is hereby repealed and replaced by the following provisions:

Article 1. 18. For the commission of an offence against morals, by causing, facilitating or encouraging the debauchery, corruption or prostitution of a minor of either sex in order to gratify the passions of another person; procuring, enticing or leading away a person of either sex for the purpose of prostitution or debauchery in order to gratify the passions of another person; detained any person in a house of debauchery against his will; forcing a person to engage in prostitution; keeping a house of debauchery or prostitution; selling, letting or otherwise making available all or part of a building for the purpose of prostitution;

procuring; habitually exploiting the debauchery or prostitution of another person.

Article 9

Article 2, paragraph 1, of the Act of 2 August 1939 on child welfare is hereby repealed and replaced by the following provision:

1. Fathers and mothers convicted under articles 372-377 and articles 379-381 of the Penal Code, as amended by the Act of 1 April 1968 to abolish the official regulation of prostitution and to intensify the campaign against prostitution and procuring.

ACT OF 1 APRIL 1968 TO ABOLISH THE OFFICIAL REGULATION OF PROSTITUTION AND INTENSIFY THE CAMPAIGN AGAINST PROSTITUTION AND PROCURING ³

CORRIGENDUM

On page 255 of *Mémorial A* No. 17, of 17 April 1968, paragraphs 1 and 2 of article 379 of the Penal Code, as replaced by article 1 of the above-mentioned Act, shall read as follows:

“Any person who commits an offence against morals by causing, facilitating or encouraging the debauchery, corruption or prostitution of a young person of either sex under the age of twenty-one years whom he knows to be a minor in order to gratify the passions of another person shall be liable to imprisonment for a term of not less than one year or more than five years.

“He shall be liable to imprisonment for not less than six months or more than three years if he was, through his own negligence, unaware that the young person concerned was a minor.”

³ *Ibid.*, No. 21, of 3 May 1968.

ACT OF 10 MAY 1968 CONCERNING EDUCATIONAL REFORM
(TITLE VI: SECONDARY EDUCATION) ⁴

TITLE VI — SECONDARY EDUCATION

Article 44. Secondary education shall be intended to give boys and girls a thorough general training for the main purpose of enabling them to undergo higher education at the university level.

Secondary education establishments shall be established by law.

There may be separate classes for boys and girls or mixed classes, according to the terms and conditions to be laid down by a regulation of the Grand Duchy.

Secondary education establishments shall be known as *lycées*. They may be granted special names by a regulation of the Grand Duchy.

...

Article 47. In the orientation class, the curricula shall be the same for all pupils. Language teaching in that class shall be limited to the French, German and Luxembourg languages. The curricula and the number of lessons to be given in each subject each week shall be laid down by a regulation of the Grand Duchy.

...

The structure and curricula of secondary education shall be the same for boys and for girls,

⁴ *Ibid.*

except that certain special subjects for boys or for girls may be included in the curricula of certain sections.

Article 48. Secondary education shall include a course in religious and moral instruction and a course in non-religious moral instruction.

On receipt of a written statement addressed to the director of the establishment concerned by the

person responsible for the child's education, each pupil shall be enrolled either in the course in religious and moral instruction or in the course in non-religious moral instruction.

On receipt of a written statement by the said person, a pupil may be exempted from attending either of these courses.

...

ACT OF 28 MAY 1968 CONCERNING THE REGISTRATION OF GUESTS IN HOTELS AND SIMILAR ESTABLISHMENTS ⁵

Article 1. Any person who for payment provides accommodation in a hotel, house, furnished apartment or room, at a campsite, or in a youth hostel or overnight lodging, shall complete, or cause to be completed, in triplicate, a registration form for each guest; however, the name of a wife shall be entered together with her maiden name on the same form as the name of her husband and, in the case of children less than fifteen years of age, only the number of such children shall be entered on the form of the person in charge of them at the time of their arrival.

The registration form shall be completed on the day of the guest's arrival at the establishment. It shall be signed both by the guest and by the manager. On the day of the guest's departure, the manager shall enter on the form the actual departure date.

The original of each registration form shall be kept by the owner of the establishment in a counterfoil book. The forms shall be kept in the book in numerical order, with no numbers missing. They shall be retained by the owner for five years. All forms which have been cancelled for any reason shall be retained as cancelled forms.

On the day following the day of the guest's arrival, the second copy of the registration form shall be sent by the manager to the office of the *Sûreté publique*, in the case of establishments in the city of Luxembourg, or to the local police station, in the case of establishments in other parts of the country. The first copy of the form shall be sent during the first five days of the month following the guest's departure to the Central Office for Statistics and Economic Research.

Article 2. In the case of persons travelling in a group, the guide shall furnish the manager with

a list in triplicate giving the family name, first name, date and place of birth, home address, and nationality of each member of the group. Only the guide shall complete a registration form, and he shall enter thereon the number of persons in the group. A copy of the guide's list shall be attached to the original and to each copy of the registration form.

The provisions of article 1, paragraphs 1 and 2, shall apply to the registration form completed by the guide.

Article 3. The manager shall be required to verify, by examining the identity documents, the information given by the guest concerning his identity. The guest shall be required to produce identity documents.

The originals of the registration forms retained as provided for in article 1 shall be presented on request to officers of the national or local police.

The lay-out of the registration forms, as well as the information to be entered thereon, shall be determined by public administrative regulation.

Article 4. Any offence against the provisions of this Act or of the regulations governing its application shall, without prejudice to any more severe penalties which may be provided for in existing laws and regulations, be punishable by imprisonment for a period of one to seven days or by a fine of 100 to 500 francs, or both.

If the offence is repeated, the maximum fine shall be imposed and the term of imprisonment may be extended to twelve days.

Without prejudice to the application of article 231 of the Penal Code, the same penalties shall apply to persons who, in the circumstances referred to in the preceding articles, make false statements to the manager of an establishment.

⁵ *Ibid.*

MADAGASCAR¹

ACT No. 68-012 OF 4 JULY 1968, CONCERNING SUCCESSIONS, WILLS AND DONATIONS²

PRELIMINARY TITLE

GENERAL PROVISIONS

Chapter I

THE OPENING OF SUCCESSIONS

Article 1. Succession is the devolution of the estate of the decedent. The estate comprises the property, the rights and the obligations of the decedent.

Chapter II

THE CAPACITY TO SUCCEED

Article 5. To succeed, a person must:

1. Exist when the succession opens;
2. Not have been declared unworthy to succeed;
3. Not have been deprived of the right to succeed;
4. Not have been rejected by the decedent, save as otherwise provided in article 46.

Article 6. A child conceived subsequent to the opening of the succession shall not be entitled to succeed.

The date of conception shall be determined on the basis of the same presumptions as those applied in establishing filiation.

Article 7. A succession in which an absent person is entitled to participate shall devolve in accordance with the provisions in respect of absence.

Article 10. The following shall be unworthy to succeed:

1. Persons upon whom a final sentence has been imposed for:

- killing or attempting to kill the decedent;
- complicity in his murder or attempted murder;
- bringing against the decedent an accusation of a capital offence deemed to be calumnious;

2. An heir or legatee of full age and sound mind who is aware that the decedent has been murdered and has not so informed the judicial authorities.

The provision concerning failure to inform the authorities shall not be applicable to the murderer's ascendants or descendants, brothers or sisters, uncles or aunts, nephews or nieces, relatives by marriage in the same degree, husband or wife.

TITLE I

INTESTATE SUCCESSION

Article 16. In the absence of a will or when the succession is only partially testamentary, heirs shall be entitled to take in the following order, without distinction as to sex or primogeniture:

- first class: children;
- second class: grandchildren;
- third class: father and mother;
- fourth class: brothers and sisters;
- fifth class: children of brothers and sisters;
- sixth class: uncles and aunts;
- seventh class: first cousins;
- eighth class: surviving spouse;
- ninth class: the State.

The existence of an heir in a preferred class shall exclude heirs in lower classes except in the case of representation.

Article 17. The term "children" shall be understood to mean those born to the decedent provided their filiation has been legally established and the law has not deprived them of the right to succeed their parent.

Article 18. A legally adopted child shall have the same rights of succession as a child born to the decedent.

¹ Texts furnished by the Government of the Malagasy Republic.

² *Journal officiel de la République malgache*, of 13 July 1968.

Article 19. A child who has been adopted informally shall inherit from the adoptive parent one-half of the share to which he would have been entitled under articles 17 and 18.

In the absence of any other heir in the first or second class, he shall take the entire succession.

The adoptive parent of a child adopted informally shall succeed to such property as he has given the adoptee who has predeceased him without issue, if the property is present in the succession in its original form.

If the property has been disposed of, he shall be entitled to the amount of the price which may be due on it. He shall also succeed to any action for recovery brought by the donee.

...

TITLE II

WILLS

Article 25. Any person of sound mind who has not been declared incapable by law or custom

may, subject to the conditions and restrictions set forth in this title, dispose by will of the whole or part of his property for the time when he will no longer be living.

A will may be revoked at any time.

...

TITLE IV

DONATIONS

Article 95. Donation is an act whereby a person of sound mind disposes, provided neither law nor custom holds him incapable of doing so, of all or part of his property in favour of another person who accepts it.

Save as otherwise provided in this title, donations shall be gratuitous and irrevocable.

Article 96. Donations to take effect upon the death of the donor shall be governed by the rules relating to testamentary disposition.

...

ACT No. 68-022 OF 17 DECEMBER 1968 TO AUTHORIZE THE ACCESSION OF THE MALAGASY REPUBLIC TO THE GENERAL CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE ORGANIZATION OF AFRICAN UNITY ³

Article 1. The accession of the Malagasy Republic to the General Convention on the Privileges and Immunities of the Organization of African Unity is hereby authorized.

This accession shall be subject to the following proviso:

"It is the understanding of the Malagasy Government that the certificates accorded under Article VIII, paragraph 3, to experts and other persons travelling on the business of the Organization of African Unity without a *laissez-passer* shall be accorded only by the Deputy Secretaries-General of the Organization." ⁴

³ *Ibid.*, 21 December 1968.

⁴ Article VIII, paragraph 3, of the General Convention on the Privileges and Immunities of the Organization of African Unity reads:

"Similar facilities to those specified in paragraph 2 of this Article shall be accorded to experts and other persons who, though not the holders of Organization of African Unity *laissez-passer* have a certificate that they are travelling on the business of the Organization of African Unity."

ACT NO. 68.023 OF 17 DECEMBER 1968 ESTABLISHING A RETIREMENT SCHEME AND THE NATIONAL SOCIAL SECURITY FUND ⁵

Article 1. This Act institutes a retirement scheme to be administered by the National Family Allowances and Workers' Compensation Fund and to be known as the National Social Security Fund.

Chapter I

THE RETIREMENT SCHEME

Article 2. The retirement scheme shall comprise:

⁵ *Ibid.*

1. From 1 January 1969,

(a) An old-age insurance scheme which shall apply to all employees who come under the Labour Code or the Merchant Shipping Code when they are no longer gainfully employed, except those covered by the Social Security and Retirement Fund instituted under Decree No. 61-642 of 29 November 1961

(b) A supplementary retirement scheme open to:

— Employees participating in retirement funds or mutual insurance associations which were in operation prior to the introduction of the retirement scheme;

— Such other employees as may wish to participate by paying an additional contribution, the amount of which shall be fixed by decree.

2. At a date to be determined subsequently by decree, a voluntary retirement scheme open to non-salaried persons.

Article 3. The retirement scheme referred to in Article 2, paragraph 1 (a), shall provide the following benefits:

(a) Old-age pension for employees who fulfil the requirements of age and length of contributory service;

(b) *Ex gratia* pensions to be granted during early years of the scheme to employees who do not fulfil the requirements of length of contributory service;

(c) Disability benefits;

(d) Survivor's benefits.

Article 4. Participants in the supplementary retirement scheme referred to in article 2, paragraph 1 (b), shall be guaranteed the rights they acquired under the particular scheme by which they were covered prior to the introduction of the present old-age insurance scheme.

Annuities accrued under retirement schemes prior to the entry into force of this Act can count towards entitlement to old-age pensions instead of *ex gratia* pensions.

Article 5. The assets of the retirement scheme shall be constituted as follows:

(1) Initially the scheme shall take over the assets of the funds and mutual insurance association referred to in article 2, paragraph 1 (b);

(2) It shall be maintained by the compulsory contributions of employers and employees; these contributions shall be based on the remuneration of workers who come under the Labour Code or the Merchant Shipping Code;

(3) The voluntary retirement scheme shall be financed by the voluntary contributions of its participants;

(4) Further resources shall be derived from the yield from the investment of liquid assets; such

investment shall be in conformity which a scheme draw up by the Board of the Fund and approved in the Council of Ministers.

Chapter II

THE NATIONAL SOCIAL SECURITY FUND

Article 6. The National Social Security Fund shall take over the rights and obligations of the National Family Allowances and Workers' Compensation Fund instituted by Ordinance No. 62-078 of 29 September 1962.

Article 7. Within six months from its establishment, the National Social Security Fund shall, on behalf of the supplementary retirement scheme, take over the retirement, pension and old-age insurance schemes previously instituted by private firms or mutual insurance associations.

Chapter III

HEALTH AND WELFARE ACTIVITIES

Article 8. The health and welfare activities for which the Fund is responsible under article 4 of Ordinance No. 62-078 of 29 September 1962, shall be financed from the assets of the Health and Welfare Activities Fund.

...

Chapter IV

THE SOCIAL SECURITY CODE

Article 10. The procedures governing the application of this Act shall be determined by decree after consultation with the Board of the National Social Security Fund. Such procedures shall relate *inter alia* to:

(a) The financial organization of the pension scheme;

(b) Entitlement to the various benefits of the said scheme;

(c) The benefits;

(d) The amount of statutory reserves which the Fund shall be required to establish in respect of each of the social security schemes which it administers.

Article 11. The decrees referred to above shall form book IV of the Family Allowances and Workers' Compensation Code instituted by Decree No. 63-124 of 22 February 1963.

This code shall be known as the Social Security Code.

...

MALI

ACT No. 68-20 AMENDING CERTAIN PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE

Promulgated by Decree No. 02. P.G. of 24 February 1968 ¹

...
Sole article. The following amendments are made to the articles of Act No. 62-66, of 23 August 1962, mentioned below:

Article 127 is abrogated and replaced by the following provisions:

"The examining judge may, at the request of the accused person, or on the application of the *Ministère public* or *ex officio*, after obtaining the opinion of the *procureur de la République*, order in any type of case that the defendant be placed on provisional release subject to deposit of security, provided that he undertakes to appear at all stages of the proceedings as soon as he is required to do so and to keep the examining judge informed of all his movements."

Article 128 is abrogated and replaced by the following provisions:

"When the *procureur de la République* applies for the defendant's provisional release, the examining judge shall make his decision within three days from the date on which the application is received."

Article 129 (1) is abrogated and replaced by the following provisions:

"The accused person or his counsel may at any time request the examining judge to grant provisional release, under the conditions stipulated in article 127."

(The rest of article 129 is unchanged.)

Article 178 is abrogated and replaced by the following provisions:

"The order for the transmittal of the evidence in the proceedings to the *procureur général* shall be notified to the accused person through the *procureurs de la République* or the cantonal judges with extended jurisdiction; the accused person shall at the same time be invited to address to the *chambre d'accusation* any memorandum he may deem necessary. This memo-

randum must be deposited within thirty days from the date of notification."

...
Article 196 (1) is abrogated and replaced by the following provisions:

"The President of the *chambre d'accusation* shall, whenever he shall deem it necessary and at least once a year, visit the remand homes within the jurisdiction of the Appeal Court and re-view the situation of defendants remanded in custody" (the rest unchanged).

Articles 481 and 482 are abrogated and replaced by a new article 481 worded as follows:

"The following persons are exempted from the deposit covering a possible fine:

"1. Persons sentenced to a criminal, correctional or police penalty;

"2. Public officials, in proceedings directly concerning State administration and State-owned property;

"3. Persons who enclose with their request a certificate from the collector of taxes stating that they are not required to pay taxes and a certificate issued by the Mayor, the head of the administrative district or the commissioner of police, stating that they are unable to deposit the sum to cover a fine."

...
Article 574 is abrogated and replaced by the following provisions:

"When a Minister, a member of the Supreme Court (without prejudice to the special provisions concerning criminal proceedings), a Governor, or a judge who is member of the Bar becomes liable to be accused of a crime or offence committed otherwise than in the exercise of his duties, the *procureur de la République* to whom the case is submitted shall make an application to the Criminal Chamber of the Supreme Court of Judges and shall designate the jurisdiction in which the examination and judgement of the case shall take place."

¹ *Journal officiel de la République du Mali*, No. 271, of 15 March 1968.

DECREE No. 44 P.G. OF 22 FEBRUARY 1968, ESTABLISHING REGULATIONS
ON RELIEF MEASURES IN THE REPUBLIC OF MALI²

TITLE I

GENERAL PROVISIONS

Article 1. Relief provided by the Republic of Mali shall take the form of exceptional allowances granted as a favour to individuals or bodies corporate or to local communities in the Republic. In no case may the relief be permanent or for life.

Inasmuch as relief is granted as a favour, decisions to grant relief or to deny a request for relief shall not be subject to appeal.

Article 2. Relief payments shall be made from appropriations included for the purpose in State or community budgets.

Article 3. In no case may an individual or body corporate receive concurrently more than one type of relief for the same reason.

TITLE II

NATURE OF RELIEF MEASURES

Article 4. Relief shall be classified as:

Emergency relief;
Immediate relief;
Temporary relief;
Sickness relief.

Relief shall normally be granted on the proposal of the national relief commission or of the regional relief commissions. In cases of exceptional urgency, however, the Minister responsible for Social Affairs or the regional Governor may grant relief, within the limits prescribed in this Decree.

Article 5. Emergency relief. Without prejudice to cases submitted to the relief commission which the commission considers to be matters for immediate relief, the Minister responsible for Social Affairs or the regional Governor may, when he deems it necessary, grant emergency relief, without previously consulting the relief commission, up to a limit of 50,000 francs for any specific case.

In the event of extensive damage resulting from disasters or catastrophes or any other cause, emergency relief may be increased to 100,000 francs for any specific case. Emergency relief payments shall be made in accordance with the established procedure.

Article 6. Immediate relief. Immediate relief shall be granted on the recommendation of the

national or regional relief commissions to meet situations of a momentary nature.

The ceiling for immediate relief shall be 100,000 francs per individual or body corporate during a given year.

Article 7. Temporary relief. Such relief shall be granted periodically to meet situations which persist for some time.

Temporary relief shall be granted on the recommendation of the national or regional relief commissions for a specific period of time which shall not be more than three (3) years.

The annual total of temporary relief shall not exceed 200,000 francs. Payments shall be made according to established procedure at the end of each quarter.

Temporary relief may be terminated at any time during the period of allocation on the recommendation of the relief commission if the situation giving rise to the assistance has ceased to exist.

In the case of eligibility for both temporary relief and a civil or military pension, the terms of payment of temporary relief shall be determined by a special decision of the Minister of Finance and the Minister responsible for Social Affairs, following a recommendation by the national relief commission.

Article 8. Sickness relief. Sickness relief shall be granted as assistance towards the payment of medical expenses which are disproportionate to the resources of the applicant.

It shall be granted on the recommendation of the national or regional relief commissions.

Sickness relief may not exceed an amount of 50,000 francs per quarter for a given recipient. Sickness relief may be drawn concurrently with immediate or temporary relief unless the relief commission recommends otherwise.

TITLE III

RECIPIENTS OF RELIEF

Article 9. Emergency, immediate and temporary relief shall be reserved exclusively for individuals, bodies corporate and local communities in the Republic of Mali where their resources are limited and they experience occasional hardship owing to a disaster, a catastrophe or any other cause considered as *force majeure* and beyond the control of the applicant.

Sickness relief shall be reserved exclusively for individuals, whether civil servants or not, who are natives of the Republic or citizens of African States who are permanently resident in Mali.

² *Ibid.*

ACT No. 68-12 A.N.-R.M. OF 17 FEBRUARY 1968, SUPPLEMENTING ACT No. 66-6 A.N.-R.M. OF 2 MARCH 1966 GOVERNING HOUSE ARREST AND MEASURES OF REMOVAL AND EXPULSION ³

Article 1. The following shall be added, as a second paragraph, to article 1 of the above-mentioned Act No. 66-6 A.N.-R.M. of 2 March 1966:

“In certain cases, however, the regional Governors may order removal or house arrest when such action is to be effected within the confines of the region where the events took place.”

Article 2. The following shall be added, as a third paragraph, to article 5 of Act No. 66-6 A.N.-R.M.

“Measures of removal or house arrest prescribed by regional Governors may be rescinded at any time by order of the same authorities.”

...

³ *Journal officiel de la République du Mali*, No. 274, of 15 April 1968.

ACT No. 68-19 A.N.-R.M. OF 17 FEBRUARY 1968, AMENDING ARTICLES 184 AND 211 OF THE PENAL CODE ⁴

Article 1. Paragraphs 1 and 2 of article 184 of the above-mentioned Act of 3 August 1961 are repealed and replaced by the following:

“*Article 184.* A woman convicted of adultery shall be punished by imprisonment for a term of not less than three months and not more than two years.

“A married man who deserts his wife or child and refuses to provide for their maintenance, and a woman who abandons her conjugal home in circumstances other than those prescribed by law or without grave cause, shall receive the same penalties.”

(The rest remains unchanged.)

Article 2. Article 211 of the above-mentioned Act of 3 August 1961 is repealed and replaced by the following:

“*Article 211 (new).* Non-payment of a civil

or commercial debt as a result of bad faith on the part of the debtor shall be punishable by imprisonment for a term of one month to one year and, at the option of the court, by a fine of 20,000 to 300,000 francs.

“A penalty of one to five years’ imprisonment shall be imposed on any person who, having been ordered to pay a debt, has from the time when the debt is payable: firstly, concealed, fraudulently, removed, sold below their value or made a gift of any of his assets, cancelled a debt payable to him or paid a fictitious debt; secondly, declared wholly or partly fictitious debts or obligations to be genuine; thirdly, favoured one of his creditors over the others; fourthly, abstracted or wilfully altered his books.

“Public action shall terminate upon withdrawal of the suit by the plaintiff or payment of the debt before judgement is pronounced. Payment after judgement shall void the penal sentence and its effects.”

⁴ *Ibid.*

ORDINANCE No. 1 OF 28 NOVEMBER 1968 ON PROVISIONAL ORGANIZATION OF
THE PUBLIC AUTHORITIES IN THE REPUBLIC OF MALI. ⁵ THE MILITARY
COMMITTEE OF NATIONAL LIBERATION

...

Considering that the action of the Army on 19 November 1968 resulted in the substitution of the Military Committee of National Liberation for the Government and Legislative Delegation established after the Revolution of 22 August 1967;

...

Considering that the aforementioned steps and circumstances represent a breach of constitutionality and authorize the suspension of the Constitution of 22 September 1960; ⁶

DECLARES the Constitution of 22 September 1960 to be suspended and, in view of the need to introduce new arrangements for the provisional organization of the public authorities in the Republic of Mali,

DECREES :

PREAMBLE

The Malian people solemnly proclaim the Republic of Mali, founded on an ideal of liberty and justice.

The Republic of Mali shall organize the conditions necessary for the harmonious development of the individual and the family in a modern society and with due respect for the African personality.

The Republic of Mali solemnly reaffirms the rights and freedoms of man and of the citizen, enshrined in the Universal Declaration of Human Rights of 10 December 1948.

It recognizes the right of all men to work and rest, and the freedom to join co-operative or trade union organizations of their choice in order to defend their occupational interests. Work is a duty for every citizen, but no person may be forced to do specific work except for the performance of an exceptional public service in the general interest on a basis of complete equality and under the conditions determined by law.

The Malian people, conscious of the historical, moral and material imperatives which unite the States of Africa and desirous of achieving the political, economic and social unity essential to the affirmation of the African personality, affirm their determination to continue their efforts to achieve African unity.

⁵ *Journal officiel de la République du Mali*, No. 228, special edition of 28 November 1968.

⁶ For extracts from the Constitution of 22 September 1960, see the *Yearbook on Human Rights for 1960*, pp. 234 and 235.

TITLE I

SOVEREIGNTY

Article 1. The Republic of Mali is indivisible, democratic, secular and social.

It shall ensure equality before the law for all persons, without distinction as to origin, race, sex or religion.

The official language shall be French.

...

Its principle shall be government of the people, by the people and for the people.

Article 2. Sovereignty shall be vested in the people as a whole. No section of the people nor any individual may assume the exercise of sovereignty.

The people shall exercise their sovereignty through their representatives and, in certain cases, by referendum. The vote shall be universal, equal and secret. It may be direct or indirect, under the conditions established by law.

All Malian citizens of both sexes who are of full age and in full possession of their civil and political rights shall be entitled to vote under the conditions established by law.

Article 3. The political parties and groups shall in the ordinary course assist in the exercise of the franchise.

They may be formed and engage in their activities freely, subject to respect for democratic principles and for the interests and the laws and regulations of the State.

Article 4. Any act of racial or ethnic discrimination and any regionalist propaganda which might threaten the security of the State or the territorial integrity of the Republic shall be punished by law.

Article 5. The provisional institutions of the Republic shall be:

The Military Committee of National Liberation;

The Provisional Government;

The Supreme Court.

The institutions shall have their seat at Bamako. The seat may be transferred to any other location by ordinance.

TITLE II

THE MILITARY COMMITTEE OF
NATIONAL LIBERATION

...

Article 7. The Military Committee of National Liberation shall establish its own rules of procedure. It shall act on matters within its competence

by means of ordinances and may consult the Provisional Government on every occasion.

Article 8. The Military Committee of National Liberation shall hold closed meetings unless it decides otherwise.

Article 9. The Military Committee of National Liberation shall have the role of defining, guiding and overseeing the general policies of the Republic.

Article 10. The Military Committee of National Liberation shall nominate a candidate for the office of President of the Provisional Government. The nominee shall submit for its approval a list of members of the Provisional Government.

Article 11. The Chairman of the Military Committee of National Liberation shall assume the functions of Head of State.

...

Article 12. The President of the Provisional Government and the Ministers may be heard by the Military Committee of National Liberation at any time.

TITLE III

THE PROVISIONAL GOVERNMENT

Article 13. The Provisional Government of the

Republic of Mali shall be composed of the President and Ministers.

The President shall be responsible to the Military Committee of National Liberation.

The Ministers shall be responsible to the President.

The President of the Provisional Government shall have the power to dismiss Ministers.

...

TITLE IV

MISCELLANEOUS PROVISIONS

Article 19. The provisions of titles V, VI, VII, VIII and X of the Constitution of 22 September 1960 shall, *mutatis mutandis*, remain valid, in so far as they are not contrary to this Ordinance and are not expressly repealed.

Article 20. The legislation in force shall remain valid in so far as it is not contrary to this Constitution and has not been expressly repealed.

Article 21. This Ordinance, effective from 19 November 1968, shall be published in the *Journal officiel*.

MAURITANIA

CONSTITUTIONAL ACT No. 68-065 OF 4 MARCH 1968 AMENDING ARTICLES 3, 47 AND 53 OF THE CONSTITUTION ¹

...
Article 1. The provisions of article 3 of Act No. 61-095 of 20 May 1961 to enact the Constitution of the Islamic Republic of Mauritania ² are hereby abrogated and replaced by the following provisions:

“*Article 3.* The national language shall be Arabic. The official languages shall be French and Arabic.”

Article 2. The provisions of article 47 of Act No. 61-095 of 20 May 1961 to enact the Constitution of the Islamic Republic of Mauritania are hereby abrogated and replaced by the following provisions:

“*Article 47.* The judicial authority shall be independent of the executive power and the legislative power. The statute of the judiciary shall be established by law.”

Article 3. The provisions of article 53 of Act No. 61-095 of 20 May 1961 to enact the Constitution of the Islamic Republic of Mauritania are hereby abrogated and replaced by the following provisions:

“*Article 53.* The territorial units of the State shall be the regions and the communes.”

¹ *Journal officiel de la République islamique de Mauritanie*, Nos. 226-227, of 27 March 1968.

² See *Yearbook on Human Rights for 1961*, pp. 224-225, for excerpts from the Constitution of 20 May 1961.

ACT No. 68-068 OF 4 MARCH 1968 AMENDING ARTICLE 13 OF ACT No. 63-014 OF 18 JANUARY 1963 ON THE STATUTE OF THE JUDICIARY ³

Article 1. Article 13 of Act No. 63-014 of 18 January 1963 on the statute of the judiciary, as amended by Act No. 63-212 of 4 December 1963, is abrogated and replaced by the following provisions:

“*Article 13.* Any manifestation of hostility to the principle and the form of government of the Republic by judges shall be prohibited, as shall any demonstration of a political nature which is incompatible with the restraint dictated by their office.

“Any concerted action likely to interrupt or impede the operation of the courts shall likewise be prohibited.”

³ *Journal officiel de la République islamique de Mauritanie*, Nos. 226-227, of 27 March 1968.

DECREE No. 68-078 OF 7 MARCH 1968 ESTABLISHING
A TRANSLATION DEPARTEMENT ⁴

Article 1. A translation department is hereby established within the Office of the President of the Republic. It shall be headed by a director appointed by decree.

Article 2. The functions of the translation department shall be:

To draw up rules for the use of the official languages, Arabic and French, in all fields, and particularly in the administrative, educational, cultural, economic and technical fields;

To promote, in co-operation with the departments concerned, the use of the Arabic language in programmes of rural development, mass education, mass literacy training and other activities of a social or cultural nature.

Article 3. With that end in view, the translation department shall:

1. Prepare a terminology for the use and standardization of the Arabic language with a view to fostering its use in the public services. The results of that work, in the form of glossaries for specific fields, shall be the subject of implementing legislation making their use compulsory;

2. Translate from one language into the other all official instruments and documents, and all documentation of an official nature intended for publication.

...

⁴ *Ibid.*

ACT No. 68-208 OF 6 JULY 1968 AMENDING CERTAIN ARTICLES
OF THE CODE OF CRIMINAL PROCEDURE ⁵

Article 1. Articles 19, 23, 24 and 66 of the Code of Criminal Procedure established by Act No. 61-141 of 12 July 1961, and revised by Act No. 67-170 of 10 July 1967, are amended as follows:

Article 19. The following are officers of the criminal police: *gendarmier* officers, commissioned or non-commissioned, having the rank of sergeant or a higher rank, and *gendarmes* who are put in charge of a brigade or post;" The remainder of the article is unchanged.

Article 23. The following are agents of the criminal police: *gendarmes* not having the rank of officer of the criminal police.

"Their duties are:

"To assist the officers of the criminal police in carrying out their duties;

"To verify the occurrence of crimes, offences or contraventions and to report on them in writing;

"To take down in writing statements made to them by any persons able to supply them with clues, evidence and information relating to the perpetrators of such offences and their accomplices.

Article 24. The following also are agents of the criminal police: Government officials serving in the regular police departments.

"Their duties are:

"To assist the officers of the criminal police in carrying out their duties;

"To report to their superiors all crimes, offences or contraventions which come to their attention;

"To verify, in accordance with the orders given by their superiors, the occurrence of breaches of the criminal law and to gather all information with a view to identifying the offenders."

Article 66. The officers of the criminal police and the agents specified in article 23 shall undertake preliminary investigations either following the instructions of the public prosecutor or *ex officio* with a view to identifying the offenders or obtaining proof of the offences."

The second paragraph is unchanged.

⁵ *Journal officiel de la République islamique de Mauritanie*, No. 234, of 17 July 1968. For excerpts from the Code of Criminal Procedure, see *Yearbook of Human Rights for 1961*, pp. 226-231.

ACT No. 62-236 OF 19 JULY 1968 AMENDING ACT No. 63-023,
OF 23 JANUARY 1963 ESTABLISHING A LABOUR CODE⁶

Article 1. Section 15 of Book IV of the Labour Code is amended as follows:

"*New Article 15.* Any worker or any employer must request the competent labour inspector or the labour supervisory officer, or their lawful substitute, to bring about an amicable settlement of the dispute.

"Such request shall suspend the running of the prescriptive period referred to in section 101 of Book I of this Code as from the date of its reception by the competent labour inspector or labour supervisory officer or their lawful substitute. The suspension shall remain in effect until the date of the written report terminating the attempt at conciliation at the Inspectorate of Labour. In the case of conciliation the executory formula shall be entered by order of the president of the court, at the request of either party, on the conciliation report drawn up by the labour inspector or labour supervisory officer or their lawful substitute.

"In the case of partial conciliation, the report shall be executory as regards the parts in respect of which agreement was reached, and a non-conciliation report shall be drawn up by the labour inspector or the labour supervisory officer as regards the remainder of the plaint.

"The execution shall be carried out in the same way as in the case of a judgement of the labour court.

"The competent labour court president shall be the one within whose jurisdiction the report of conciliation was signed.

"In all cases, the report drawn up by the labour inspectorate or labour supervisory officer shall state the grounds on which the report is based."

Article 2. The following shall be added to Book IV of the Labour Code as article 15 (a):

"*Article 15 (a).* On the day following receipt of the plaint (not including Sundays and holidays) the labour inspector or labour supervisory officer shall summon the parties to a hearing within four days (to which shall be added in appropriate cases travelling time fixed in the manner prescribed in section 14 above).

"The parties shall appear before the labour inspector or labour supervisory officer on the appointed day and at the appointed hour or be represented by a person holding a power of attorney. They may also be accompanied by a worker or employer belonging to the same branch of activity or by a representative of the organizations to which they belong.

"If the plaintiff fails to appear on the day fixed for the hearing and fails to show a cause of *force majeure*, a report of non-appearance shall be drawn up. The plaint may be resumed once only, with the same formalities as for the initial plaint, in default of which the plaint shall lapse.

"If the defendant fails to appear and fails to show a cause of *force majeure*, or if he has failed to present his defence in a written memorandum, the labour inspector or labour supervisory officer shall prepare a detailed report of the matter in dispute which he shall submit together with his opinion to the president of the labour court hearing the case."

...

⁶ *Ibid.*, No. 235 (Numéro spécial), of 31 July 1968.

ACT No. 68-237 DATED 19 JULY 1968 AMENDING THE STATUTE OF THE JUDICIARY⁷

Chapter I

GENERAL PROVISIONS

Article 1. The judiciary consists of the judges of the Bench, the *parquet* of the Supreme Court, the courts of first instance, and the judges of the central administration of the Ministry of Justice.

⁷ *Ibid.*

It also includes the *cadis*, who are governed by a special statute.

...

Article 10. The exercise of the office of judge is incompatible with the exercise of any public office or any professional or salaried activity.

Individual judges may, however, be exempted from this rule by the Minister of Justice for the purpose of teaching subjects appropriate to their

profession or of performing functions or activities of a type not detrimental to their dignity or independence.

A judge may carry on scientific, literary or artistic work without prior permission.

Article 11. The exercise of the office of judge is incompatible with the exercise of any elective office.

Article 12. No relative of a judge, either by blood or by marriage, up to and including the degree of uncle or nephew, shall act simultaneously with him in the same proceedings and within the same jurisdiction as either a judge or an officer of the *ministère public*.

Article 13. Any manifestation of hostility to the principle and the form of government of the Republic shall be prohibited, as shall any demonstration of a political nature which is incompatible with the restraint dictated by their office.

Any concerted action likely to interrupt or hinder the operation of the courts shall likewise be prohibited.

Article 14. Independently of the provisions of the Criminal Code, judges shall be protected against threats or attacks on any kind to which they may be exposed in the performance of their duties. The State shall provide compensation for

any direct injury or loss sustained thereby, unless it is covered by the legislation on pensions.

Proceedings against judges shall be initiated in the manner laid down in article 588 and the following articles of the Code of Criminal Procedure.

...

Chapter II

RECRUITMENT

Article 20. Candidates for judicial office shall:

1. Be not less than twenty-three years of age;
2. Be of Mauritanian nationality;
3. Enjoy full civil rights and be of high moral character;
4. Be in good standing under the laws regarding recruitment into the army;
5. Meet such standards of physical fitness necessary for the performance of their duties and be found to be free from or completely cured of any illness which might entitle them to prolonged leave of absence;
6. Hold a *licence en droit* or an equivalent law degree.

...

ACT No. 68-243 OF 30 JULY 1968 CONCERNING REGIONAL ORGANIZATION AND THE ORGANIZATION OF THE DISTRICT OF NOUAKCHOTT⁸

...

TITLE I

REGIONAL ORGANS

Article 1. The regional organs shall be:
The regional governor,
And the regional assembly.

A. THE REGIONAL GOVERNOR

Article 2. Within the region, the regional governor shall represent the executive power and be the representative of the region.

He shall preside over the regional assembly.
He shall administer the property of the region.

...

B. THE REGIONAL ASSEMBLY

Article 6. The regional assembly shall meet at the regional capital. Its members shall bear the title of regional councillors.

The regional assembly shall have no fewer than twenty and no more than thirty members.

The number of members of each assembly, which shall be an average of one councillor for every 6,000 persons recorded in the census, shall be determined by decree.

Article 7. Regional councillors shall be appointed for a term of five years.

They shall be appointed by decree from a list submitted by the Mauritanian People's Party.

In the event of vacancies by reason of resignation, death or any other cause, provision shall be made for the replacement of councillors in the procedures established for their appointment.

...

⁸ *Journal officiel de la République islamique de Mauritanie*, Nos. 236-237, of 28 August 1968.

ACT No. 68-180 OF 11 JUNE 1968 ⁹

This law authorizes the ratification of the agreement on cultural and scientific co-operation between the Islamic Republic of Mauritania and the Union of Soviet Socialist Republics, done at Moscow on 29 December 1967.

Article 1 of the agreement reads as follows:

“The Contracting Parties shall contribute to the development of co-operation and to the exchange of experience and achievements in the spheres of science, teaching and public education, public health, literature, art, radio, sports and tourism by exchanging cultural, educational and other delegations and by individual visits under this agreement.”

⁹ *Ibid.*, Nos. 244-245, of 31 December 1968.

DECREE No. 68-335 OF 16 DECEMBER 1968 ESTABLISHING A GENERAL SECRETARIAT FOR CULTURAL AFFAIRS ¹⁰

Article 1. A General Secretariat for Cultural Affairs shall be established; it shall be directed by a Secretary-General appointed by decree of the Council of Ministers.

The General Secretariat for Cultural Affairs shall be established within the office of the President of the Republic (General Secretariat).

Article 2. The General Secretariat for Cultural Affairs, under the authority of the Secretary-General of the office of the President of the Republic, shall be responsible for cultural questions and for the implementation of a cultural development policy.

...

¹⁰ *Ibid.*

MAURITIUS

THE CONSTITUTION OF MAURITIUS¹

Chapter I

THE STATE AND THE CONSTITUTION

1. Mauritius shall be a sovereign democratic State.

...

Chapter II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

3. It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms, namely—

(a) The right of the individual to life, liberty, security of the person and the protection of the law;

(b) Freedom of conscience, of expression, of assembly and association and freedom to establish schools; and

(c) The right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,

and the provisions of this Chapter shall have effect for the purpose of affording protection to the said rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the

enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

4. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) 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 a lawful arrest or to prevent the escape of a person lawfully detained;

(c) For the purpose of suppressing a riot, insurrection or mutiny; or

(d) In order to prevent the commission by that person of a criminal offence, or if he dies as the result of a lawful act of war.

5 (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say—

(a) In consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether in Mauritius or elsewhere, in respect of a criminal offence of which he has been convicted;

(b) In execution of the order of a court punishing him for contempt of that court or of another court;

(c) In execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(d) For the purpose of bringing him before a court in execution of the order of a court;

(e) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

(f) In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

¹ Text appears in the Schedule to the Mauritius Independence Order 1968, published as Government Notice No. 54 of 1968 in the *Legal Supplement to the Government Gazette of the Colony of Mauritius*, No. 30, of 6 March 1968. Mauritius became an independent State on 12 March 1968.

(g) For the purpose of preventing the spread of an infectious or contagious disease;

(h) In the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of his care or treatment or the protection of the community;

(i) For the purpose of preventing the unlawful entry of that person into Mauritius, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Mauritius or the taking of proceedings relating thereto;

(j) Upon reasonable suspicion of his being likely to commit breaches of the peace; or

(k) In execution of the order of the Commissioner of Police, upon reasonable suspicion of his having engaged in, or being about to engage in, activities likely to cause a serious threat to public safety or public order.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(a) For the purpose of bringing him before a court in execution of the order of a court;

(b) Upon reasonable suspicion of his having committed, or being about to commit a criminal offence; or

(c) Upon reasonable suspicion of his being likely to commit breaches of the peace, and who is not released, shall be afforded reasonable facilities to consult a legal representative of his own choice and shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (b) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial; and if any person arrested or detained as mentioned in paragraph (c) of this subsection is not brought before a court within a reasonable time in order that the court may decide whether to order him to give security for his good behaviour then, without prejudice to any further proceedings that may be brought against him, he shall be released unconditionally.

(4) When a person is detained in pursuance of any such provision of law as is referred to in paragraph (k) of subsection (1) of this section, the following provisions shall apply, that is to say:—

(a) He shall, as soon as is reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(b) Not more than seven days after the commencement of his detention, a notification shall be published in the *Gazette* stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) Not more than fourteen days after the commencement of his detention and thereafter during his detention at intervals of not more than thirty days, his case shall be reviewed by an independent and impartial tribunal and consisting of a chairman and two other members appointed by the Judicial and Legal Service Commission, the chairman being appointed from among persons who are entitled to practise as a barrister or as an attorney-at-law in Mauritius;

(d) He shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of his case;

(e) At the hearing of his case by the tribunal he shall be permitted to appear in person or by a legal representative of his own choice and, unless the tribunal otherwise directs, the hearing shall be held in public;

(f) At the conclusion of any review by a tribunal in pursuance of this subsection in any case, the tribunal shall announce its decision in public, stating whether or not there is, in its opinion, sufficient cause for the detention, and if, in its opinion, there is not sufficient cause, the detained person shall forthwith be released and if during the period of six months from his release he is again detained as aforesaid the tribunal established as aforesaid for the review of his case shall not decide that, in its opinion, there is sufficient cause for the further detention unless it is satisfied that new and reasonable grounds for the detention exist.

(5) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

(6) In the exercise of any functions conferred upon him for the purposes of subsection (1) (k) of this section, the Commissioner of Police shall not be subject to the direction or control of any other person or authority.

6. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include—

(a) Any labour required in consequence of the sentence or order of a court;

(b) Labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that person is required by law to perform in place of such service; or

(d) Any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the

requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

7. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Mauritius on 11th March 1964 being the day before the day on which section 5 of the Constitution set out in Schedule 2 to the Mauritius (Constitution) Order 1964 came into force.

8. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(a) The taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such a manner as to promote the public benefit; and

(b) There is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(c) Provision is made by a law applicable to that taking of possession or acquisition—

- (i) for the prompt payment of adequate compensation; and
- (ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Mauritius.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the last preceding subsection to the extent that the law in question authorises—

(a) The attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party;

(b) The imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted; or

(c) The imposition of any deductions, charge or tax that is made or levied generally in respect of the remission of moneys from Mauritius and that is not discriminatory within the meaning of section 16 (3) of this Constitution.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

(a) To the extent that the law in question makes provision for the taking of possession or acquisition of property—

- (i) in satisfaction of any tax, rate or due;
- (ii) by way of penalty for breach of the law or forfeiture in consequence of a breach of the law;
- (iii) as an incident of a lease, tenancy, mortgage, charge, sale, pledge or contract;
- (iv) in the execution of judgments or orders of courts;
- (v) by reason of its being in a dangerous state or injurious to the health of human beings, animals, trees or plants;
- (vi) in consequence of any law with respect to the limitations of actions or acquisitive prescription;
- (vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon—

- (A) of work of soil conservation or the conservation of other natural resources; or
- (B) of agricultural development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed to carry out,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) To the extent that the law in question makes provision for the taking of possession or acquisition of—

- (i) enemy property;
- (ii) property of a person who has died or is unable, by reason of legal incapacity, to administer it himself, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
- (iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
- (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) Nothing in this section shall affect the making or operation of any law so far as it provides for the vesting in the Crown of the ownership of underground water or unextracted minerals.

(6) Nothing in this section shall affect the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided from public funds.

9. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) In the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;

(b) For the purpose of protecting the rights or freedoms of other persons;

(c) To enable an officer or agent of the Government or a Local Authority, or a body corporate established by law for a public purpose, to enter on the premises of any person in order to value those premises for the purpose of any tax, rate or due, or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, the Local Authority or that body corporate, as the case may be; or

(d) To authorise, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or the entry upon any premises by such order, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

10. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(a) Shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) Shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence;

(c) Shall be given adequate time and facilities for the preparation of his defence;

(d) Shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense;

(e) Shall be afforded facilities to examine, in person or by his legal representative, the witnesses called by the prosecution before any court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by the prosecution; and

(f) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence, and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be specified by or under any law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial of that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon, by competent authority, for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the last foregoing subsection shall prevent the court or other authority from excluding from the proceedings (except the announcement of the decision of the court or other

authority) persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(a) May by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the privacy of persons concerned in the proceedings: or

(b) May by law be empowered or required to do so in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(a) Subsection (2)(a) of this section, to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) Subsection (2)(e) of his section, to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(c) Subsection (5) of this section, to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In this section "criminal offence" means a crime, misdemeanour or contravention punishable under the law of Mauritius.

11. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.

(3) No religious community or denomination shall be prevented from making provision for the giving, by persons lawfully in Mauritius, of religious instruction to persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) In the interests of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of persons professing any other religion or belief,

except so far as that provision, or as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

12. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) In the interests of defence, public safety, public order, public morality or public health;

(b) For the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or

(c) For the imposition of restrictions upon officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

13. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) In the interests of defence, public safety, public order, public morality or public health;

(b) For the purpose of protecting the rights or freedoms of other persons; or

(c) For the imposition of restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

14. (1) No religious denomination and no religious, social, ethnic or cultural association or group shall be prevented from establishing and maintaining schools at its own expense.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the preceding subsection to the extent that the law in question makes provision—

(a) In the interests of defence, public safety, public order, public morality or public health; or

(b) For regulating such schools in the interests of persons receiving instruction therein, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) No person shall be prevented from sending to any such school a child of whom that person is parent or guardian by reason only that the school is not a school established or maintained by the Government.

(4) In the preceding subsection "child" includes a stepchild and a child adopted in a manner recognised by law; and the word "parent" shall be construed accordingly.

15. (1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Mauritius, the right to reside in any part of Mauritius, the right to enter Mauritius, the right to leave Mauritius and immunity from expulsion from Mauritius.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) For the imposition of restrictions on the movement or residence within Mauritius of any person in the interests of defence, public safety, public order, public morality or public health;

(b) For the imposition of restrictions on the right of any person to leave Mauritius in the interests of defence, public safety, public order, public morality or public health or of securing compliance with any international obligation of the Government particulars of which have been laid before the Assembly;

(c) For the imposition of restrictions, by order of a court, on the movement or residence within Mauritius of any person either in consequence of his having been found guilty of a criminal offence under the law of Mauritius or for the purpose of ensuring that he appears before a court at a later date for trial in respect of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or other lawful removal from Mauritius;

(d) For the imposition of restrictions on the movement or residence within Mauritius of any person who is not a citizen of Mauritius or the

exclusion or expulsion from Mauritius of any such person;

(e) For the imposition of restrictions on the acquisition or use by any person of land or other property in Mauritius;

(f) For the removal of a person from Mauritius to be tried outside Mauritius for a criminal offence or to undergo imprisonment outside Mauritius in execution of the sentence of a court in respect of a criminal offence of which he has been convicted; or

(g) For the imposition of restrictions on the right of any person to leave Mauritius in order to secure the fulfilment of any obligations imposed upon that person by law, except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted in pursuance of any such provision of law as is referred to in paragraph (a) or (b) of the preceding subsection so requests, the following provisions shall apply, that is to say—

(a) He shall, as soon as is reasonably practicable and in any case not more than seven days after the making of the request, be furnished with a statement in writing in a language that he understands specifying the grounds for the imposition of the restriction;

(b) Not more than fourteen days after the making of the request, and thereafter during the continuance of the restriction at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal consisting of a chairman and two other members appointed by the Judicial and Legal Service Commission, the chairman being appointed from among persons who are entitled to practise as a barrister or as an attorney-at-law in Mauritius;

(c) He or a legal representative of his own choice shall be permitted to make representations to the tribunal appointed for the review of his case;

(d) On any review by a tribunal in pursuance of this subsection in any case, the tribunal may make recommendations concerning the necessity or expediency of continuing the restriction in question to the authority by which it was ordered and that authority shall act in accordance with any recommendation for the removal or relaxation of the restriction:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction that is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the Supreme Court.

16. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting in the performance of any public function

conferred by any law or otherwise in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(a) For the appropriation of revenues or other funds of Mauritius;

(b) With respect to persons who are not citizens of Mauritius; or

(c) For the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, caste, place of origin, political opinions, colour or creed) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, any office in the service of a Local Authority or any office in a body corporate established directly by any law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13, 14 and 15 of this Constitution, being such a restriction as is authorised by section 9(2), 11(5), 12(2), 13(2), 14(2) or 15(3) of this Constitution, as the case may be.

(8) Subsection (2) of this section shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

17. (1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is

lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of the preceding subsection, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) The Supreme Court shall have such powers in addition to those conferred by this section as may be prescribed for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred upon it by this section.

(4) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred upon it by or under this section (including rules with respect to the time within which applications to that court may be made).

18. (1) Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of section 5 or section 16 of this Constitution to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Mauritius during that period:

Provided that no law, to the extent that it authorises the taking during a period of public emergency other than a period during which Mauritius is at war of measures that would be inconsistent with or in contravention of section 5 or section 16 of this Constitution if taken otherwise than during a period of public emergency, shall have effect unless there is in force a Proclamation of the Governor-General declaring that, because of the situation existing at the time, the measures authorised by the law are required in the interests of peace, order and good government.

(2) A Proclamation made by the Governor-General for the purposes of this section—

(a) Shall, when the Assembly is sitting or when arrangements have already been made for it to meet within seven days of the date of the Proclamation, lapse unless within seven days the Assembly by resolution approves the Proclamation;

(b) Shall, when the Assembly is not sitting and no arrangements have been made for it to meet within seven days, lapse unless within twenty-one days it meets and approves the Proclamation by resolution;

(c) Shall, if approved by resolution, remain in force for such period, not exceeding six months, as the Assembly may specify in the resolution;

(d) May be extended in operation for further periods not exceeding six months at a time by resolution of the Assembly;

(e) May be revoked at any time by the Governor-General, or by resolution of the Assembly:

Provided that no resolution for the purposes of paragraphs (a), (b), (c) or (d) of this subsection shall be passed unless it is supported by the votes of at least two-thirds of all the members of the Assembly.

(3) When a person is detained by virtue of any such law as is referred to in subsection (1) of this section of this Constitution (not being a person who is detained because he is a person who, not being a citizen of Mauritius, is a citizen of a country with which Mauritius is at war or has been engaged in hostilities against Mauritius in association with or on behalf of such a country or otherwise assisting or adhering to such a country) the following provisions shall apply, that is to say:—

(a) He shall, as soon as is reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(b) Not more than fourteen days after the commencement of his detention, a notification shall be published in the *Gazette* stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) Not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal consisting of a chairman and two other members appointed by the Judicial and Legal Service Commission, the chairman being appointed from among persons who are entitled to practise as a barrister or as an attorney-at-law in Mauritius;

(d) He shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and

(e) At the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(4) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

...

Chapter III

CITIZENSHIP

20. (1) Every person who, having been born in Mauritius, is on 11th March 1968 a citizen of

the United Kingdom and Colonies shall become a citizen of Mauritius on 12th March 1968.

(2) Every person who, on 11th March 1968, is a citizen of the United Kingdom and Colonies—

(a) Having become such a citizen under the British Nationality Act 1948 by virtue of his having been naturalised by the Governor of the former colony of Mauritius as a British subject before that Act came into force; or

(b) Having become such a citizen by virtue of his having been naturalised or registered by the Governor of the former colony of Mauritius under that Act, shall become a citizen of Mauritius on 12th March 1968.

(3) Every person who, having been born outside Mauritius, is on 11th March 1968 a citizen of the United Kingdom and Colonies shall, if his father becomes, or would but for his death have become, a citizen of Mauritius by virtue of subsection (1) or subsection (2) of this section, shall become a citizen of Mauritius on 12th March 1968.

(4) For the purposes of this section a person shall be regarded as having been born in Mauritius if he was born in the territories which were comprised in the former colony of Mauritius immediately before 8th November 1965 but were not so comprised immediately before 12th March 1968 unless his father was born in the territories which were comprised in the colony of Seychelles immediately before 8th November 1965.

21. (1) Any woman who, on 12th March 1968, is or has been married to a person—

(a) Who becomes a citizen of Mauritius by virtue of the preceding section; or

(b) Who, having died before 12th March 1968, would, but for his death, have become a citizen of Mauritius by virtue of that section, shall be entitled, upon making application and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Mauritius:

Provided that, in the case of any woman who on 12th March 1968 is not a citizen of the United Kingdom and Colonies, the right to be registered as a citizen of Mauritius under this section shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(2) Any application for registration under this section shall be made in such manner as may be prescribed as respects that application.

22. Every person born in Mauritius after 11th March 1968 shall become a citizen of Mauritius at the date of his birth:

Provided that a person shall not become a citizen of Mauritius by virtue of this section if at the time of his birth—

(a) His father possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Mauritius and neither of his parents is a citizen of Mauritius; or

(b) His father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

23. A person born outside Mauritius after 11th March 1968 shall become a citizen of Mauritius at the date of his birth if at that date his father is a citizen of Mauritius otherwise than by virtue of this section or section 20 (3) of this Constitution.

24. Any woman who, after 11th March 1968 marries a person who is or becomes a citizen of Mauritius shall be entitled, upon making application in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Mauritius:

Provided that the right to be registered as a citizen of Mauritius under this section shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

25. (1) Every person who under this Constitution or any other law is a citizen of Mauritius or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

...

26. Parliament may make provision—

(a) For the acquisition of citizenship of Mauritius by persons who are not eligible or who are no longer eligible to become citizens of Mauritius by virtue of the provisions of this Chapter;

(b) For depriving of his citizenship of Mauritius any person who is a citizen of Mauritius otherwise than by virtue of sections 20, 22 or 23 of the Constitution;

(c) For the renunciation by any person of his citizenship of Mauritius;

(d) For the maintenance of a register of citizens of Mauritius who are also citizens of other countries; or

(e) For depriving of his citizenship of Mauritius any citizen of Mauritius who has attained the age of 21 years after 11th March 1968, and who, being a citizen of some other country, has not, within such period after his attainment of that age as may be prescribed, renounced his citizenship of that other country or, if the law of that other country does not permit him to renounce his citizenship of that other country, made such declaration as may be prescribed.

...

Chapter V

PARLIAMENT

PART I — THE LEGISLATIVE ASSEMBLY

31. (1) There shall be a Parliament for Mauritius, which shall consist of Her Majesty and a Legislative Assembly.

(2) The Assembly shall consist of persons elected in accordance with schedule 1 to this Constitution, which makes provision for the election of seventy members.

...

33. Subject to the provisions of the next following section, a person shall be qualified to be elected as a member of the Assembly if, and shall not be so qualified unless, he—

(1) Is a Commonwealth citizen of not less than twenty-one years of age;

(2) Has resided in Mauritius for a period of, or periods amounting in the aggregate to, not less than two years before the date of his nomination for election;

(3) Has resided in Mauritius for a period of not less than six months immediately before that date; and

(4) Is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly.

34. (1) No person shall be qualified to be elected as a member of the Assembly who—

(a) Is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a power or state outside the Commonwealth;

(b) Is a public officer or a local government officer;

(c) Is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the government for or on account of the public service, and has not, within fourteen days after his nomination as a candidate for election, published in the English language in the *Gazette* and in a newspaper circulating in the constituency for which he is a candidate a notice setting out the nature of such contract and his interest, or the interest of any such firm or company, therein;

(d) Has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged or has obtained the benefit of a *cessio bonorum* in Mauritius;

(e) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in Mauritius;

(f) Is under sentence of death imposed on him by a court in any part of the Commonwealth, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(g) Is disqualified for election by any law in force in Mauritius by reason of his holding, or acting in, an office the functions of which involve—

(i) any responsibility for, or in connection with, the conduct of any election; or

(ii) any responsibility for the compilation or revision of any electoral register; or

(h) Is disqualified for membership of the Assembly by any law in force in Mauritius relating to offences connected with elections.

(2) If it is prescribed by Parliament that any office in the public service or the service of a Local Authority is not to be regarded as such an office for the purposes of this section, a person shall not be regarded for the purposes of this section as a public officer or a local government officer, as the case may be, by reason only that he holds, or is acting in, that office.

(3) For the purpose of this section—

(a) Two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and

(b) Imprisonment in default of payment of a fine shall be disregarded.

...

42. (1) Subject to the provisions of the next following section, a person shall be entitled to be registered as an elector if, and shall not be so entitled unless—

(a) He is a Commonwealth citizen of not less than twenty-one years of age; and

(b) Either he has resided in Mauritius for a period of not less than two years immediately before such date as may be prescribed by Parliament or he is domiciled in Mauritius and is resident therein on the prescribed date.

(2) No person shall be entitled to be registered as an elector—

(a) In more than one constituency; or

(b) In any constituency in which he is not resident on the prescribed date.

43. No person shall be entitled to be registered as an elector who—

(a) Is under sentence of death imposed on him by a court in any part of the Commonwealth, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(b) Is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in Mauritius; or

(c) Is disqualified for registration as an elector by any law in force in Mauritius relating to offences connected with elections.

44. (1) Any person who is registered as an elector in a constituency shall be entitled to vote in such manner as may be prescribed at any election for that constituency unless he is prohibited from so voting by any law in force in Mauritius because—

(a) He is a returning officer; or

(b) He has been concerned in any offence connected with elections:

Provided that no such person shall be entitled so to vote if on the date prescribed for polling he is in lawful custody or (except in so far as may otherwise be prescribed) he is for any other reason unable to attend in person at the place and time prescribed for polling.

(2) No person shall vote at any election for any constituency who is not registered as an elector in that constituency.

PART II — LEGISLATION AND PROCEDURE IN LEGISLATIVE ASSEMBLY

...

47. (1) Subject to the provisions of this section, Parliament may alter this Constitution.

(2) A bill for an Act of Parliament to alter any of the following provisions of this Constitution, that is to say:—

(a) This section;

(b) Sections 28 to 31, 37 to 46, 56 to 58, 64, 65, 71, 72 and 108;

(c) Chapters II, VII, VIII and IX;

(d) Schedule 1; and

(e) Chapter XI, to the extent that it relates to any of the provisions specified in the preceding paragraphs,

shall not be passed by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than three-quarters of all the members of the Assembly.

(3) A bill for an Act of Parliament to alter any provision of this Constitution (but which does not alter any of the provisions of this Constitution as specified in subsection (2) of this section) shall not be passed by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than two-thirds of all the members of the Assembly.

(4) In this section references to altering this Constitution or any part of this Constitution include references—

(a) To revoking it, with or without re-enactment thereof or the making of different provision in lieu thereof;

(b) To modifying it, whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise; and

(c) To suspending its operation for any period, or terminating any such suspension.

...

73. (1) There shall be a Leader of the Opposition who shall be appointed by the Governor-General.

(2) Whenever the Governor-General has occasion to appoint a Leader of the Opposition he shall in his own deliberate judgment appoint—

(a) If there is one opposition party whose numerical strength in the Assembly is greater than the strength of any other opposition party, the member of the Assembly who is the leader in the Assembly of that party; or

(b) If there is no such party, the member of the Assembly whose appointment would, in the judgment of the Governor-General, be most acceptable to the leaders in the Assembly of the opposition parties:

Provided that, if occasion arises for making an appointment while Parliament is dissolved, a

person who was a member of the Assembly immediately before the dissolution may be appointed Leader of the Opposition.

Chapter IX

THE OMBUDSMAN

96. (1) There shall be an Ombudsman, whose office shall be a public office.

(2) The Ombudsman shall be appointed by the Governor-General, acting after consultation with the Prime Minister, the Leader of the Opposition and such other persons, if any, as appear to the Governor-General, acting in his own deliberate judgment, to be leaders of parties in the Assembly.

(3) No person shall be qualified for appointment as Ombudsman if he is a member of, or a candidate for election to, the Assembly or any Local Authority or is a local government officer, and no person holding the office of Ombudsman shall perform the functions of any other public office.

97. (1) Subject to the provisions of this section, the Ombudsman may investigate any action taken by any officer or authority to which this section applies in the exercise of administrative functions of that officer or authority, in any case in which a member of the public claims, or appears to the Ombudsman, to have sustained injustice in consequence of maladministration in connection with the action so taken and in which—

(a) A complaint under this section is made;

(b) He is invited to do so by any Minister or other member of the Assembly; or

(c) He considers it desirable to do so of his own motion.

(2) This section applies to the following officers and authorities—

(a) Any department of the Government;

(b) The Police Force or any member thereof;

(c) The Mauritius Prison Service or any other service maintained and controlled by the Government or any officer or authority of any such service;

(d) Any authority empowered to determine the person with whom any contract or class of contracts is to be entered into by or on behalf of the Government or any such officer or authority;

(e) Such other officers or authorities as may be prescribed by Parliament:

Provided that it shall not apply in relation to any of the following officers and authorities—

(i) the Governor-General or his personal staff;

(ii) the Chief Justice;

(iii) any Commission established by this Constitution or their staff;

(iv) the Director of Public Prosecutions or any person acting in accordance with his instructions;

(v) any person exercising powers delegated to him by the Public Service Commission or

the Police Service Commission, being powers the exercise of which is subject to review or confirmation by the Commission by which they were delegated.

(3) A complaint under this section may be made by any individual, or by any body of persons whether incorporated or not, not being—

(a) An authority of the Government or a Local Authority or other authority or body constituted for purposes of the public service or local government; or

(b) Any other authority or body whose members are appointed by the Governor-General or by a Minister or whose revenues consist wholly or mainly of moneys provided from public funds.

(4) Where any person by whom a complaint might have been made under the last preceding subsection has died or is for any reason unable to act for himself, the complaint may be made by his personal representatives or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained unless made by the person aggrieved himself.

(5) The Ombudsman shall not conduct an investigation in respect of any complaint under this section unless the person aggrieved is resident in Mauritius (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in Mauritius or in relation to rights or obligations that accrued or arose in Mauritius.

(6) The Ombudsman shall not conduct an investigation under this section in respect of any complaint under this section in so far as it relates to any of the following matters, that is to say—

(a) Any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any law in force in Mauritius; or

(b) Any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that—

(i) the Ombudsman may conduct such an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to avail himself or to have availed himself of that right or remedy; and

(ii) nothing in this subsection shall preclude the Ombudsman from conducting any investigation as to whether any of the provisions of Chapter II of this Constitution has been contravened.

(7) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section in respect of any action if he is given notice in writing by the Prime Minister that the action was taken by a Minister or Parliamentary Secretary in person in the exercise of his own deliberate judgment.

(8) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section where it appears to him—

(a) That the complaint is merely frivolous or vexatious;

(b) That the subject-matter of the complaint is trivial;

(c) That the person aggrieved has no sufficient interest in the subject-matter of the complaint; or

(d) That the making of the complaint has, without reasonable cause, been delayed for more than twelve months.

(9) The Ombudsman shall not conduct an investigation under this section in respect of any matter if he is given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Mauritius.

(10) In this section "action" includes failure to act.

98. (1) Where the Ombudsman proposes to conduct an investigation under the preceding section, he shall afford to the principal officer of any department or authority concerned, and to any other person who is alleged to have taken or authorised the action in question, an opportunity to comment on any allegations made to the Ombudsman in respect thereof.

(2) Every such investigation shall be conducted in private but except as provided in this Constitution or as prescribed under section 102 of this Constitution the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case; and without prejudice to the generality of the foregoing provision the Ombudsman may obtain information from such persons and in such manner, and make such enquiries, as he thinks fit, and may determine whether any person may be represented, by counsel or attorney-at-law or otherwise, in the investigation.

99. (1) For the purposes of an investigation under section 97 of this Constitution the Ombudsman may require any Minister, officer or member of any department or authority concerned or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) If any case to which this section applies the Ombudsman is of opinion—

(a) That the matter should be given further consideration;

(b) That an omission should be rectified;

(c) That a decision should be cancelled, reversed or varied;

(d) That any practice on which the act, omission, decision or recommendation was based should be altered;

(e) That any law on which the act, omission, decision or recommendation was based should be reconsidered;

(f) That reasons should have been given for the decision; or

(g) That any other steps should be taken, the Ombudsman shall report his opinion, and his reasons therefor, to the principal officer of any department or authority concerned, and may make such recommendations as he thinks fit; he may request that officer to notify him, within a specified time, of the steps (if any) that it is proposed to take to give effect to his recommendations; and he shall also send a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

(3) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, if he thinks fit, after considering the comments (if any) made by or on behalf of any department, authority, body or person affected, may send a copy of the report and recommendations to the Prime Minister and to any Minister concerned, and may thereafter make such further report to the Assembly on the matter as he thinks fit.

101. (1) In the discharge of his functions, the Ombudsman shall not be subject to the direction or control any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.

(2) In determining whether to initiate, continue or discontinue an investigation under section 97 of this Constitution the Ombudsman shall act in accordance with his own discretion; and any question whether a complaint is duly made for the purposes of that section shall be determined by the Ombudsman.

(3) The Ombudsman shall make an annual report to the Governor-General concerning the discharge of his functions, which shall be laid before the Assembly.

...

THE MAURITIUS CITIZENSHIP ACT, 1968

Act No. 45 of 1968, assented to on 13 December 1968²

...

PART II

ACQUISITION OF CITIZENSHIP

3. Where under a law in force in Mauritius relating to the adoption of children an adoption order is made in respect of a minor who is not a citizen of Mauritius, then, if the adopter, or in the case of a joint adoption the male adopter, is a citizen of Mauritius, the minor shall become a citizen of Mauritius as from the date of the order.

4. If any territory becomes a part of Mauritius the Governor-General may by Order published in the *Gazette* specify the persons who shall be citizens of Mauritius by reason of their connection with that territory and those persons shall become citizens of Mauritius as from such date as may be specified in the Order.

5. (1) Subject to the provisions of this section, the Minister may cause any Commonwealth citizen, being a person of full age and capacity, to be registered as a citizen of Mauritius who makes application therefor in the prescribed manner and satisfies the Minister—

(a) That he is of good character;

(b) That he has an adequate knowledge of the English language or any other language current in Mauritius and of the responsibilities of a citizen of Mauritius;

(c) That he has resided in Mauritius throughout the period of five years, or such shorter period (not being less than twelve months) as the Minister may in the special circumstances of any particular case accept, immediately preceding the date of his application;

(d) That he intends, if registered, to continue to reside in Mauritius.

(2) A person to whom this section applies shall not be registered under this section unless he first renounces any other citizenship which he may possess.

6. (1) The Minister may cause the minor child of a citizen of Mauritius to be registered as a citizen of Mauritius upon application made in the prescribed manner by the responsible parent or the guardian of such child.

(2) The Minister may, in such special circumstances as he thinks fit, cause any minor to be registered as a citizen of Mauritius.

7. (1) Subject to the provisions of subsection (2) of this section, any woman whether of full age or capacity, who is, by virtue of the provisions of sections 21 and 24 of the Constitution entitled to be registered as a citizen of Mauritius shall be so registered on making application therefor to the Minister in the prescribed manner.

(2) A woman to whom this section applies shall not be registered under this section unless she first renounces any nationality or citizenship which she may possess and, if she is an alien or a British protected person, takes the prescribed oath or affirmation of allegiance.

8. A person registered under the provisions of section 5, 6 or 7 of this Act shall be a citizen of Mauritius by registration as from the date on which he is registered.

9. (1) Subject to the provisions of this section, the Minister may grant a certificate of naturalization to any alien or British protected person of full age and capacity who makes application therefor in the prescribed manner and satisfies the Minister—

(a) That he is of good character;

(b) That he has an adequate knowledge of the English language or any other language current in Mauritius and of the responsibilities of a citizen of Mauritius;

(c) That he has resided in Mauritius throughout the period of twelve months immediately preceding the date of his application;

(d) That during the seven years immediately preceding the said period of twelve months he has resided in Mauritius for periods amounting to not less than five years;

(e) That he intends in the event of a certificate being granted to him to continue to reside in Mauritius.

(2) The Minister may, in such cases as he thinks fit—

(a) Allow a continuous period of twelve months ending not later than six months before the date of the application to be reckoned for the purpose of paragraph (c) of subsection (1) of this section as if it had immediately preceded that date; and

(b) Allow periods of residence earlier than the seven years preceding the date of the application to be reckoned in computing the aggregate period mentioned in paragraph (d) of subsection (1) of this section.

(3) The Minister may accept a continuous period of residence of not less than two years in lieu of the qualification in respect of residence specified in paragraphs (c) and (d) of subsection (1) of this section in the case of—

² *Legal Supplement to the Government Gazette of Mauritius*, No. 128, of 14 December 1968.

(a) A male person who is or has been married to a citizen of Mauritius; or

(b) A person who has invested in Mauritius a sum of not less than three hundred thousand rupees.

(4) An alien or British protected person shall not be granted a certificate of naturalization under this section unless he first renounces the nationality or citizenship of any other country which he may possess and takes the prescribed oath or affirmation of allegiance.

10. A person to whom a certificate of naturalization has been granted under the provisions of section 9 of this Act shall become a citizen of Mauritius by naturalization as from the date on which that certificate is granted.

PART III

LOSS OF CITIZENSHIP

11. (1) A citizen of Mauritius who became such by registration or naturalization under this Act shall cease to be a citizen of Mauritius if he is deprived of that citizenship by an order of the Minister made under this section.

(2) Subject to the provisions of this section, the Minister may by order deprive of his citizenship any citizen of Mauritius who became such by registration or naturalization under this Act if he is satisfied that the registration or certificate of naturalization in relation to such citizen, was obtained by means of fraud, false representation or the concealment of any material fact.

(3) Subject to the provisions of this section, the Minister may by order deprive of his citizenship any citizen of Mauritius who became such by registration or naturalization under this Act if the Minister is satisfied that that citizen—

(a) Has shown himself by act or speech to be disloyal or disaffected towards Her Majesty; or

(b) Has, during any war in which Mauritius was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(c) Has within five years after his registration or naturalization under this Act been sentenced in any country to imprisonment for a term of not less than twelve months:

Provided that the Minister shall not deprive any person of his citizenship on this ground if it appears to him that that person would thereupon become stateless.

(4) Subject to the provisions of this section, the Minister may by order deprive of his citizenship any citizen of Mauritius, of full age and capacity, who became such by registration or naturalization under this Act if he is satisfied that that person has been ordinarily resident in another country or other countries for a continuous period of five years and during that period—

(a) Has not been at any time in the service of the Government of Mauritius or of an inter-

national organisation of which Mauritius was a member; or

(b) Has not registered in the prescribed manner at a consulate of Mauritius his intention to retain his citizenship of Mauritius; or

(c) Has not given notice in writing to the Minister of his intention to retain his citizenship of Mauritius:

Provided that the Minister shall not deprive any person of his citizenship of Mauritius on this ground if it appears to him that that person would thereupon become stateless.

(5) Before making an order under this section the Minister shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and, if the order is proposed to be made on any of the grounds specified in subsection (2) of this section, of his right to an enquiry under this section.

(6) A notice under the last preceding subsection may be given—

(a) In a case in which the address of the person concerned is known, by causing the notice to be delivered to him personally or by sending it to him at that address by registered post;

(b) In a case where that person's address is not known, by sending it to his last known address and in such other manner, if any, as the Minister may consider fit.

(7) When and as often as it is proposed to make an order on any of the grounds specified in subsection (2) of this section, the Minister shall, if the person against whom the order is proposed to be made so requests, refer the case for enquiry and report to a committee appointed by him for the purpose.

12. (1) The Minister may by order deprive of his citizenship a citizen of Mauritius who became such by registration or naturalization under this Act if he is satisfied that such citizen has, while of full age and capacity, claimed and exercised—

(a) In a foreign country; or

(b) In any other country under the law of which provision is made for conferring on its own citizens rights not available to Commonwealth citizens generally, any right available to him under the law of that country, being a right accorded exclusively to its own nationals or citizens:

Provided that the Minister shall not deprive any person of his citizenship of Mauritius on this ground if it appears to him that that person would thereupon become stateless.

(2) Where at the time of his registration or naturalization as a citizen of Mauritius under this Act a person was not permitted to renounce his nationality or citizenship of another country under the law of that country but that law was subsequently altered to permit him so to do, the Minister may, by notice in writing given in the manner set out in subsection (6) of the last preceding section, require that person to renounce his nationality or citizenship of that other country within such period as may be specified by the Minister, and if that person fails to do so within

the period specified, the Minister may by order deprive that person of his citizenship of Mauritius.

(3) Subsections (5), (6) and (7) of the last preceding section shall apply, *mutatis mutandis*, in relation to an order that is proposed to be made under subsection (1) of this section.

13. Upon an order being made under section 11 or 12 of this Act in respect of any person, he shall cease to be a citizen of Mauritius as from the date on which the order is made.

14. (1) If any citizen of Mauritius of full age and capacity who is also—

(a) A national of a foreign country; or

(b) A citizen of any country specified in the First Schedule to this Act,

makes a declaration of renunciation of his citizenship of Mauritius in the prescribed manner, the Minister shall cause such declaration to be registered, and thereupon that person shall cease to be a citizen of Mauritius:

Provided that the Minister may withhold registration of any such declaration if it is made during any war in which Mauritius is engaged by a person who is a national of a foreign country.

(2) A woman of full age and capacity who has ceased to be a citizen of Mauritius upon her marriage and upon making a declaration of renunciation under the preceding subsection shall be entitled to resume her citizenship of Mauritius and to be registered as a citizen of Mauritius if she makes application therefor in the prescribed manner and satisfies the Minister—

(a) That her marriage has been dissolved, or that she has been separated from or abandoned by her husband or that her husband has died; and

(b) That she intends to reside in Mauritius.

(3) A woman to whom the last preceding subsection applies shall not be entitled to resume

her citizenship of Mauritius unless she first renounces any nationality or citizenship which she may possess.

(4) For the purposes of subsections (1) and (2) of this section any woman who is or has been married shall be deemed to be of full age.

15. Any person, being a citizen of Mauritius and also a national or citizen of some other country, who has attained the age of twenty-one years on or after the appointed day, shall, within twelve months after he attains that age, renounce the nationality or citizenship of that other country failing which he shall cease to be a citizen of Mauritius:

Provided that where the Minister is satisfied that any such person was absent from Mauritius during the said period of twelve months he may extend the time within which such person shall renounce the nationality or citizenship of that other country.

PART IV

MISCELLANEOUS

16. (1) The Minister may, on application made to him and in such cases as he thinks fit, certify that a person with respect to whose citizenship of Mauritius a doubt exists, whether on a question of fact or of law, is a citizen of Mauritius.

(2) A certificate issued under this section shall, unless it is proved that it was obtained by means of fraud, false representation, or concealment of any material fact, be conclusive evidence that that person was a citizen of Mauritius on the date of the certificate, without prejudice to any evidence that he was such a citizen at an earlier date.

...

THE PASSPORTS ACT, 1968

Act No. 46 of 1968, assented to on 13 December 1968³

...

3. (1) It shall be lawful for the Passport Officer to issue a passport to any citizen of Mauritius who satisfies such conditions as may be prescribed by regulations made by the Minister for the issue of a passport.

(2) Every passport shall be in the prescribed form.

(3) Any passport issued under subsection (1) of this section may be cancelled by the Passport

Officer upon an order of the Minister and thereupon any such passport shall become void.

4. (1) It shall be lawful for the Passport Officer to renew and endorse passports.

(2) Any renewal or endorsement made or granted pursuant to this section may be cancelled by the Passport Officer upon an order of the Minister and thereupon such renewal or endorsement shall become void.

(3) Where a passport, or a renewal or endorsement in respect thereto, has been cancelled, the Passport Officer may require the holder of such passport, by notice in writing served upon him

³ *Ibid.*

personally to deliver the passport within such time as may be specified in the notice and if he fails so to do without reasonable excuse he shall be guilty of an offence against this Act.

5. Any person who, for the purpose of obtaining a passport, or a renewal or endorsement in respect thereto, makes any representation or statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, shall be guilty of an offence against this Act.

6. (1) It shall be lawful for the Passport Officer to take and retain possession of any passport in any case where he has good reason to believe that the passport is in the wrongful possession of any person, or that the passport or a renewal or endorsement in respect thereto has been obtained by means of any false representation or of any statement that is false in a material particular.

(2) Any person having in his possession or under his control any such passport shall, on demand, forthwith deliver such passport to the Passport Officer.

(3) Any person who fails without reasonable excuse so to deliver any such passport upon demand shall be guilty of an offence against this Act.

7. (1) When and as often as it is not reasonably practicable to issue a passport, the Passport Officer may, with the approval of the Minister, issue a certificate of identity or other travel document which shall be in such form as may be approved by the Minister.

(2) The provisions of this Act relating to passports shall, subject to such modifications and adaptations as may be necessary, apply to certificates of identity or travel documents issued under the preceding subsection.

8. (1) The Minister may, from time to time, authorise any overseas representative to exercise in that country all or any of the powers and functions of the Passport Officer under this Act, and in every such case the provisions of this Act shall, so far as they are applicable and with such adaptations and modifications as may be necessary, apply accordingly.

...

10. (1) Subject to the provisions of subsection (3) of this section, no person shall leave or

enter Mauritius unless he is in possession of a valid passport issued by or on behalf of the Government of a country of which he is a national or citizen, or some other document establishing his nationality or citizenship and identity to the satisfaction of the Passport Officer.

(2) Every person leaving or entering Mauritius shall, on demand by the Passport Officer, produce his passport or other document as aforesaid.

(3) The Minister may exempt, either conditionally or unconditionally, or upon or subject to such conditions as he may think fit to impose, any person or specified class of persons from compliance with the provisions of subsection (1) of this section.

11. (1) Any person who is required to produce his passport or other travel document under the last preceding section shall, if so required, deliver his passport to the Passport Officer before leaving the vessel or aircraft in which he enters Mauritius or at any time while he is in Mauritius.

(2) Any passport or other travel document delivered to the Passport Officer under the preceding subsection shall, subject to such directions as may be given by the Minister, be returned to the person who delivered it on such person leaving Mauritius.

(3) Any person who fails without reasonable excuse to deliver his passport as and when required in accordance with the provisions of this section shall be guilty of an offence against this Act.

12. (1) The Minister may by Order published in the *Gazette* specify the countries the nationals or citizens of which shall obtain a visa before entering Mauritius.

(2) A stateless person, or, where an Order is made under the preceding subsection, a national or citizen of any country specified in the Order shall not be allowed to enter Mauritius unless he has previously obtained a visa from the Passport Officer, an overseas representative or such other person or class of persons as may have been authorised by the Minister to issue visas on behalf of the Government of Mauritius.

(3) Nothing in this section shall be construed as exempting any person entering Mauritius from compliance with any law relating to immigration in force at the time he enters Mauritius.

...

MEXICO

NOTE ¹

Decree amending and supplementing various articles of the Penal Code for the Federal District and Territories (*Diario Oficial de la Federación* of 8 March 1968). Extracts from the Decree appear below.

Decree amending and supplementing the Organic Law of articles 103 and 107 of the Political Constitution of the United Mexican States (*ibid.*, 30 April 1968).² Extracts from the Decree appear below.

Decree authorizing a special commemorative programme in tribute to Dr. Martin Luther King, Nobel Peace Prize (*ibid.*, 2 June 1968).

Decree establishing a decentralized public agency under the title of the Mexican Institution for Child Welfare (*ibid.*, 19 August 1968).

DECREE TO AMEND ARTICLES 15, 85, 193, 194, 195, 196, 197, 198, 199, 201, 306, 309 AND 387; TO CHANGE THE NAME OF CHAPTER ONE, TITLE SEVEN, BOOK TWO; TO ADD ARTICLE 164 *BIS* OF THE PENAL CODE FOR THE FEDERAL DISTRICT AND TERRITORIES AS REGARDS COMMON JURISDICTION AND FOR THE WHOLE REPUBLIC AS REGARDS FEDERAL JURISDICTION

Article 1. Section II of article 15 of the Penal Code for the Federal District and Territories as regards Common Jurisdiction and for the whole Republic as regards Federal Jurisdiction is amended to read as follows:

"*Article 15.* The following shall be held to be exonerating circumstances in respect of criminal responsibility:

...

"II. If, at the time the offence was committed, the accused was not aware of what he was doing, due to the accidental or involuntary

use of toxic substances, intoxicants or narcotic drugs, or because he was suffering from acute toxicity or an involuntary mental derangement of a pathological and temporary nature;"

Article 2. Article 85 of the aforesaid Penal Code has been elaborated and reads as follows:

Article 85. Provisional release shall not be granted to a person convicted of kidnapping, corruption of minors, drug offences, or to recidivists or habitual offenders."

Article 3. Article 164 *bis*, which reads as follows, is added to the Penal Code:

"*Article 164 bis.* When one or more offences are committed by a gang, the latter shall be liable, in addition to the penalties prescribed for the offence or offences committed, to an additional penalty of from six months' to three years' imprisonment.

"For the purposes of this provision, a gang shall mean the habitual, occasional or temporary association of three or more persons who, while not organized for criminal purposes, jointly commit an offence."

...

Article 6. The second paragraph of article 201 of the Penal Code is amended to read as follows:

"*Article 201.* ... A person shall be deemed to have committed the offence of corruption of minors if he causes or contributes to the sexual depravation of a child who has reached puberty, if he undertakes the sexual initiation or the corruption of a child who has not yet reached puberty, or if he induces, encourages or helps them to live by begging, indulge in perversion, drunkenness or drug-taking, or to become members of a criminal conspiracy, or to commit any offence."

...

ORGANIC LAW OF ARTICLES 103 AND 107 OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES

Article 1. Articles 19, final part; 44; 45; 65; 73, section XII, final paragraph; 74, section V;

¹ Note furnished by the Government of Mexico.

² For the text of articles 103 and 107 of the Political Constitution of the United Mexican States of 5 February 1917, see *Yearbook on Human Rights for 1946*, pages 197-199.

84; 85, section III; 88, first paragraph; 92, last paragraph; 105, last paragraph; 108; 114, sections II and III; 158; 159, preamble and section XI; 160, section XVII; 161; 163; 164; 165; 166; section VIII; 167; 170; 185; 192; 193; 193 *bis*; 194; 195; 195 *bis*; 196 and 197 of the present Organic Law; of articles 103 and 107 of the Political Constitution of the United Mexican States hereinafter referred to as the "Law of *Amparo*, relating to articles 103 and 107 of the Political Constitution of the United Mexican States" are hereby amended and expanded to read as follows:

Article 19. . . .

Notwithstanding the provisions of the foregoing paragraph, the President of the Republic may be represented in any proceedings connected with this law by the Heads of State Secretariats and Departments as appropriate, in accordance with the division of competence established by the Law on State Secretariats and Departments, or by Under-Secretaries, Secretaries General and Senior Officials of State Secretariats and Departments, in the absence of the Heads of those Secretariats and Departments, in accordance with the organizational structure of the latter, and by the Chief State Counsel (*Procurador General de la República*), when the Executive shall authorize him to represent him in matters concerning the Department for which he is responsible.

Article 44. *Amparo* proceedings against final judgements or awards, whether or not the violation occurred during the trial or during the sentencing, will be brought directly before the Supreme Court of Justice where such cases fall within its jurisdiction and as provided for by the

Organic Law of the Judicial Power of the Federation.

Article 45. In all cases except those referred to in the foregoing article, *amparo* proceedings against final judgements or awards, whether or not the violation occurred during the trial or during the sentencing, shall be brought directly before the Circuit Court having jurisdiction over the authority which rendered the judgement or award.

In the cases referred to in this article and the foregoing article, the Supreme Court of Justice or the Circuit Court, as the case may be, shall render the judgement without any other formality than the presentation of the written application, the certified copies referred to in article 163 hereof, or the original legal papers in the case, the written application which may be submitted by the injured third party and the application which may be produced, where appropriate, by the Federal State Counsel division.

...

Article 163. When an application for *amparo* proceedings has been filed, the competent authority shall transmit to the Supreme Court of Justice or the Circuit Court, as the case may be, the original legal papers in the case, except for copies of the findings essential to the execution of the sentence, unless there is a legal impediment to their transmission; in that event the applicant, within fifteen days following the notification of the court order refusing remission of the sentence, shall apply for certified copy of the findings which he may consider essential, which copy shall be added to those submitted by the respondent and the aforesaid authority.

...

MONACO

ACT No. 830 OF 28 DECEMBER 1967 CONCERNING THE SUPPLEMENTARY COMPENSATION FUND FOR INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES¹

TITLE I

INCREASE OF PENSIONS

Article 1. Pensions granted for industrial accidents and occupational diseases and established in pursuance of the provisions of the law on registration of, compensation for and insurance against industrial accidents shall be increased in the manner and conditions described below.

Article 2. Entitlement to the increase shall accrue if the pension granted is lower than that which the pensioner would have obtained, in application of the law on compensation for industrial accidents and occupational diseases in force at the time entitlement accrues, on the basis of the annual wage used for the purpose of calculating the pension revaluated as prescribed by ministerial decree after consultation with the Special Commission on Industrial Accidents.

The increase shall be equal to the difference between the pension calculated as above and the pension actually granted.

The victim shall not, however, be entitled to any increase when the degree of disability is less than 10 per cent.

In the case of permanent total disablement compelling the victim to seek the assistance of a third person in order to perform the ordinary acts of living, the mandatory nature of that assistance shall be decided by order of the chairman of the Compensation Board who shall first order a medical examination. His decision cannot be appealed.

Article 3. In all cases where the pension has been replaced, wholly or partly, by a lump sum or by a pension assignable to the spouse, the replacement shall, for the purpose of calculating the increase, be presumed not to have been made.

Article 4. In the event of remarriage, the surviving spouse shall automatically cease to enjoy the increase on the date on which the allowance substituted for the pension becomes payable.

Article 5. Aliens or their beneficiaries who do not, or who cease to, reside in Monaco or in the French *département* of *Alpes-Maritimes* are not covered by the provisions of this Act.

The disqualifications established in the preceding paragraph shall not, however, apply to aliens whose country of origin guarantees Monegasque nationals or their beneficiaries, irrespective of residence, advantages regarded as equivalent to those provided for in this Act.

Article 6. For the purposes of this Act, the victim's beneficiary shall be determined by the law in force on the day of the accident or of the manifestation of the occupational disease which was the cause of death.

Article 7. In the event of aggregate occupational disability of at least 10 per cent, resulting from several industrial accidents or occupational diseases, each of the pensions granted shall be increased in accordance with the provisions of article 2 regardless of the degree of disability resulting from each accident or disease.

The total of pensions and increases granted may not be lower than the pension calculated on the basis of the total reduction in capacity for work and of the minimum annual wage fixed by ministerial decree.

TITLE II

ALLOWANCE TO THIRD PERSONS WHO ASSIST THE VICTIM OF AN INDUSTRIAL ACCIDENT

Article 8. Subject to the provisions of article 5, upon the death of a victim of an industrial accident or occupational disease who received a

¹ *Journal de Monaco*, No. 5,754 of 5 January 1968.

supplementary pension for the assistance of a third person, the third person shall, even if death occurred prior to publication of this Act, be entitled to an allowance, provided it is established that he/she:

- (1) Lived in the home of the victim and really assisted him in the ordinary acts of living;
- (2) Was not paid a wage by the victim;
- (3) Was related to the victim by ties of birth or marriage to the third degree, or by ties of adoption.

This allowance shall be paid from the fund referred to in article 10 hereinunder.

Article 9. Entitlement to the allowance and, possibly, to assignability, shall accrue in the same way as for the retirement pensions of wage-earners; the allowance shall be paid in accordance with the same rules; it shall be calculated in the same way as the uniform pension for periods prior to 1 August 1947 and as the proportional pension for periods after that date; in this case, the remuneration to be taken into consideration shall be the amount of the increase, after revaluation.

With a view to accrual of entitlement, periods of assistance shall be added to periods of work pensionable under a general or particular retire-

ment scheme: the amount of the allowance and pensions to be paid shall be determined by each of the debtor organizations on the basis of length of service under its system.

The whole of this allowance may be added to retirement pensions from any source whatever.

TITLE III

GENERAL PROVISIONS

Article 10. The increases resulting from application of Title I of this Act, the allowances pursuant to Title II and the benefits provided for by Act No. 600 of 2 June 1955, shall be paid from a supplementary compensation fund for industrial accidents and occupational diseases.

Article 11. Should the resources of the "supplementary compensation fund for industrial accidents and occupational diseases" be temporarily depleted, the Treasury shall make interest-free loans to replenish it.

Such loans must be repaid within a period of three years.

ACT No. 835 OF 28 DECEMBER 1967 CONCERNING THE PROTECTION OF MINORS UNDER THE CIVIL LAW ²

ARTICLE I

Articles 271 to 279 of the Civil Code are hereby replaced by the following provisions:

Article 271. Under the terms of articles 272 to 278, action may be taken to provide educational supervision or assistance to minors whose health, safety, morality or education are in jeopardy."

Article 272. Such cases shall be brought to the attention of the Judge of the Juvenile Court at the request of the minor's father, mother, any person having custody of the minor, the minor himself or the State Counsel.

"The Judge may also take action on his own initiative.

"As soon as the case is brought to his attention, the Judge may order an investigation into the minor's character and home environment or may initiate any other measures which, in his opinion, would be of help in obtaining information.

"During the investigation, he may order any protective measure which the minor might require by virtue of his position.

"If it is in the interest of the minor, such a measure may be amended or revoked at any time."

Article 273. Before taking any decision on the substance of the case and eight days before the hearing, the Judge shall summon by registered letter the minor's parents or, where appropriate, his guardian, and the minor himself, if he thinks it would be helpful for the latter to appear.

"He shall notify by the same means the counsel chosen by the parties concerned or appointed by the court."

Article 274. After hearing the parents or guardian and their counsel, the *Ministère public*, the minor, when present, and anyone else he may have thought it advisable to hear and after having obtained the parents' consent to a protective measure, the Judge may render a judgment placing the minor in the care of:

"(1) the parent who did not have custody of him previously;

"(2) another relative or trustworthy person;

"(3) a preventive institution; an institution for medical care or treatment; an institution providing education, training or retraining or any other appropriate institution.

² *Ibid.*

"If he considers it advisable, he may arrange for visiting rights to be granted to the minor's parents or any other person concerned with the minor's welfare.

"In the event that the minor is left in the care of his parents or a guardian or placed in their custody, the Judge may order a measure ensuring educational supervision.

"One of the duties of the person responsible for such supervision shall be to advise the minor's parents or guardian; he shall submit a report on the minor's progress to the Judge at a time set by the latter."

"*Article 275.* Within three days of the hearing, the decision rendered by the Judge of the Juvenile Court under the fourth paragraph of article 272 or under article 274 shall be notified in an extra-judicial act to the minor's parents or guardian and to the minor himself.

"Within eight days of notification, the persons referred to in the first paragraph of article 272 may file an appeal, either by making a declaration at the Office of the Court Clerk or in a registered letter addressed to the Chief Clerk.

"The minor may, however, appeal within eight days of learning of the decision.

"The parties and their counsel shall be summoned in accordance with the procedure outlined in article 273.

"Decisions of the Court of Appeal shall be notified to the persons referred to in the first paragraph of this article and, when appropriate, to the minor himself in the manner and within the time-limit stipulated in this Act."

"*Article 276.* The Judge of the Juvenile Court shall adjudicate in closed hearing and the Court of Appeal, in the Council Chamber.

"Decisions rendered by the Judge under the fourth paragraph of article 272 and by the Court of Appeal shall become effective immediately and before they are registered, on the understanding that decisions of the Judge of the Juvenile Court are provisional.

"If it has been duly established that an emergency exists, these rules of execution may be applied to decisions rendered by the Judge of the Juvenile Court under article 274.

"The documents of the proceedings shall be exempt from stamp; decisions shall be registered free of charge.

"If a decision is appealed, the parties shall be exempt from the deposit provided for under the first paragraph of article 443 of the Code of Civil Procedure.

"An appeal shall be considered to be a matter of urgency and judged on the basis of the documents in the case."

"*Article 277.* If he chooses, the Judge of the Juvenile Court may at any time amend or annul a measure providing educational assistance or supervision taken in application of article 274.

"Amendments shall be subject to the provisions set forth above".

"*Article 278.* The cost of maintaining or educating a minor shall be borne by his parents.

"If they are unable to pay the full cost, the amount of their contribution shall be stipulated in the decision, and the State shall be responsible for the remainder, subject to its right to reclaim that sum from the persons responsible for the maintenance of the minor."

"*Article 279.* If a minor is being raised under markedly inferior conditions of food, lodging, hygiene or education or if legal or social benefits paid on his account are not being utilized exclusively in his interest, the Judge of the Juvenile Court may order the benefits to be paid either in whole or in part to a person appointed by him to ensure that they are used solely for the minor's needs.

"In that event, the procedures and remedies described in the preceding articles shall be applicable."

ARTICLE 2

Without prejudice to the provisions of article 274, the Judge of the Juvenile Court shall be the only authority competent to deal with petitions filed for the sole or primary purpose of changing the custody of a minor whose parents have initiated separation or divorce proceedings or are separated or divorced, if there has been a new development since the latest decision concerning his custody which would indicate that his health, safety, morality or education are in jeopardy.

Proceedings with regard to this matter shall be subject to articles 272 to 277 of the Civil Code.

ACT No. 836 OF 28 DECEMBER 1967 TO AMEND AND SUPPLEMENT LEGISLATIVE ORDINANCE No. 677 OF 2 DECEMBER 1959 RESPECTING HOURS OF WORKS ³

SINGLE ARTICLE

Article 5 of Legislative Ordinance No. 677 of 2 December 1959 is amended as follows:

“Article 5. The average working week calculated over any period of twelve consecutive weeks of actual work shall not exceed fifty-four hours.

“As an exceptional measure, in certain sectors or in certain enterprises, exceptions covering specific periods may be made to the above-mentioned limit of fifty-four hours, in accordance with procedures established by the Sovereign Ordinance.

“The application of the foregoing provisions shall not in any circumstances result in an increase in the hours of actual work beyond sixty a week.

“Furthermore, the rest period between two consecutive working days shall not be less than ten hours in length.”

³ *Ibid.*

ACT No. 839 OF 23 FEBRUARY 1968 ON NATIONAL AND COMMUNAL ELECTIONS ⁴

Chapter I

THE ELECTORATE

SECTION I — ELECTORS

Article 1. Monegasques of both sexes who have attained the age of twenty-one years and have been nationals of Monaco for at least five years, excluding those who are debarred from voting on one of the grounds specified by law, shall be electors.

The five-year period shall be reckoned from the day following either the date of publication of the Sovereign Ordinance of naturalization or of restoration of Monegasque nationality or the date of acquisition of Monegasque nationality by declaration or through marriage.

Article 2. The following persons shall be debarred from voting:

1. Persons convicted of a serious crime;
2. Persons sentenced to imprisonment for more than five days without suspension of sentence or to imprisonment for more than three months with suspension of sentence for theft, fraud, breach of trust or an offence punishable by one of the sentences provided for those offences, misappropriation of public funds by persons to whom they

are entrusted, perjury, falsification of passports or certificates, offences against morality, or corruption of public officials or private employees;

3. Persons sentenced to imprisonment for more than three months without suspension of sentence or to imprisonment for more than six months with suspension of sentence for any offence other than those referred to in sub-paragraph 2, with the following exceptions:

Negligent offences, except when accompanied by the offence of leaving the scene where the negligent offence was committed;

Offences for the punishment of which proof that the offender acted in bad faith is not required, except those involving violation of the laws in respect of companies;

4. Persons who, having been convicted twice in courts of summary jurisdiction of the offence of drunkenness, have by the second judgement been sentenced to imprisonment;

5. Undischarged bankrupts who have been adjudged bankrupt either in Monaco or abroad by judgements enforceable in Monaco;

6. Clerks, notaries and any other court officials removed from office in pursuance of disciplinary judgements or decisions;

7. Persons under a disability and persons under guardianship;

8. Persons who have been debarred from voting by a court in pursuance of the laws providing for such debarment.

⁴ *Journal de Monaco*, No. 5,761, 23 February 1968.

Article 3. The right to vote shall be suspended in the case of detainees and persons who fail to appear in court to answer charges against them.

Article 4. The Chief Clerk of the Court shall notify the Mayor without delay when final sentences as referred to in article 2 are pronounced against Monegasque nationals.

...

Chapter II

ELIGIBILITY AND INCOMPATIBILITY

SECTION I — THE NATIONAL COUNCIL

Article 13. Subject to the provisions of article 14, electors of both sexes who have attained the age of twenty-five years by the date of the election shall be eligible for election to the National Council.

Article 14. The following persons shall not be eligible for election to the National Council:

- Crown Councillors;
- Members of the Supreme Court;
- State Councillors;

Electors who, by virtue of another nationality, would be entitled to hold public or elective office in a foreign country.

...

SECTION II—THE COMMUNAL COUNCIL

Article 16. Subject to the provisions of article 18, all electors shall be eligible for election to the Communal Council.

...

SECTION III — REGULATION OF CASES OF INCOMPATIBILITY AND INELIGIBILITY

Article 18. In a case of incompatibility arising in respect of any member of the National Council or the Communal Council at the time of his election, such member must, within thirty days of the election or, in the case of a contested election, within thirty days of the final judicial decision, either relinquish the functions which are incompatible with his elective office or, if he is a public servant, have been placed in the position specified by the regulations governing his employment. If he fails to comply with these provisions, he shall be declared to have resigned his elective office automatically.

In a case of ineligibility or incompatibility or of debarment from voting arising in respect of any member of the National Council or the Communal Council as a result of circumstances occurring subsequent to his election, such member must, within a period of eight days, either resign his elective office or relinquish the function by reason of which he is ineligible or which is incompatible with his elective office. If he fails to comply with these provisions, he shall be declared to have resigned his elective office automatically.

Article 19. The question whether he is to be declared to have resigned automatically shall be adjudged by the court of first instance on an application filed at the General Office of the Clerk of the Court either by any interested elector or member of the National Council or the Communal Council or by the *Ministre d'Etat* or the *Procureur général*.

A decision shall be taken within one month in accordance with the provisions of article 850 of the Code of Civil Procedure.

The decision may be appealed within ten days after it has been rendered; the appeal shall be examined and decided within one month as indicated in the preceding paragraph.

An application for review of the decision on the appeal, being deemed a matter of urgency, may be made only within ten days following the date of such decision.

Copies of the decision of the court of first instance and the appeals court shall be forwarded by the Chief Clerk of the Court, immediately and free of charge, to the *Ministre d'Etat*, to either the President of the National Council or the Mayor, as appropriate, and to the parties concerned.

Chapter III

SECTION I—MEMBERSHIP IN, METHOD AND CONDITIONS OF ELECTION TO AND TERM OF THE ASSEMBLIES

Article 20. The National Council shall be composed of eighteen members elected for five years.

The Communal Council shall be composed of fifteen members elected for four years.

Suffrage shall be universal and direct.

Elections shall be conducted in accordance with a plurinomina majority system in two stages, a split vote being permitted. The system does not provide for a preferential vote. The vote shall be by secret ballot.

Membership in the Communal Council shall not be incompatible with membership in the National Council.

Article 21. A candidate may not be elected a member of the National Council or the Communal Council on the first ballot unless he receives:

- (1) An absolute majority of the votes cast;
- (2) Votes equalling one-fourth of the number of electors registered.

On the second ballot, a relative majority shall suffice, regardless of the number of voters.

In the case of a tie vote, the older candidate shall be elected.

...

SECTION II — ANNOUNCEMENT OF CANDIDATURES

Article 25. Each candidate for election must file a written declaration of his candidature with the secretariat of the Town Hall during its working hours from eight to fifteen days preceding the day of the election.

...

SECTION III — THE ELECTORAL CAMPAIGN

Article 30. On the day following the final day of the period fixed for registration of candidatures, the Mayor shall issue a decree designating places where electoral notices may be displayed, which shall be immediately affixed to the door of the Town Hall.

Each candidate or list of candidates shall be allotted equal space in such places.

Electoral notices shall be exempt from any administrative seal or stamp tax requirement.

Article 31. Display of any notice concerning the elections, even when stamped, shall be prohibited in places other than those referred to in article 30 or in space reserved for other candidates; defacing or covering over electoral notices displayed in accordance with the provisions of article 30 shall likewise be prohibited.

No notice may be affixed after 12 midnight preceding the election.

Article 32. The holding of electoral meetings shall be subject to the provisions of the act concerning freedom of assembly.

Electoral meetings may not be held within the twenty-four-hour period preceding the day of the election.

...

SECTION V — CONTESTED ELECTIONS

Article 52. Any elector shall have the right to challenge the validity of an election in the Court of First Instance.

If the *Ministre d'Etat* considers that the conditions and formalities prescribed by law have not been observed, he may likewise challenge the validity of the election in that court.

In all cases the court may, if it does not reject the complaint, either amend the proclamation referred to in article 48 or annul the election in whole or in part.

...

NAURU

THE CONSTITUTION OF NAURU ¹

...

PART II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS

3. Whereas every person in Nauru is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following freedoms, namely:—

(a) Life, liberty, security of the person, the enjoyment of property and the protection of the law;

(b) Freedom of conscience, of expression and of peaceful assembly and association; and

(c) Respect for his private and family life, the subsequent provisions of this Part have effect for the purpose of affording protection to those rights and freedoms, subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by a person does not prejudice the rights and freedoms of other persons or the public interest.

4. (1) No person shall be deprived of his life intentionally, except in execution of a sentence of a court following his conviction of an offence for which the penalty of deprivation of life is prescribed by law.

(2) Deprivation of the life of a person is not a contravention of the provisions of clause (1) of

this Article where it results from the use, to such an extent and in such circumstances as is permitted by law, of such force as is reasonably justifiable in the circumstances of the case—

(a) For the defence of a person from violence;

(b) For the defence of public property;

(c) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(d) For the purpose of suppressing a riot, insurrection or mutiny.

5. (1) No person shall be deprived of his personal liberty, except as authorised by law in any of the following cases:—

(a) In execution of the sentence or order of a court in respect of an offence of which he has been convicted;

(b) For the purpose of bringing him before a court in execution of the order of a court;

(c) Upon reasonable suspicion of his having committed, or being about to commit, an offence;

(d) Under the order of a court, for his education during any period ending not later than the thirty-first day of December after he attains the age of eighteen years;

(e) Under the order of a court, for his welfare during any period ending not later than the date on which he attains the age of twenty years;

(f) For the purpose of preventing the spread of disease;

(g) In the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of his care or treatment or the protection of the community; and

(h) For the purpose of preventing his unlawful entry into Nauru, or for the purpose of effecting his expulsion, extradition or other lawful removal from Nauru.

(2) A person who is arrested or detained shall be informed promptly of the reasons for the arrest or detention and shall be permitted to consult in the place in which he is detained a legal representative of his own choice.

¹ Text of the Constitution furnished by Mr. J. O. Clark, Attorney-General's Department, Canberra, government-appointed correspondent of the *Yearbook on Human Rights*. The Trust Territory of Nauru had been administered since 1 November 1947 by Australia, New Zealand and the United Kingdom, the joint Administering Authority, and became the independent Republic of Nauru on 31 January 1968.

(3) A person who has been arrested or detained in the circumstances referred to in paragraph (c) of clause (1) of this Article and has not been released shall be brought before a judge or some other person holding judicial office within a period of twenty-four hours after the arrest or detention and shall not be further held in custody in connexion with that offence except by order of a judge or some other person holding judicial office.

(4) Where a complaint is made to the Supreme Court that a person is unlawfully detained, the Supreme Court shall enquire into the complaint and, unless satisfied that the detention is lawful, shall order that person to be brought before it and shall release him.

6. (1) No person shall be required to perform forced labour.

(2) For the purposes of this Article, "forced labour" does not include—

(a) Labour required by the sentence or order of a court;

(b) Labour required of a person while he is lawfully detained, being labour that, though not required by the sentence or order of a court, is reasonably necessary for the purposes of hygiene or for the maintenance of the place at which he is detained;

(c) Labour required of a member of a disciplined force in pursuance of his duties as such a member; or

(d) Labour reasonably required as part of reasonable and normal communal or other civic obligations.

7. No person shall be subjected to torture or to treatment or punishment that is inhuman or degrading.

8. (1) No person shall be deprived compulsorily of his property except in accordance with law for a public purpose and on just terms.

(2) Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of the provisions of clause (1) of this Article to the extent that that law makes provision—

(a) For the taking of possession or acquisition of any property—

- (i) in satisfaction of a tax;
- (ii) by way of penalty for breach of the law or forfeiture in consequence of breach of the law;
- (iii) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;
- (iv) in the execution of a judgment or order of a court in proceedings for the determination of civil rights or obligations;
- (v) in circumstances where it is reasonably necessary so to do because the property is in a dangerous state or is injurious to the health of human beings, animals or plants; or
- (vi) in consequence of any law with respect to the limitation of actions; or

(b) For the taking of possession or acquisition of any of the following property:—

- (i) property of a deceased person, a person of unsound mind or a person who has not attained the age of twenty years, for the purpose

of administering it for the benefit of the person entitled to the beneficial interest in that property;

(ii) property of a person adjudged bankrupt or insolvent or of a body corporate in liquidation, for the purpose of administering it for the benefit of the creditors of the bankrupt or insolvent or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property;

(iii) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust; and

(iv) property held by a body corporate established by law for public purposes.

9. (1) No person shall without his consent be subject to the search of his person or property or the entry on his premises by other persons.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of clause (1) of this Article to the extent that that law makes provision—

(a) That is reasonably required in the interests of defence, public safety, public order, public morality, public health, the development or utilisation of natural resources or the development or utilisation of any property for a purpose beneficial to the community;

(b) That is reasonably required for protecting the rights or freedoms of other persons;

(c) That authorises an officer or agent of the Republic of Nauru or of a body corporate established by law for public purposes to enter, where reasonably necessary, on the premises of a person in order to inspect those premises or anything in or on them in relation to any tax or in order to carry out work connected with any property that is lawfully in or on those premises and belongs to the Republic or body corporate as the case may be; or

(d) That authorises, for the purpose of enforcing the judgment or order of a court, the search of a person or property by order of a court or entry upon any premises under such an order.

10. (1) No person shall be convicted of an offence which is not defined by law.

(2) A person charged with an offence shall, unless the charge is withdrawn, be afforded a fair hearing within a reasonable time by an independent and impartial court.

(3) A person charged with an offence—

(a) Shall be presumed innocent until proved guilty according to law;

(b) Shall be informed promptly in a language that he understands and in detail of the nature of the offence with which he is charged;

(c) Shall be given adequate time and facilities for the preparation of his defence;

(d) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand or speak the language used at the trial of the charge;

(e) Shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice or to have a legal representative assigned to him in a case where the interests of justice so require and without payment by him in any such case if he does not, in the opinion of the court, have sufficient means to pay the costs incurred; and

(f) Shall be afforded facilities to examine in person or by his legal representative the witnesses called before the court by the prosecution, and to obtain the attendance and carry out the examination of witnesses and to testify before the court on his own behalf, on the same conditions as those applying to witnesses called by the prosecution,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(4) No person shall be convicted of an 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 an offence that is more severe in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for an offence and either convicted or acquitted shall again be tried for that offence, except upon the order of a superior court made in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for an offence for which he has been pardoned.

(7) No person who is tried for an offence shall be compelled to give evidence at the trial.

(8) No person shall be compelled in the trial of an offence to be a witness against himself.

(9) A determination of the existence or extent of a civil right or obligation shall not be made except by an independent and impartial court or other authority prescribed by law and proceedings for such a determination shall be fairly heard and within a reasonable time.

(10) Except with the agreement of the parties thereto, proceedings of a court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in clause (10) of this Article shall prevent the court or other authority from excluding from the hearing of the proceedings persons, other than the parties thereto and their legal representatives, to such extent as the court or other authority—

(a) Is by law empowered to do and considers necessary or expedient in the interests of public morality or in circumstances where publicity would prejudice the interests of justice, the welfare of persons under the age of twenty years or

the protection of the private lives of persons concerned in the proceedings; or

(b) Is by law empowered or required to do in the interests of defence, public safety or public order.

(12) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of—

(a) Paragraph (a) of clause (3) of this Article by reason that that law places upon a person charged with an offence the burden of proving particular matters; or

(b) Paragraph (f) of clause (3) of this Article by reason that that law imposes reasonable conditions which must be satisfied if witnesses called to testify on behalf of a person charged with an offence are to be paid their expenses out of public funds.

11. (1) A person has the right to freedom of conscience, thought and religion, including freedom to change his religion or beliefs and freedom, either alone or in community with others and in public or private, to manifest and propagate his religion or beliefs in worship, teaching, practice and observance.

(2) Except with his consent, no person shall be hindered in the enjoyment of a right or freedom referred to in clause (1) of this Article.

(3) Except with his consent or, if he is under the age of twenty years, the consent of his parent or guardian, no person attending a place of education is required to receive religious instruction or to take part in or attend a religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own religion or belief.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the provisions of this Article to the extent that that law makes provision which is reasonably required—

(a) In the interests of defence, public safety, public order, public morality or public health;

(b) For protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of some other religion; or

(c) For regulating the secular education provided in any place of education in the interests of the persons receiving instruction in that place.

12. (1) A person has the right to freedom of expression.

(2) Except with his consent, no person shall be hindered in the enjoyment of his right to freedom of expression.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the provisions of this Article to the extent that that law makes provision—

(a) That is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) That is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of

persons concerned in legal proceedings, preventing the disclosure of information received in confidence or maintaining the authority and independence of the courts;

(c) That is reasonably required for the purpose of regulating the technical administration or technical operation of telephony, telegraphy, posts, wireless broadcasting or television or restricting the establishment or use of telephonic, telegraphic, wireless broadcasting or television equipment or of postal services; or

(d) That regulates the use of information obtained by public officers in the course of their employment.

13. (1) Persons have the right to assemble and associate peaceably and to form or belong to trade unions or other associations.

(2) Except with his consent, no person shall be hindered in the enjoyment of a right referred to in clause (1) of this Article.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the provisions of this Article to the extent that that law makes provision that is reasonably required—

(a) In the interests of defence, public safety, public order, public morality or public health; or

(b) For protecting the rights and freedoms of other persons.

14. (1) A right or freedom conferred by this Part is enforceable by the Supreme Court at the suit of a person having an interest in the enforcement of that right or freedom.

(2) The Supreme Court may make all such orders and declarations as are necessary and appropriate for the purposes of clause (1) of this Article.

15. In this Part, unless the context otherwise requires—

“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“disciplined force” means—

(a) The Police Force; or

(b) Any other body established by law for the purposes of defence or maintaining public safety or public order;

“legal representative” means a person entitled to be in or to enter Nauru and entitled by law to appear in proceedings before a court on behalf of a party to those proceedings;

“member”, in relation to a disciplined force, includes a person who, under the law regulating the discipline of that force, is subject to that discipline;

“public property” includes property of a body corporate established by law for public purposes.

PART III

THE PRESIDENT AND THE EXECUTIVE

16. (1) There shall be a President of Nauru, who shall be elected by Parliament.

(2) A person is not qualified to be elected President unless he is a member of Parliament.

(3) The Speaker and the Deputy Speaker are not qualified to be elected President.

...

PART IV

THE LEGISLATURE *

26. There shall be a Parliament of Nauru.

...

28. (1) Parliament shall consist of eighteen members or such greater number as is prescribed by law.

...

29. Members of Parliament shall be elected in such manner as is prescribed by law, by Nauruan citizens who have attained the age of twenty years.

30. A person is qualified to be elected a member of Parliament if, and is not so qualified unless, he—

(a) Is a Nauruan citizen and has attained the age of twenty years; and

(b) Is not disqualified under this Constitution.

31. No person is qualified to be elected a member of Parliament if he—

(a) Is an undischarged bankrupt or insolvent who has been declared bankrupt or insolvent according to law;

(b) Is a person certified to be insane or otherwise adjudged according to law to be mentally disordered;

(c) Has been convicted and is under sentence or is subject to be sentenced for an offence punishable according to law by death or by imprisonment for one year or longer;

(d) Does not possess such qualifications relating to residence or domicile in Nauru as are prescribed by law; or

(e) Holds an office of profit in the service of Nauru or of a statutory corporation, being an office prescribed by law for the purposes of this paragraph.

...

PART V

THE JUDICATURE

48. (1) There shall be a Supreme Court of Nauru, which shall be a superior court of record.

(2) The Supreme Court has, in addition to the jurisdiction conferred on it by this Constitution, such jurisdiction as is prescribed by law.

...

54. (1) The Supreme Court shall, to the exclusion of any other court, have original jurisdiction

* The name of the legislature was changed from “the Legislative Assembly” to “Parliament” on 17 May 1968.

to determine any question arising under or involving the interpretation or effect of any provision of this Constitution.

PART VIII

CITIZENSHIP

71. A person who on the thirtieth day of January One thousand nine hundred and sixty-eight was included in one of the classes of persons who constituted the Nauruan Community within the meaning of the *Nauruan Community Ordinance 1956-1966* of Nauru is a Nauruan citizen.

72. (1) A person born on or after the thirty-first day of January One thousand nine hundred and sixty-eight is a Nauruan citizen if his parents were Nauruan citizens at the date of his birth.

(2) A person born on or after the thirty-first day of January One thousand nine hundred and sixty-eight is a Nauruan citizen if he is born of a marriage between a Nauruan citizen and a Pacific Islander and neither parent has within seven days after the birth of that person exercised a right prescribed by law in the manner prescribed by law to determine that that person is not a Nauruan citizen.

73. A person born in Nauru on or after the thirty-first day of January One thousand nine hundred and sixty-eight is a Nauruan citizen if, at the date of his birth he would not, but for the provisions of this Article, have the nationality of any country.

74. A woman, not being a Nauruan citizen, who is married to a Nauruan citizen or has been married to a man who was, throughout the subsistence of the marriage, a Nauruan citizen, is entitled, upon making application in such manner as is prescribed by law, to become a Nauruan citizen.

75. (1) Parliament may make provision for the acquisition of Nauruan citizenship by persons who are not otherwise eligible to become Nauruan citizens under the provisions of this Part.

(2) Parliament may make provision for depriving a person of his Nauruan citizenship being a person who has acquired the nationality of another country otherwise than by marriage.

(3) Parliament may make provision for depriving a person of his Nauruan citizenship being a person who is a Nauruan citizen otherwise than by reason of Article 71 or Article 72.

(4) Parliament may make provision for the renunciation by a person of his Nauruan citizenship.

76. (1) In this Part, "Pacific Islander" has, except as otherwise prescribed by law, the same meaning as in the *Nauruan Community Ordinance 1956-1966* of Nauru.

(2) A reference in this Part to the citizenship of the parent of a person at the date of that person's birth shall, in relation to a person one of whose parents died before the birth of that per-

son, be construed as a reference to the citizenship of the parent at the time of the parent's death.

PART IX

EMERGENCY POWERS

77. (1) If the President is satisfied that a grave emergency exists whereby the security or economy of Nauru is threatened he may, by public proclamation, declare that a state of emergency exists.

(2) A declaration of emergency lapses—

(a) If the declaration is made when Parliament is sitting, at the expiration of seven days after the date of publication of the declaration; or

(b) In any other case, at the expiration of twenty-one days after the date of publication of the declaration,

unless it has in the meantime been approved by a resolution of Parliament approved by a majority of the members of Parliament present and voting.

(3) The President may at any time revoke a declaration of emergency by public proclamation.

(4) A declaration of emergency that has been approved by a resolution of Parliament under clause (2) of this Article remains, subject to the provisions of clause (3) of this Article, in force for twelve months or such shorter period as is specified in the resolution.

(5) A provision of this Article that a declaration of emergency lapses or ceases to be in force at a particular time does not prevent the making of a further such declaration whether before or after that time.

78. (1) During the period during which a declaration of emergency is in force, the President may make such orders as appear to him to be reasonably required for securing public safety, maintaining public order or safeguarding the interests or maintaining the welfare of the community.

(2) An order made by the President under clause (1) of this Article—

(a) Has effect notwithstanding anything in Part II of this Constitution . . . ;

(b) Is not invalid in whole or in part by reason only that it provides for any matter for which provision is made under any law or because of inconsistency with any law; and

(c) Lapses when the declaration of emergency lapses unless in the meantime the order is revoked by a resolution of Parliament approved by a majority of the members of Parliament present and voting.

(3) The revocation or lapsing of an order made by the President under clause (1) of this Article does not affect the previous operation of that order, the validity of anything done or omitted to be done under it or any offence committed or penalty or punishment incurred.

...

PART X

GENERAL

...

84. (1) This Constitution shall not be altered except in accordance with this Article.

(2) This Constitution may be altered by law but a proposed law for that purpose shall not be

passed by Parliament unless—

(a) There has been an interval of not less than ninety days between the introduction of the proposed law in Parliament and the passing of the proposed law by Parliament; and

(b) It is approved by not less than two-thirds of the total number of members of Parliament.

...

NETHERLANDS

NOTE ¹

1. RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION, AND RIGHT TO FREEDOM OF OPINION AND EXPRESSION

Judicial decisions

In its decision of 16 January 1968, the Supreme Court deals with the following question: may participation in a march of demonstrators be a way of showing one's religion in addition to being a form of expression? The question had already been discussed in the Supreme Court decision of 7 November 1967. In that case, the demonstrators had contended that the motivation of participants in a given march might be compared to the religious convictions of fervent Christians and that the march might be compared to a procession. They claimed that a municipal order forbidding the organization of a march or participation in it without the prior authorization of the local authorities was contrary not only to freedom of expression, which is guaranteed by article 10 of the European Convention on Human Rights, but to freedom of thought, conscience and religion, which is guaranteed by article 9 of that Convention.

The High Court ruled at that time that marches by demonstrators were not protected by article 9 of the European Convention on Human Rights but by article 10, and that the municipal order in question might be considered to be one of the restrictions on freedom of expression referred to in article 10 (2).

In 1968, a demonstrator who was being prosecuted under the same municipal order also invoked article 9 of the European Convention on Human Rights. This was unlike the previous case, in that the demonstrator did not compare the march to a religious procession but cited his own religious convictions. He said that, by his participation in the demonstration, he had intended to express his religious convictions.

The Supreme Court, while holding that the judge of the lower court had rightly deemed the

defence of personal religious demonstration to be a *force majeure* exception and had rightly rejected it as such, took the demonstrator's submission into consideration; it ruled, however, that invoking article 9 of the European Convention on Human Rights was no help in his case, since paragraph 2 of that article permitted the freedom to manifest one's religion to be subjected to certain specific limitations, within the scope of which the municipal order in question fell.

2. RIGHT TO PRIVACY

Legislation

A Bill was introduced on 19 June 1968 dealing with criminal offences involving portraits of individuals and the protection of privacy.

The Bill proposes the inclusion of the following provisions in the Criminal Code:

Article 139 bis

The following persons shall be liable to imprisonment for up to six months or to a maximum fine of 20,000 florins:

1. Anyone who, availing himself of an opportunity created by ruse or artifice, deliberately utilizes a technical device to make a portrait of a person present in a dwelling or a place not open to the public, if the portrait is likely to damage what may reasonably be deemed to be that person's interests;

2. Anyone who has in his possession a portrait which he knows or might reasonably assume to have been obtained by or as a result of an act punishable under paragraph 1.

Article 139 ter

Anyone who publishes a portrait which is covered by paragraph 2 of this article shall be liable to imprisonment for up to six months or to a maximum fine of 100,000 florins.

¹ Note transmitted by the Netherlands Government.

3. RIGHT TO TAKE PART IN ELECTIONS

Legislation

The Act of 25 April 1968 enables voters in elections for the Second Chamber of the States-General and for the Provincial States to vote in the commune of their choice (which must, however, in the case of elections for the Provincial States, be within the province in which the voter is domiciled), on presentation of a voter's card. Formerly, anyone wishing to vote in a commune other than that in whose electoral registers he was listed had to designate that commune in advance.

4. RIGHT TO EDUCATION

Legislation

(a) The Secondary Education Act came into force on 1 August 1968. It lays down new regulations for all education after the primary cycle, with the exception of university education. The Act contains no mandatory provisions applying directly to education other than that provided by the public authorities—under the Constitution of the Netherlands, education is free—but it establishes the requirements which such education must meet in order to be financed by the Treasury. The cost of education provided by private organizations is, in fact, borne in full by the Treasury if certain qualifying requirements are satisfied. These requirements, which are in no sense political or philosophical in nature, are similar to the standards applied to State and communal schools. The new Act creates more variety within secondary education, largely by introducing some new forms. It also combines several types of schools into a single unit, which, for pupils whose first choice proved to be a mistake, facilitates the transition to a different type of training. The fact that the first year in the different types of school is virtually uniform is one factor which enables each pupil to be given the form of education which best suits him. Consequently, if the choice of school was ill-advised, a pupil can change schools without repeating the first year. Organizations of parents, teachers, municipalities or school principals may advise the Minister of Education and Science on certain questions to be specified by the Crown. The advantage of this Act, from the legal point of view, is that it regulates in a single document matters formerly covered by several Acts.

(b) During the year, a new Act was passed on the period of compulsory schooling, which has been increased, in principle, from eight to nine years. The date on which this extension is to come into effect, however, has not yet been decided. Moreover, the enforcement of this Act will be the responsibility of the social services, since the officials who will do this work will not bring offenders to court if an interview with parents yields the desired results.

Under the Act, bargemen and itinerants are no longer exempted from the obligation to send their children to school.

5. SOCIAL SECURITY

Bilateral agreement

The social security agreement concluded on 12 October 1966 between the Netherlands and Portugal entered into force on 1 June 1968.

The agreement covers all social security benefits: sickness insurance, invalidity insurance, old-age insurance, widows' and orphans' insurance, insurance against accidents at work, unemployment insurance and family allowances.

The provisions of the agreement are almost identical with those of earlier social security agreements concluded by the Netherlands. Like earlier agreements, it is based on three fundamental principles: the equality of both Parties' nationals under the national legislation of each of them; the aggregation of insurance periods registered in each of the two countries for the purpose of assessing the right to benefits where that right depends on the length of time a person has been insured; and the payment of social security benefits in a country other than that in which the competent insurance authority has its headquarters.

Legislation

The Act of 10 July 1968 establishes regulations which, in certain circumstances, guarantee the payment to an employee of wages owed to him if the employer is unable to pay him. Under these regulations an employee may, in the event of his employer's bankruptcy or if his employer's circumstances are such that he has ceased to pay him, apply to the executive unemployment insurance body for the wages due to him.

6. SOCIAL WELFARE

Legislation

(a) The Act of 21 February 1968 lays down new rules with a view to improving the social well-being of caravan-dwellers. This Act will replace the 1918 Act on caravans and house-boats, which will provisionally remain in force for house-boats until such time as a new Act on house-boats is promulgated.

The 1918 Act relied rather heavily on the police, and new concepts with regard to caravan-dwellers made its replacement essential. Although the new Act applies to all caravans in the Netherlands, it is particularly directed at genuine caravan-dwellers, namely, the itinerant population.

There are also some families which live in caravans because of the profession of the head of the family (itinerant vendors, road-building workers, etc.).

There are other caravan-dwellers who cannot be classified in the above-mentioned categories. In many cases, they are people who have been forced by the housing shortage to resort to this form of dwelling.

The purpose of the Act is to promote the full participation of caravan-dwellers in Netherlands

society. Its intent is to make it possible for these people to become integrated with the sedentary population, if they so desire. This aim can be achieved, however, only if the caravan-dwellers live in satisfactory material conditions. For this reason, the Act makes it obligatory for every commune to provide and maintain a public caravan centre, either independently or in co-operation with one or more other communes.

(b) The royal decrees of 18 August 1967, 11 August 1967, 30 January 1968 and 7 May 1968 provide a more detailed interpretation of the Act of 10 January 1963 on homes for the aged.

These royal decrees relate to article 7 of the Act. This article guarantees the right to privacy and protection by ordering the provinces to draw up rules on homes for the aged covering, *inter alia*, the following points:

(a) Freedom for the aged to organize their lives as they wish;

(b) Hygiene and health care;

(c) Safety;

(d) Number, qualifications and character of persons working in homes for the aged;

(e) Physical characteristics of the building.

In applying these rules, the provincial authorities may issue instructions to the managers of homes for the aged. They may even prohibit the use of the establishment as a home for the aged if a regulation or instruction has not been obeyed.

The manager of a home for the aged may appeal to the Crown against a decision of the provincial authority involving an instruction or prohibition of the kind mentioned above.

The above-mentioned royal decrees contain the following principles laid down by the Crown on the interpretation of article 7 of the Act:

1. The provincial decree is contravened unless each old person living in the establishment has a single room.

2. An isolation room must be equipped and kept available in any establishment in which sick people are treated and cared for.

3. In some circumstances, the number of old people admitted to a home must be limited: a new applicant may be admitted only if a single room is available.

4. The provincial decree is contravened if the only access to rooms on the top floor (attic) of the main building is by a difficult staircase or if the lighting and ventilation of the bedrooms are inadequate; timber walls in the bedrooms also constitute a major fire hazard.

5. Every home for the aged must have an adequate number of qualified staff for the number of persons to be cared for.

NETHERLANDS ANTILLES

Legislation

1. The national decree on the entry and expulsion of aliens was amended by the national decree of 26 January 1968. Prior to this amendment, an alien who had lost the job for which he was admitted to the Netherlands Antilles could be expelled without any kind of legal proceedings. In fact, the admission of an alien depended on one condition: namely, that while in the country he had to work in a specified job. When no longer so employed, any prolongation of his stay in the Netherlands Antilles was deemed to be contrary to the regulations relating to entry and expulsion.

It is now expressly stipulated that in such cases the residence permit or temporary residence permit must be withdrawn by the Minister of Justice in a decision which states the reasons for the action. An appeal may be made to the Governor against such a decision within fifteen days.

2. The national decree of 18 December 1968 contains provisions relating to court documents and certificates of good character.

Articles 4, 5 and 11, on the excision of pages from a court record and the destruction of police records, are of special interest. The intention is that, in certain circumstances and after a certain period of time (four, five or eight years) has elapsed, a person who has been the subject of police or court action will be able to receive a certificate of good character.

Article 18, which provides that an application for a certificate of good character must be made by the person who is to be the subject of the certificate, or that that person must at least give his consent to the application, is also a valuable safeguard.

NEW ZEALAND

NOTE ¹

I. LEGISLATION

1. *Arms Amendment Act*

Makes provision for further limitation of the right to possess firearms.

2. *Civil Defence Amendment Act*

This broadens the powers of the authorities to declare a state of civil defence emergency, during which many basic civil rights may be overridden, if this is necessary to combat an emergency. In general terms, such declarations may be made under the Civil Defence Act where any violent phenomenon endangers the physical safety of the populace.

3. *Domestic Proceedings Act*

This is a new code governing domestic cases in the Magistrates Courts. Amongst other things, the Act deals with the separation of married persons, the establishment of paternity of illegitimate children, and maintenance of dependent members of the family. Where the mother of an illegitimate child seeks a Court order as to the child's paternity, the Court may now direct all persons involved to undergo genetic tests.

4. *Guardianship Act*

This is a new code relating to the custody and guardianship of children. For the first time, the mother of a child has been given the same rights in this regard as the child's father. Children are also given increased rights. Those over eighteen may now have any important decision or refusal of consent by a parent or guardian reviewed by a Magistrate. The domicile of children who are or have been married is now determined as if they are adult. Children over sixteen may now consent as if adult to medical, surgical and dental procedures, including blood transfusions.

5. *Hospitals Amendment Act*

The age at which persons may consent to the disclosure of information concerning their condition or treatment as a patient in a hospital has been lowered from twenty-one to sixteen years.

6. *Judicature Amendment Act*

This establishes in the Supreme Court of New Zealand an Administrative Division consisting of not more than four Judges of the Supreme Court assigned to the Division by the Chief Justice. The function of the Division will be to hear appeals from certain administrative tribunals, and such applications for the prerogative writs as the Chief Justice refers to the Division.

7. *Juries Amendment Act*

Full-time drivers of ambulances for humans are now exempted from jury service.

8. *Litter Act*

This Act is an attempt to assist the basic human right to enjoy the environment. It makes the depositing of dangerous or offensive litter in a public place an offence. The Act also makes provision for the appointment of litter prevention officers.

9. *Matrimonial Proceedings Amendment Act*

This Act reduces the periods of time involved in several grounds of divorce. Thus where divorce is sought on such grounds as separation, or living apart, the petitioner will not have to wait so many years before commencing proceedings.

10. *National Military Service Amendment Act*

This reduces from twenty to nineteen years the age at which every male British subject ordinarily resident in New Zealand becomes liable for three years' call-up in the Army.

¹ Note furnished by the Government of New Zealand.

11. *Parliamentary Commissioner (Ombudsman) Amendment Act*

The jurisdiction of the Ombudsman is extended to acts of officials of hospital and education boards.

12. *Police Amendment Act*

This provides that a constable on probation, and a temporary member of the Police Force who has served for less than two years, may now appeal to the Appeal Board, when an inquiry has been held into his conduct. This means that cadets are now the only members of the Police Force who may not make such an appeal.

13. *Quantity Surveyors Act*

This Act applies the rule *audi alteram partem* to applications for registration as quantity surveyors. The rule is also applied to inquiries into complaints against quantity surveyors. A right of appeal is given against decisions taken on such applications or inquiries.

14. *Summary Proceedings Amendment Act*

Where a defendant does not receive a summons sent by means of registered post, but in his absence he is nevertheless convicted, or an order is made against him, a Magistrate or the Registrar of the Court may grant a re-hearing of the proceedings.

15. *Transport Amendment Act*

Parking infringements will no longer be criminal offences; instead of a fine on conviction, a fee will become payable. It becomes an offence to fail to pay this fee without reasonable cause. It is now an offence to drive a car with more than a specified proportion of blood alcohol (100 mg. per 100 cc.); breath and blood tests will be required of motorists suspected of this offence.

16. *Trespass Act*

Increases the number of situations where trespassing becomes a criminal offence, even though no damage is caused by the trespass. In particular, it becomes an offence to wilfully trespass on a place at any time within six months after being warned off it by the lawful occupier.

II. JUDICIAL DECISIONS

1. *Williams v. Crimes Compensation Tribunal* [1968] N.Z.L.R. 711

Under the Criminal Injuries Compensation Act 1963, the Crimes Compensation Tribunal is empowered to compensate victims of violent crime. The person convicted of that crime may also be ordered to refund to the Crown a proportion of that compensation. It was held that the principles of natural justice require that the offender be entitled to be heard both on the question of the amount of compensation to be awarded to the victim, and on the proportion the offender should be called upon to refund.

2. *Nicholson v. New Zealand Kennel Club Inc.* [1968] N.Z.L.R. 529

It was held that a penalty imposed upon a person by the executive council of his club was void, since it was given in his absence and without notice to him, and in contravention of the rules of natural justice.

3. *Dobersek v. Petrizza* [1968] N.Z.L.R. 211

It was held that a married person may not make a valid agreement to marry another person at some future date when his present marriage is ended by divorce. It is only after the final decree of divorce that an enforceable agreement to marry may be made.

4. *Blundell v. Attorney-General* [1968] N.Z. L.R. 341

It was held in this case that where grounds for a lawful arrest do not exist, the police cannot justify a false imprisonment on the grounds that they acted reasonably. Detention while making inquiries is not permitted under the law of New Zealand. The reasonableness of the police action may become relevant only when the amount of damages is being decided, after the plaintiff has established his claim.

5. *Seven Seas Publishing Pty Ltd v. Sullivan and Others* [1968] N.Z.L.R. 663

It was held that where a Magistrate issuing a search warrant has adopted the lesser standard of suspicion of an offence, rather than the statutory standard of reasonable belief that an offence has occurred, there is an error of law on the face of the document. Thus the Supreme Court has jurisdiction by *certiorari* to quash the conviction based on the search carried out pursuant to that search warrant.

6. *R. v. Convery* [1968] N.Z.L.R. 426

It was held that even where a person is overawed by police officers, and actually believes that he must accompany them and answer their questions, he is not "in custody" for the purposes of the English Judges' Rules. It is thus not necessary in these circumstances for the police to caution the suspect before questioning him. Before a caution is required, there must be police conduct which leads the suspect to believe "on reasonable grounds" that he is in custody. The Court of Appeal stressed that the Judges' Rules merely prescribe a proper standard of police conduct, and have not the force of law in New Zealand.

7. *Eyre v. New Zealand Press Association Ltd* [1968] N.Z.L.R. 736

The plaintiff alleged that he had been defamed by the defendant, which published a report of a public statement said to have been made by the plaintiff. It was held that an honest belief in the correctness of the report and a contractual duty to communicate the statement correctly to associates (in this case, other members of a Press syndicate) does not support a plea of qualified privilege as a defence to an action for defamation,

if in fact what is communicated is an incorrect report of the statement.

8. *S. v. Police* [1968] N.Z.L.R. 798

Under section 42 of the Criminal Justice Act 1954, a defendant may be discharged without being convicted, even though the Court considers the offence proved. It was held that where a Magistrate discharges a person pursuant to section 42, his decision is not appealable.

9. *Smith v. Wellington City* [1968] N.Z.L.R. 636

In this case, on the other hand, it was held that where a defendant is not only discharged under section 42, but also ordered to pay court costs, he has a right of appeal.

10. *Wainwright & Butler v. Police* [1968] N.Z.L.R. 101

This case deals with the right to publicly express honestly-held though controversial political views, and the point at which such expression contravenes the criminal law. The defendants placed a placard-bearing wreath at a public wreath-laying and remembrance ceremony honouring the dead of the first and second world wars. The ceremony is held annually, on a public holiday known as Anzac Day. The placard expressed opposition to New Zealand's involvement in the Viet-Nam war. This was held to constitute the offence of disorderly behaviour.

11. *R. v. Wheatley* [1968] N.Z.L.R. 1135

It is a matter for the discretion of a trial Judge whether he comments on the failure of an accused person to give evidence at his trial. However, the Judge may not comment in a way which could leave the jury under the impression that the burden of proving his innocence lay on the accused and, further, could lead the jury to conclude that if the accused was innocent, he would have given evidence and that his failure to do so would justify the jury assuming he was guilty. Such a comment goes too far, rendering the trial unfair, so that a new trial will be ordered.

12. *Waterman v. Police* [1968] N.Z.L.R. 689

It is an offence to habitually consort with reputed thieves. In this case, it was held that persons may be reputed thieves, even though they have never been convicted. It is sufficient if the reputation exists in police circles, and the accused knew or may be presumed to have known of that reputation.

13. *Fogg v. McKnight* [1968] N.Z.L.R. 330

The plaintiff was unjustly accused by a store-detective of being a shoplifter. The detective also committed a technical assault upon him. The plaintiff was most upset by this, and even when it turned out that he was innocent, no apology was forthcoming, right up to the time of trial. It was held that the plaintiff was entitled to damages to compensate for his wounded dignity and feelings.

14. *S. v. Police* [1968] N.Z.L.R. 622

Another application of the principle *audi alteram partem*. It was held that a child should be present at the hearing when the Children's Court is dealing with a complaint that he is not under proper control.

15. *McConnell v. Urquhart* [1968] N.Z.L.R. 417

The plaintiff, a probationary police constable, was found asleep in bed in the police barracks with a woman who was naked (or semi-naked—the evidence was conflicting). He was discharged from the Force, without being given a hearing and a chance to defend himself against a charge. It was held that the constable was entitled to insist upon a charge and hearing before the Police Tribunal, in terms of the relevant regulations. The defendant Commissioner of Police was not entitled to by-pass the regulations by summary termination of the constable's employment.

16. *Perpetual Trustees v. Dunedin City* [1968] N.Z.L.R. 19

When a local authority takes land pursuant to the provisions of the Public Works Act, an objector to such appropriation is not entitled to be told of the information on which a decision has been made to enter upon a particular scheme of works. Nor, where the objector submits an alternative scheme to the local authority in the course of his objection, is he entitled to examine or comment on reports obtained by the local authority on his alternative scheme. The rules of natural justice are met, provided the local authority gives consideration to the matters raised in the objection.

17. *O'Sullivan v. Mt. Albert Borough* [1968] N.Z.L.R. 1099

The appellants owned residential land adjoining a public sports ground. They erected a "Scotchman's stand" from which sporting activities could be watched by the public without paying the requisite admission fee to the grounds. The local body obtained an injunction pursuant to the provisions of the Town and Country Planning Act 1953, limiting the appellants' right to use their land in this way.

18. *Blackler v. New Zealand Rugby Football League (Inc.)* [1968] N.Z.L.R. 547

The appellant applied to the respondent for a clearance which was necessary before he could play Rugby League football professionally in Australia. The League refused to grant him a clearance, and he sought a declaration that this refusal was illegal and void as being beyond the powers of the League, and as being an unlawful restraint of his right to seek employment. It was held that the rule under which the League acted was an unreasonable restraint of trade and therefore void as between the appellant and the League.

NIGER

ACT No. 68-012 OF 20 FEBRUARY 1968 AMENDING ACT No. 67-15 OF 18 MARCH 1967 ON THE PROTECTION OF THE CIVIL INTERESTS OF MINORS ¹

...

Article 1. Article 1 of Act No. 67-15 of 18 March 1967 shall be amended by the addition of the following third paragraph:

“On the application of the *Ministère public*, civil claims on behalf of minors shall be admissible, even if made for the first time in appeal proceedings.”

Article 2. Article 3 of the same Act shall be amended to read as follows:

“If the minor has no legal representative, the appointed counsel shall exercise, under the authority of the *Ministère public*, all the powers of a civil plaintiff in agreeing to civil damages, including the determination of the amount claimed. He shall be empowered to ensure the execution of the court’s decision and, in general, to use all means of execution and enforcement.

“On request by the minor’s representative or the appointed counsel, an unstamped authenticated copy of the decision shall be supplied free of charge by the clerk of the court.

“If the minor’s legal representative refuses to take custody of the damages awarded, such damages shall be paid into a special savings account opened in the minor’s name.”

...

¹ *Journal officiel de la République du Niger*, No. 5, of 1 March 1968.

ACT No. 68-24/PRN OF 31 JULY 1968 ESTABLISHING A CODE OF INVESTMENTS IN THE NIGER ²

...

Article 1. The measures for the encouragement of investment in the Republic of the Niger shall comprise one system of general law and two special systems.

The special systems, called respectively *régime d'agrément* (a system based on acceptance) and *régime conventionnel* (a system based on agreement), shall offer to enterprises advantages which

increase in accordance with the significance that they represent for national development.

TITLE I

SYSTEM OF GENERAL LAW

Article 2. The Republic of the Niger, in its desire to encourage the ever-growing participation of private investments in the implementation of its economic development programmes, shall ensure

² *Ibid.*, No. 16, of 15 August 1968.

the constant protection of such investments from both legal and judicial points of view. It shall give them just and equitable treatment, and for enterprises that are established or might be established it shall guarantee:

Fair compensation in the case of expropriation;

Non-discrimination between nationals and foreign persons, whether individuals or bodies corporate, pursuing their professional activities with due respect for the regulations in force. This non-discrimination shall apply to all matters concerning the various aspects of economic activity.

Article 3. New industrial enterprises shall be granted exemption from:

(a) Licence fees during the fiscal year in which they begin their operations and the four subsequent years;

(b) Tax on industrial and commercial profits up to and including the fiscal year ending during

the fifth year following the beginning of their operations;

(c) Land tax up to the sixth year following the year of completion of construction work or operations of a similar nature.

However, they shall remain subject to all other taxes and dues.

Article 4. The provisions of article 3 shall be applicable to a new establishment (or establishments) under the control of an existing enterprise, provided the establishment (or establishments) in question is equipped with an accounting system enabling the results of its activities to be isolated and the establishment (or establishments) to be considered as a self-contained unit within the enterprise controlling it.

...

NIGERIA

NOTE ¹

I. RIGHT TO EDUCATION

1. Regarding the right to education, it has been the policy of the Federal Military Government to make education available to all Nigerian citizens irrespective of age, sex and religion. In order to ensure that all children have equal opportunity for education, the Federal Military Government has recently set up a Commission to study the feasibility of free primary education for all children in all States of the Federation.

2. The Government is aware of the preponderance of adult illiteracy in this country, and in pursuance of our determination to make education available to all citizens irrespective of age, each State Government has mounted efficient adult education programme under the supervision of the State Ministries of Education. Judging from the number of adults who are issued with literacy certificates in each State, one is bound to be optimistic for the future.

3. Apart from direct instructional programmes in schools and adult education centres, each State has a Department of Community Development which organizes clubs and societies for boys and girls as well as men and women. Furthermore, the Nigerian Government is making a definite effort to reach a wide society by means of the radio, television and cinema. The literacy situation in this country is changing for the better and it is our hope that in the very near future all citizens will acquire a modicum of literacy education.

4. In the field of higher and technical education, Nigeria is making encouraging strides. It is with pleasure that we report the good facilities which are now available in our technical colleges. The situation in university education is equally encouraging. Altogether there are five universities in Nigeria. Four of these are functioning now but the fifth has been closed since 1967 owing to the crisis. Each of the four functioning universities is expanding its scope both in the number of subjects available and facilities for research.

5. To ensure that all students who qualify for higher education and who wish to avail themselves of the opportunity do in fact get a chance, our Government has established programmes for financial aid to needy students by way of full scholarship, loans and bursary.

6. Progress is being made in the field of women's education and also more and more girls are going to school, and several measures are being taken to make post-primary education as accessible to girls as to boys. One of these measures is the trend towards changing boys secondary schools into co-educational schools which admit girls as well. This has increased the number of post-primary places available to girls.

7. Furthermore, equal access of girls to higher education is a basic characteristic of our system—the sole criterion being capacity and merit; social prejudice is steadily breaking down, in the face of proven ability by Nigerian women in many fields of social endeavour.

8. Post-primary education is becoming available to an increasing percentage of primary school leavers. This is the result not only of a steady growth in the number of secondary schools, but also of the diversity of post-primary institutions, the most significant of which is the establishment of the comprehensive school. This diversity (contrasted with the old situation where most secondary schools were grammar-type) will obviously make better provision for the varying talents of secondary school age children, and therefore remove some of the wastage which was inevitable in the days of "grammar-only" schools.

9. The right of parents to choose their children's school is characteristic also of our system, again the only limitation being the inadequacy of facilities especially at secondary level, within easy geographical reach. Participation by the public in the general determination of educational objectives—through the press and radio; through parent-teachers association, etc.—influences the content of curricula, while objection by parents to religious instruction (except in their chosen faith) in school is entrenched in the educational laws of this country.

¹ Note furnished by the Government of Nigeria.

II. RIGHT (OF PEOPLE) TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

1. All men are created equal by God, and so should, under normal circumstances, reach approximately equal levels of physical and mental development, if diseases and other deprivations did not impede. The Creator did not intend one man to be unhappy due to chronic ailments, while another enjoys robust health; nor that one man should be mentally alert and sound, while the other suffers from insanity of one form or another.

2. The diversity of world population, however, and geographical differences have been the main inhibiting factors in equal development of men. Fortunately, Governments of various countries have been alert to their responsibilities in providing the necessary facilities for the enjoyment of the highest attainable standard of physical and mental health. Unfortunately, the provision of facilities for health are very expensive and the budget is never adequate for these facilities. The economy of the country needs to be improved.

3. For the period 1 July 1966 to 30 June 1969, the Federal Government of Nigeria did more than in any other period to meet the challenge posed by man's right to the enjoyment of the highest attainable standard of physical and mental health.

4. The National Council on Health was formed to co-ordinate all matters on health throughout the country. It consists of all Commissioners/Ministers for Health and their technical advisers in the country. It is advisory in nature.

5. With the creation of 12 States, all States are represented on this Council. The Council meets twice a year and has discussion on matters of mutual interest including the control of communicable diseases, training of medical and para-medical staff, registration of births and deaths, immunization procedure and a host of other subjects. Very good results have been derived from the resolutions of this Council.

6. The Federal Ministry of Health, with emphasis on prevention, made provision as follows:

(a) PORT HEALTH UNIT

This Unit carries out as much as possible conditions laid down in International Sanitary Regulations to prevent spread of disease from one country to another.

(b) HOSPITAL SERVICES

Efforts were made during the period to reduce infant mortality and still-birth rates by expansion of existing paediatric units, maternity hospitals and health centres, and the establishment of new ones, and to derive full benefits to the highest attainable standards of physical and mental health by providing facilities at hospitals, health centres and university hospitals for investigation and treatment of all diseases and infections.

(c) TRAINING FACILITIES AND PROVISION OF STAFF

Sanitary and health workers were trained to educate the public on the rudiments of environmental and industrial hygiene. The health and sanitary workers are charged with the responsibility of ensuring that public nuisances are either prevented or abated.

Medical schools and schools for all para-medical workers are encouraged and financed by the Federal Government. More medical nurses, midwives and para-medical personnel were employed.

(d) CONTROL OF COMMUNICABLE DISEASES

There is an Epidemiological Unit in the Federal Ministry of Health and health workers in the States have been trained in the treatment, prevention and control of epidemic and other disease. There is also a Malaria Service Unit at Yaba which works closely with the World Health Organization staff.

(e) BUDGET ESTIMATES

During the period, the estimates of Governments show greater expenditure on health and medical services than on several other items, which is a pointer to the desire of the various Governments to provide more and better facilities for the population. The creation of 12 States in May 1967, resulting in the establishment of a Ministry of Health in each State, has automatically extended health and medical services and provided more even distribution of these services to reach remote areas of the Federation. Thus in the eve of sickness, the patient has greater chance of receiving medical attention than was hitherto available.

(f) CO-OPERATION WITH INTERNATIONAL BODIES

Co-operation with international bodies—WHO, ILO, UNICEF, FAO and Red Cross—in their objectives to raise the standard of health of people in Nigeria.

(g) ESTABLISHMENT OF BASIC HEALTH SERVICES

Establishment of Health Centres near the homes of the people to provide basic health services.

(h) LABORATORY SERVICES

Provision of laboratory services.

(i) NUTRITION SERVICES

Establishment of Nutrition Service to solve the problems posed by malnutrition.

(j) HEALTH EDUCATION

Establishment of Health Education Service to educate the masses in maintaining good environment and personal hygiene and in making them realize that health is a complete physical, mental and social well-being; to motivate people to give priority to their health; and to keep people healthy through their own efforts.

ROBBERY (SPECIAL PROVISIONS) EDICT 1968

Edict No. 1, entered into force on 20 April 1968 ²

...
 3. (1) Any person who commits the offence of robbery shall be liable upon summary trial and conviction under this Edict to imprisonment for not less than twenty-one years.
 ...

4. (1) Any person who, with intent to steal anything, assaults any other person and at or immediately after the time of the assault, uses or threatens to use actual violence to any other person or any property in order to obtain the thing intended to be stolen shall be liable upon summary trial and conviction under this Edict to imprisonment for not less than fourteen years.

² *Supplement to Official Gazette Extraordinary*, No. 35, of 26 April 1968 — Part E.

...
 5. An armed patrol may arrest without warrant any person reasonably suspected of having committed or attempted to commit any offence under this Edict, and the armed patrol may use such force, including the use of firearms, as may be reasonably necessary to effect the arrest of that person or to prevent his escape.

6. For the avoidance of doubt, it is hereby declared that any person charged with an offence under this Edict shall be entitled to defend himself either in person or by persons of his own choice who are legal practitioners, and to examine in person or by his legal representative, if he or they so wish, any person whose evidence, whether on affidavit or otherwise, forms part of the case against the first mentioned person.
 ...

THE NIGERIA POLICE REGULATIONS 1968

Entered into force on 1 April 1968 ³

PART IV

APPOINTMENTS—SUPERIOR POLICE OFFICERS AND INSPECTORS

...
 QUALIFICATIONS AND CONDITIONS OF SERVICE, CADET A.S.P.s

...
 42. (1) The general qualifications required of a male or female candidate for appointment as a cadet assistant superintendent of police (general duties) are as follows:—

Age—not below 23 years or above 28 years;

Physical fitness—must be certified by a Government Medical Officer as being physically and mentally fit for service in the Force;

Education—must be in possession of a pass degree from a university recognised by the Federal Ministry of Education;

Character—must be exemplary;

Financial status—must be free from pecuniary embarrassment.

(2) A male candidate shall be not less than 5' 6" in height and shall have an expanded chest measurement of not less than 34".

(3) A female candidate shall be unmarried, and shall be not less than 5' 4" in height.
 ...

ENLISTMENT OF WOMEN POLICE

112. The prescribed qualifications for a woman candidate seeking enlistment in the Police Force shall be as follows:—

Age—not less than 19 years and not more than 25 years of age;

Height—not less than 5' 4" in height;

Physical fitness—must be certified by a Government Medical Officer in the prescribed form as being not pregnant, and as being physically and mentally fit for service in the Police Force;

³ *Supplement to Official Gazette, Extraordinary*, No. 41, Vol. 55, of 10 May 1968 — Part B.

Education—must be in possession of a Secondary School Leaving Certificate (Middle IV);

Character—must be of good character and must not have been found guilty of any criminal offence (other than any offence which the Inspector-General accepts as being of a minor nature);

Financial status—must be free from any pecuniary embarrassment;

Marital status—must be unmarried.

114. (1) Women candidates for enlistment in the Force shall in every case be interviewed by the interviewing officer in the presence of a suitable female person, who shall be, in every case where this is practicable, a woman police officer.

(4) Interviewing officers shall bring to the attention of women candidates for enlistment into the Force the provisions of these regulations governing the duties of women police, and the miscellaneous conditions of service attaching to women police.

DUTIES OF WOMEN POLICE

115. Women police officers shall as a general rule be employed on duties which are connected with women and children, and shall be particularly employed in the following duties:

(a) Investigation of sexual offences against women and children;

(b) Recording of statements from female witnesses and female accused persons and from children;

(c) Attendance when women or children are being interviewed by male police officers;

(d) The searching, escorting and guarding of women prisoners in police stations, and the escorting of women prisoners to or from police stations;

(e) School-crossing duties;

(f) Crowd control, where women and children are present in any numbers.

116. Women police officers recruited to the General Duties Branch of the Force may, in order to relieve male police officers from these duties, be employed in any of the following office duties, namely—

(a) Clerical duties;

(b) Telephone duties;

(c) Office orderly duties.

WOMEN POLICE — MISCELLANEOUS CONDITIONS OF SERVICE

117. A woman police officer shall not be called upon to drill under arms or to take part in any baton or riot exercise.

118. A woman police officer who is desirous of marrying must first apply in writing to the commissioner of police for the area command in which she is serving, requesting permission to marry and giving the name, address, and occupation of the person she intends to marry. Permission will be granted for the marriage if the intended husband is of good character.

119. A married woman police officer shall not be granted any special privileges by reason of the

fact that she is married, and shall be subject to posting and transfer as if she were unmarried.

120. A married woman police officer who is pregnant may be granted maternity leave in accordance with the provisions of General Orders.

121. An unmarried woman police officer who becomes pregnant shall be discharged from the Force, and shall not be re-enlisted except with the approval of the Inspector-General.

122. A woman police officer whilst in uniform shall not—

(a) Wear face powder or lipstick, or wear nail varnish except those of a neutral colour, or

(b) Wear any article of jewellery other than a wedding ring, or an engagement ring or a wrist-watch, or

(c) Dress her hair in such fashion that it falls over the uniform collar; the hair, if long, is to be pinned or plaited over the top of the head, or if worn in short plaits, the plaits are to be tucked under the uniform cap.

PART XIV

DUTIES OF OFFICERS

326. In the individual exercise of his powers as a police officer, every police officer shall be personally liable for any misuse of his powers, or for any act done in excess of his authority.

336. Whether a police officer is nominally on or off duty, his responsibility is the same and he is bound to prevent and detect crime and maintain peace and good order at all times and by all legal means.

PART XV

CODE OF CONDUCT

337. (1) (a) Any police officer who—

(i) thinks himself wronged by any other police officer, or

(ii) thinks that he has just cause to complain of any matter

may make a complaint in writing to his immediate superior police officer.

(b) Any police officer on being asked by a superior police officer if he has any complaint to make may make a complaint orally to the superior police officer.

338. A police officer shall not conduct himself in such manner as to bring his private interests into conflict with his public duties or in such manner as is likely to cause a suspicion in the mind of any reasonable person that he has—

(a) Allowed his private interests to come into conflict with his public duties, or

(b) Used his public position for his private advantage.

NORWAY

NOTE¹

A. STATUTES

1. *Act of 15 March 1968 amending the Act of 27 June 1947 relating to measures for the promotion of employment*

The Act extends the employers' obligation to notify public authorities of any forthcoming curtailment or cessation of business operations. The amendment results from the desire to give the public authorities a sufficiently early opportunity to adopt measures for the promotion of employment.

2. *Act of 22 March 1968 amending the Act of 22 June 1962 relating to the Storting Ombudsman for the administration*

The functions of the Ombudsman originally comprised only the State administration and the State officials, subject to a few exceptions. The amendment removes some of the limitations which the Ombudsman Act imposed with regard to the control of municipal administration.

3. *Act of 10 May 1968 amending the Act of 7 December 1956 relating to the protection of workers and certain other Acts*

In addition to some more special amendments, the Act reduced the general number of working hours per week from 45 to 42½.

4. *Act of 14 June 1962 amending the penal provisions for violation of the legislation regarding narcotics, etc.*

Under this amendment, the punishments for offences under the narcotics legislation have been substantially increased as part of the efforts to combat the illegal use of narcotics.

The new Section 162 of the Norwegian Penal Code imposes punishment for unlawful acts of a more professional nature involving narcotics. The punishment is imprisonment up to six years.

Moreover, fines can be imposed in addition to imprisonment. According to the earlier provision in Section 43, third paragraph, of the Drugs Act of 20 June 1964, the punishment was fines or imprisonment for up to two years or both. This penal provision will continue to apply in somewhat altered form to those offences against the narcotics laws which do not come under Section 162 of the Penal Code.

5. *Act of 21 June 1968 amending the Road Traffic Act of 18 June 1955*

This Act has removed most parking offences from the list of criminal acts. Such offences will no longer lead to punishment but only to the obligation to pay a fee. The fee is imposed by the police, and the imposition can be reviewed by the Court of Enquiry.

The Act also introduces a more simple and rapid procedure for certain other kinds of traffic offences in that it permits these cases to be decided by so-called simplified optional fines. (An optional fine in Norwegian criminal procedure is a special settlement method used in minor criminal cases. The police give the accused an option to pay a fine, which the accused himself decides to accept in order to avoid prosecution in court.) Under the new rules, a police officer who has otherwise no authority to impose optional fines can be authorized to issue on the spot an optional fine for up to a certain amount. If payment of this fine is accepted, the matter is settled.

Changes were also made in the rules concerning the periods in which the issue of driver's licences is barred on account of criminal offences, etc., and some other more special changes.

6. *Act of 20 December 1968 amending the Act of 8 December 1950 relating to Norwegian nationality*

The amendments aim at making it easier for citizens of one of the other Nordic countries to acquire Norwegian nationality. Besides, the Act has been amended to enable Norway to accede to the United Nations Convention of 30 August 1961 for the limitation of statelessness.

¹ Note furnished by the Government of Norway.

B. CASE LAW

Supreme Court judgement of 31 August 1968

By its judgement of 31 August 1968 the Supreme Court held that a student, opposed to Norway's membership of NATO because he felt that some of Norway's allies in NATO pursued a policy of oppression against other nations, was on those grounds not entitled to exemption from military service under the Conscientious Objectors Act of 19 March 1965. The student was not opposed to the use of arms in any situation.

One judge—the Chief Justice—dissented, considering that a serious conviction should be sufficient grounds for exemption, even if it was politically motivated and hence dependent on the situation.

This is the first time the Supreme Court has decided the question of objection to military

service on political grounds under the Conscientious Objectors Act of 1965. The Act makes exemption subject to the requirement that military service of whatever kind conflicts with the conscript's serious conviction. This formulation is in full accordance with the wording of the Military Penal Code (§ 35, fifth paragraph), which previously stipulated the conditions for exemption. The Supreme Court had in its practice under this former Code decided that opposition to military service, when such opposition depended on the existing situation, could not provide grounds for exemption.

C. INTERNATIONAL AGREEMENTS

Norway has reportedly not concluded in 1968 any international agreements of importance to human rights outside the United Nations, the special agencies or the Council of Europe.

PAKISTAN

NOTE ¹

The Companies Profits (Workers Participation) Act, 1968, is a significant landmark in the history of labour legislation. The legislation marks the beginning of industrial democracy as it provides for the first time for sharing of profits with workers, who under the Ordinance are now entitled to two and a half per cent profits which will be held in shares. The workers will get dividends out of it. This will not only supplement their earnings but will foster in them a sense of belongingness. The main provisions of the Act are as follows:

(a) It provides for creating a Workers Participation Fund and the companies have to con-

tribute 2½ per cent of their net profits towards the said Fund.

(b) It applies to all companies employing 100 persons in a shift or having paid-up capital up to Rs. 20.00 lakh.

(c) The Fund shall be managed and administered by a Board of Trustees composed of workers, employers and government representatives.

(d) The companies can utilize the money of the Fund for its business operation, but it has to pay interest on the Fund utilized for business operation at the rate of 2½ per cent higher than the bank rate or 75 per cent of the rate at which dividends are declared on its ordinary shares, whichever is higher.

¹ Note furnished by the Government of Pakistan.

PHILIPPINES

COURT DECISIONS RELATIVE TO HUMAN RIGHTS AS DEFINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS ¹

1. *Rufo Quemuel v. Court of Appeals, et al.*, L-22794, 16 January 1968

The civil liability arising from libel is not a debt within the purview of the constitutional provision against imprisonment for non-payment of debt. In so far as said injunction is concerned, debt means an obligation to pay a sum of money arising from contract, express or implied—not arising from a tort, crime, or law. As a consequence, the subsidiary imprisonment for non-payment of said liability does not violate the constitutional injunction.

2. *People v. Elmer Estrada*, L-26103, 17 January 1968

The right of the prosecution to call at the trial witnesses other than those listed in the complaint or information may not be questioned. The accused in a criminal prosecution is entitled to know the nature and cause of the accusation against him. Yet it does not mean that he is entitled to know in advance the names of all the witnesses for the prosecution. The success of the prosecution might be endangered if this right is granted to the accused. Such witnesses might be subjected to pressure or coerced not to testify. The only time when the accused may know all the witnesses against him is when they take the witness stand.

3. *Jesus Morfe v. Amelito Mutuc, et al.*, L-20387, 31 January 1968

The constitutional guarantee against unreasonable search and seizure does not give freedom from testimonial compulsion. Subject to familiar qualifications, every man is under obligation to give testimony. But that obligation can be exacted only under judicial sanctions. Though there may be the duty to make documents available for litigation, it does not mean, however, that police officers may forcibly or fraudulently obtain them.

4. *Papa, Ricardo, et al., v. Mago, Remedios, et al.*, L-27360, 28 February 1968

The Tariff and Customs Code does not require any search warrant issued by a competent court before police authorities can effect the seizure. But they require it in the search of a dwelling house. Therefore, except in the case of the search of a dwelling house, persons exercising police authority under the customs laws may effect search and seizure without a search warrant in the enforcement of customs laws.

5. *People v. Rosauro Dionisio*, L-25513, 27 March 1968

Appellant, who has been tried, convicted, and sentenced to suffer one month's imprisonment for collecting without legal authority bets for a daily double race, an offence penalized by Rep. Act No. 3063 by a fine of not less than one thousand pesos nor more than two thousand pesos or by imprisonment for not less than one month or more than six months, or both, in the discretion of the court, maintains in this appeal that the penalty as applied to his offence infringes the constitutional provision against excessive or cruel and unusual punishment. *Held*: Neither fines nor imprisonment constitute in themselves cruel and unusual punishment, for the constitutional stricture has been interpreted as referring to penalties that are inhuman and barbarous, or shocking to the conscience (*Weems v. U.S.*, 217 U.S. 349) and fines or imprisonment are definitely not in this category.

6. *Amador Ibardolaza v. Hon. Felix Macalalag, et al.*, L-22367, 25 April 1968

It would have been far better to risk a little delay rather than in a sweeping manner foreclose a man's right to property. A principle deeply ingrained in our judicial system is the right to be heard. And this should not be denied absent a substantial prejudice to the adverse party and in the face of a good and substantial defence.

¹ Summary of court decisions furnished by the Government of the Philippines.

7. *Martiniano Vivo, et al. v. Agustin Montesa, et al.*, L-24576, 29 June 1968

We see no reason why the cautionary bond requirement of the 1947 Executive Order No. 69 of President Roxas should not apply to deportation proceedings initiated by the Immigration Commissioners, considering the identity of ends sought to be served. Such notice and bonds should suffice to ensure the subject's appearance at the hearings, without prejudice to more drastic measures in case of recalcitrant respondents. But as long as the illegal entry or offence of the respondents Calacdays has not yet been established and their expulsion finally decided upon, their arrest upon administrative warrant violates the provisions of our Bill of Rights. The constitutional guarantees of individual liberty must be liberally construed and applied if we are to enjoy the blessings of a régime of justice, liberty and democracy that the Philippine Constitution sought to secure and consolidate.

8. *Mayo Lopez, et al. v. Allied Workers' Association, et al.*, L-23689, 31 July 1968

There is equally the obligation of the State to afford protection to labour. The responsibility is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. The present case is an appropriate occasion for the discharge of such a trust.

9. *Roger Chavez v. Court of Appeals, et al.*, L-29169, 19 August 1968

The privilege against self-incrimination is based on the constitutional injunction that "No person shall be compelled to be a witness against himself" (Sec. 1, No. 18, Art. III, Phil. Constitution), fully echoed in Section 1, Rule 115, Rules of Court, where, in all criminal prosecutions, the defendant shall be entitled: "(e) to be exempt from being a witness against himself."

Habeas corpus is a high prerogative writ. It is traditionally considered as an exceptional remedy to release a person whose liberty is illegally restrained such as when the accused's constitutional rights are disregarded. Such defect results in the absence or loss of jurisdiction and therefore invalidates the trial and consequent conviction of the accused whose fundamental right was violated. That void judgement of conviction may be challenged by collateral attack, which precisely is the function of habeas corpus. This writ may issue even if another remedy which is less effective may be availed of by the defendant. Thus, failure by the accused to perfect his appeal before the Court of Appeals does not preclude a recourse to the writ. The writ may be granted upon a judgement already final.

10. *Martiniano Vivo v. Gaudencio Cloribel, et al.*, L-25411, 26 October 1968

An alien woman does not automatically become a Filipino citizen on account of her marriage to a naturalized Filipino citizen, since she must first prove that she possesses all the qualifications and none of the disqualifications for naturalization.

11. *People v. Mariano Oandasan*, L-29532, 28 September 1968

It is to be conceded right at the outset that if an accused, charged with an offence cognizable by the municipal court, pleads not guilty therein, and on appeal to the court of first instance, changes his plea to that of guilty upon arraignment, he should not be entitled to the mitigating circumstance of confession of guilt. The philosophy behind this rule is obvious. For the spontaneous willingness of the accused to admit the commission of the offence charged, which is rewarded by the mitigating circumstance, is absent (*People v. Fortuno*, 73 Phil. 597). Indeed, if the rule were otherwise, an accused, who naturally nourishes the hope of acquittal, could deliberately plead not guilty in the municipal court, and upon conviction and on appeal to the court of first instance, plead guilty just so he could avail himself of the benefit of a mitigating circumstance. This cannot be countenanced. The accused should not be allowed to speculate.

However, if an accused is charged with an offence cognizable by the court of first instance, and pleads not guilty before the municipal court at its preliminary investigation, and after the elevation of the case to the court of first instance—the court of competent jurisdiction—he pleads guilty upon arraignment before this latter court, the plea of not guilty upon arraignment at the preliminary investigation in the municipal court is no plea at all. Hence, the accused could claim his plea of guilty therein as a mitigating circumstance pursuant to Art. 13 (7) of the Revised Penal Code.

We cannot just sweep away defendant's right to a preliminary investigation. It is a statutory grant. It cannot be withheld. To do so would be to transgress constitutional due process. Defendant is thus entitled to know if probable cause existed to require elevation of his case to the court of first instance. Because, absent a probable cause, the case against him must be dismissed.

12. *Santiago, Jose v. Alikpala, Celso, et al.*, L-25133, 28 September 1968

It is to be admitted that there is no controlling and precise definition of due process which, at the most, furnishes a standard to which governmental action should conform in order to impress with the stamp of validity any deprivation of life, liberty or property. A recent decision of this Court, in *Ermita-Malate Hotel v. Mayor of Manila*, L-24693, 31 July 1967, treated the matter thus: "It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness is avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reason and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty to those strivings for justice and judges the fact of officialdom of whatever branch in the light of reason drawn from

consideration of fairness that reflect (democratic) traditions of legal and political thought.”

The due process concept rightfully referred to as a vital and living force in our jurisprudence calls for respect and deference, otherwise the governmental action taken suffers from a fatal infirmity. As was so aptly expressed by the then Justice, now Chief Justice Concepcion: . . . acts of Congress, as well as those of the Executive, can deny due process only under pain of nullity, and judicial proceedings suffering from the same flaw are subject to the same sanction, any statutory provision to the contrary notwithstanding (*Cuaycong v. Senbengco*, L-11837, 29 November 1960).

In *Harden v. The Director of Prisons*, 81 Phil. 741, 1948). Justice Tuason, speaking for the Court, explicitly announced that deprivation of any fundamental or constitutional rights justify a proceeding for habeas corpus on the ground of lack of jurisdiction. *Abriol v. Homeres*, 84 Phil. 525, 1949) is even more categorical. In that case, the action of a lower court, denying the accused the opportunity to present proof for his defence,

his motion for dismissal failing, was held by this Court as a deprivation of his right to due process. As was made clear by the opinion of Justice Ozaeta: “No court of justice under our system of government has the power to deprive him of that right. If the accused does not waive his right to be heard but on the contrary invokes the right, and the court denies it to him, that court no longer has jurisdiction to proceed; it has no power to sentence the accused without hearing him in his defence; and the sentence thus pronounced is void and may be collaterally attacked in a habeas corpus proceeding.”

In the case at bar, there is the express admission in the statement of facts that respondents, as a court-martial, were not convened to try petitioner but someone else, the action taken against petitioner being induced solely by a desire to avoid the effects of prescription; it would follow then that the absence of a competent court or tribunal is most marked and undeniable. Such a denial of due process is therefore fatal to its assumed authority to try petitioner.

POLAND

NOTE ¹

I. LEGISLATION

CONCERNING THE CITIZEN'S RIGHT TO WORK

Order No. 261 of the Council of Ministers of 8 November 1967 on the National Economic Plan for 1968 contains the following provisions concerning employment:

(a) In 1968, the total number of jobs will stand at approximately 422,000, including about 293,000 new jobs and approximately 129,000 jobs which will have become vacant as a result of natural attrition (death, retirement, etc.) which will increase.

(b) The Central Salary Reserve Fund for Trainees has been established. Its total resources are 25 million zlotys, and it is designed to make more jobs available to trainees in areas where there is a surplus of young people wanting to learn a trade.

The full implementation of the above-mentioned plans has made it possible to provide employment for all those who entered the labour force in 1968, including graduates from all types of post-primary schools.

This is confirmed by the condition of the labour market in 1968: the number of applicants for work registered with the employment offices remained at an average level of 57,400 for each month of the year, whereas the number of unfilled jobs came to 139,000.

CONCERNING THE CITIZEN'S RIGHT TO UNEMPLOYMENT INSURANCE

In many parts of the country and in individual cases, the employment office is sometimes unable to provide work within a relatively short period to individuals seeking jobs. At the request of the employment office, the social welfare agencies provide the necessary financial relief to those

persons until they find jobs. The Minister of Health and Social Welfare and the Chairman of the Committee for Work, Wages and Salaries issued a new order on 6 November 1968 (*Journal of Laws of the Ministry of Health and Social Welfare*, No. 20, item 100, 1968) concerning social assistance to persons temporarily unemployed.

IN THE FIELDS OF CONDITIONS OF WORK AND SOCIAL INSURANCE

1. On 8 February 1968, the Council of Ministers and the Central Council of Trade Unions issued order No. 42 concerning the improvement of production, of the quality of production and of the principles of using protective and working clothing and personal safety equipment.

2. On 15 March 1968, the Council of Ministers issued order No. 82 concerning the further improvement of conditions of work safety and hygiene. This order calls for, *inter alia*, the training of work teams, technical personnel and engineers in the field of work safety and hygiene, to meet recent requirements arising from technological progress and the use of new machines, equipment and raw materials in the production process.

3. Act of 23 January 1968 concerning the right to retirement pensions of employees and members of their families (*Journal of Laws*, No. 3, item 6).

4. Act of 23 January 1968 concerning the right to retirement pensions of disabled war veterans and their families (*Journal of Laws*, No. 3, item 11).

5. With a view to ensuring the best possible care of the newborn during their first few months of life, on 24 May 1968, the Council of Ministers issued order No. 158 which allows working mothers who are looking after their young children to take leave without pay. During her unpaid leave, the working woman is eligible to receive for herself and for the members of her family health service benefits and family allowances under the conditions which are generally in effect.

¹ Note furnished by the Government of Poland.

CONCERNING THE DEVELOPMENT AND IMPROVEMENT OF THE VARIOUS FORMS OF HEALTH PROTECTION

1. Order of the Minister of Health and Social Welfare of 16 April 1968 concerning the notification and confirmation of occupational diseases and the documents, records and statistics to be kept of such diseases (*Journal of Laws*, No. 14, item 86 and No. 34, item 242).

2. Order of the Minister of Health and Social Welfare of 16 April 1968 concerning decisions on the need to transfer a worker to another job as a result of a particularly dangerous occupational disease (*Journal of Laws*, No. 14, item 87).

3. Order of the Council of Ministers of 18 June 1968 concerning the list of occupational diseases entitling workers to benefits in the event of disability or death (*Journal of Laws*, No. 22, item 147).

4. Order of the Council of Ministers of 18 June 1968 concerning work safety and hygiene in the use of ionizing radiation (*Journal of Laws*, No. 20, item 122).

II. JUDGEMENTS OF THE SUPREME COURT

PROTECTION OF THE FAMILY AND CHILDREN

1. In view of the special importance of family life in the Polish People's Republic and in connexion with doubts which may arise concerning some provisions of the Family and Guardianship Code (relative to the granting of divorce by the courts), the Supreme Court, noting that it was particularly important that court decisions in divorce suits should be uniform and should be taken at a suitable level, and wishing to protect the public interest and the rights of citizens, adopted on 18 March 1968 the guidelines for the administration of justice and legal practice as regards the application of the provisions of articles 56 and 58 of the Family and Guardianship Code (II, C2P, 70, 66). These guidelines constitute acts of jurisprudence of the highest order and were adopted by the full membership of the Chambers of the Supreme Court.

To explain the attention it gave to this problem, the Supreme Court stated, *inter alia*, that "ill-advised court decisions in divorce suits have adverse social effects because they have an unfavorable influence on the social situation of the spouses and children directly concerned and can also generate false ideas regarding family relationships. The social status of these relationships derives from the constitutional principle under which the Polish People's Republic provides special protection for marriage and the family as the basic social unit and for children under age".

2. Order of 16 February 1968 (III CRN 374/67).

"Refusal to consent to divorce can be contrary to the principles of living in a society not only when the reasons for the refusal are morally reprehensible, i.e., when a party refuses its consent merely to be obstructive or to take revenge

or out of hatred for the spouse responsible for the breakdown of the marriage, but also when the refusal to consent to divorce is socially undesirable. The essence of the principles of living in a society is that they constitute objective rules of conduct, serving as a criterion for judging proper or improper behaviour from the point of view of the whole society, and not from the subjective point of view of the person concerned.

"In the light of the principles of living in a society, the validity of a refusal to consent to divorce must be judged by elucidating and considering all the substantive circumstances relevant to the question, in particular, circumstances relating to the spouses and their children born in or out of wedlock, taking into account their living conditions and the situations of their family relations."

PROTECTION OF LABOUR

Order of 23 April 1968 (II PR. 146/68).

"It is not in accordance with the law on work safety and hygiene that a work establishment should organize or tolerate arrangements whereby workers are employed for more than the four hours overtime out of twenty-four or 120 hours overtime in a year as authorized under the provisions of the Act concerning the duration of work in industry and trade, even if such arrangements are made with a view to carrying out planned tasks.

"The work establishment assumes full responsibility for losses resulting from the death of a worker, sickness or disability, if the death, sickness or disability have been caused by an infringement of the obligations assumed by the work establishment under the laws on work safety and hygiene."

III. INTERNATIONAL AGREEMENTS

1. The Agreement between the Government of the Polish People's Republic and the Government of the French Republic to facilitate the application of the Convention relating to civil procedure signed at The Hague on 1 March 1954 was concluded at Warsaw on 5 April 1965. This Agreement entered into force on 1 February 1969.

2. The Agreement between the Polish People's Republic and the French Republic concerning the applicable legislation, jurisdiction and the execution of judicial decisions in the fields of private and family law, signed at Warsaw on 5 April 1967. This Agreement entered into effect on 1 March 1969.

3. The administrative arrangement between the Committee for Work, Wages and Salaries of the Polish People's Republic and the Ministry of Social Welfare of the Kingdom of Belgium respecting the procedures for applying the General Convention between the Polish People's Republic and the Kingdom of Belgium on social security, signed at Brussels on 26 November 1965, was concluded at Warsaw on 4 January 1968. This arrangement entered into force on the day of signature.

REPUBLIC OF KOREA¹

THE CHILD WELFARE LAW

Law No. 912 of 30 December 1961, entered into force on 1 January 1962

SUMMARY

As stated in its article 1, this Law aims to secure the welfare of children so that they may grow up happily and healthily in case they are lost, separated from or abandoned by their guardians; in case their guardians are not fit to assume responsibility for bringing them up or are unable to care for them; and in case their mothers are unable to expect a healthy birth.

Article 4 provides that for the purpose of investigating and studying child welfare problems, the Minister of Health and Social Affairs may establish a National Child Welfare Committee, and the Special City of Seoul and each province, a Provincial Child Welfare Committee. Article 4 also provides that the task of these committees is to make recommendations to the administrative authorities concerned.

In order to give the necessary guidance and to promote the general welfare of children, the Special City of Seoul and provinces may appoint child welfare officers (article 5), and the *Ku* of the Special City of Seoul, the City, the *Up* and the *Myon* may appoint child commissioners having as their duties to give assistance and guidance to children and to co-operate with the child welfare officers and other authorities concerned.

Under article 15, the taking of a number of actions with respect to a child is prohibited. These actions include:

1. Making a show of a crippled or deformed child;

2. Letting a child beg or begging by means of a child;

3. Letting a child under fourteen years of age do acrobatic feats for public amusement or show;

4. Letting a child under fourteen years of age wait in a bar or similar places of occupation;

5. Letting a child practice any obscene acts;

6. Letting a child engage himself in the business of procurement for prostitutes;

7. Running a child placement service for the purpose of making money unless the placement is legally authorized;

8. Letting a child see any show, movie, and other similar performances harmful to children;

9. Letting a child play a game harmful to children and letting a child enter a place where a game harmful to children is played;

10. Ill-treating a child who is under one's direct care or supervision; and

11. Using money or goods either donated or supplied to children contrary to the original purpose.

Other provisions of the law deal with measures to be taken whenever children and expectant or nursing mothers in need of protection are found (article 8); measures to be taken by the Mayor of the Special City of Seoul or the Governor of a Province when, under the provisions of article 8, a child or a mother is reported to them within ten days (article 9); requests for the adjustment of forfeiture of parental rights (article 12); requests for the appointment of a guardian (article 13); the authority to make an investigation about children (article 16); the establishment of child welfare institutions (article 17); the education of children in child welfare institutions (article 19); and the care of the health of a child (article 20).

¹ Summaries based upon texts of laws furnished by the Government of the Republic of Korea.

LIVING PROTECTION LAW

Law No. 913 of 30 December 1961, entered into force on 1 January 1962

SUMMARY

The purpose of this Law, as stated in its article I, is to contribute to the development of social welfare activities in accordance with the method provided and in respect of persons who are disabled to support themselves owing to old and infirm disease or loss of labour capacity.

The category of beneficiaries listed in article III includes old and infirm people over sixty-five; children under eighteen; expectant and nursing mothers; persons who, due to physical and mental disease, wounds, handicap and disabilities, have lost their labour capacity; and persons who, under the Law, are deemed to be in need of protection by a protective organization.

Article V mentions the following categories of protection: (a) subsistence protection; (b) medical protection; (c) delivery protection; and (d) condolence measure.

Other provisions of the Law deal with the organization of protection; the implementation of protection; institutions of protection; the rights and obligations of wards; protest applications; and protection expenses.

ROMANIA

NOTE ¹

A. Texts of, or extracts from, legislation and regulations adopted during 1968

I. REGULATIONS CONCERNING FREEDOM OF MOVEMENT

(Article 13 of the Universal Declaration of Human Rights)

1. Decision No. 3240/1967 of the Council of Ministers for the implementation in 1968 of Decision No. 801 of the Council of Ministers of 13 April 1967, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 1, of 5 January 1968, provides for the granting of certain facilities for the entry and exit of foreign tourists visiting Romania during International Tourist Year 1967.

2. Decree No. 973 concerning the regulation of passports, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 135, of 28 October 1968, provides as follows:

Article 1. Romanian citizens shall have the right to obtain passports under the conditions specified in this Decree.

The following types of passports are issued to Romanian citizens: diplomatic passports, service passports, ordinary passports and passports for Romanian citizens residing abroad.

Romanian citizens may also cross the Romanian State frontier using certain other documents issued for this purpose by the competent organs of the Romanian State, in accordance with international agreements to which Romania is a party.

Article 2. Passports and documents issued by the competent organs of another State shall confer the right to cross the Romanian State frontier if they are recognized or accepted by the Romanian State.

...

Article 5. Passports for Romanian citizens residing abroad, which meet the requirements of validity, shall confer on their holders the right to enter the country temporarily or permanently, without other formalities.

Article 6. In order to be valid for crossing the Romanian State frontier, passports must be stamped with a Romanian visa.

Romanian diplomatic passports, service passports and passports for Romanian citizens residing abroad shall not require a Romanian visa. Similarly, passports issued by the competent organs of another State, in accordance with the agreements to which Romania is a party, shall not require a Romanian visa.

II. REGULATIONS CONCERNING LABOUR RELATIONS

(Article 23 of the Universal Declaration of Human Rights)

1. Act No. 13 concerning the exercise of crafts by artisans in their own workshops, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 64, of 15 May 1968, states:

Article 1. Any person may exercise a craft in his own workshop, in a town or in a commune, if he fulfils the following conditions:

(a) He is suitably qualified;

(b) He has obtained authorization to exercise the craft in question.

Article 2. A person shall be deemed suitably qualified under the terms of article 1 if he has received the necessary professional training, by exercising his craft for a certain period of time, and by acquiring an artisan's certificate after passing an examination before the Commission described in article 3.

The Minister of Labour shall lay down the period during which the craft must be exercised by the persons covered by the preceding paragraph, taking into account the object of the authorization and the place where the craft is exercised.

¹ Note furnished by the Government of the Socialist Republic of Romania.

A person shall also be deemed to have fulfilled the terms of article 1 sub-paragraph (a) if he has received intermediate or advanced technical training in a speciality, or if he has been issued an artisan's certificate under the Act of 30 April 1936 concerning professional training and the exercise of crafts.

Article 5. Artisans working in their own workshops shall have the right, within the limits of the activity specified in the product authorization, to offer services, to carry out projects designed to serve the people, and also to sell the goods they produce, if this right is included in the authorization.

They shall also be entitled, on the basis of contracts concluded with the State socialist organizations and co-operatives, to produce goods and carry out projects using either their own materials or the materials of the recipient.

Article 6. Artisans working in their own workshops may be assisted by members of their families who are specified by name in the authorization permitting them to exercise their craft.

Artisans shall have the right to train apprentices, and such apprentices shall have all the rights and all the obligations set forth in the legal provisions concerning apprenticeship at the place of work—which provisions shall be applied to them in an appropriate matter—as well as in the apprenticeship contract.

The apprenticeship contract shall also specify the period of time at the end of which an apprentice shall complete his apprenticeship and become an employee of the workshop where he is working. This period shall not exceed three years.

The number of apprentices who may be trained simultaneously by an artisan in his own workshop shall range from one to three, depending upon the particular craft.

The number of apprentices trained by an artisan who may work as employees in his workshop after completing their apprenticeship shall range from one to three, depending upon the particular craft and upon the size of the workshop. The wages paid to these employees shall be based on the remuneration prevailing in artisan co-operatives for similar work. The scholastic instruction required for apprentices in artisan workshops is specified in the legal provisions concerning apprenticeship. Practical tests necessary for obtaining a skilled worker's certificate shall be administered by the same commissions which examine apprentices trained in artisan co-operative units.

The remuneration paid to apprentices during their practical training, as well as subsistence and travel allowances paid during their academic training, shall be borne by the artisans in whose workshops they are occupied.

Article 7. Artisans working in their own workshops may acquire raw materials and equipment from local sources and from State and co-operative stores.

The State Committee for Planning and the co-ordinating ministries, when making their annual allocations of raw materials and equipment, shall also take into account the needs of artisans working in their own workshops.

Article 8. Artisans working in their own workshops shall be required to carry insurance under the social security plan of the artisan co-operative system, and shall pay an insurance contribution based on their taxable professional income.

Apprentices in training in artisan workshops shall be entitled to a disability pension, paid from the social security funds of the artisan co-operative system, if their disability occurs during, and as a result of, their professional work. The heirs of such apprentices shall also be entitled to a survivor's pension, in conformity with existing regulations. Persons working as employees after completing their apprenticeship in artisan workshops shall be insured under the social security plan of the artisan co-operative system. The amount of the social security contribution to be paid by artisans, for themselves, for apprentices, and for persons employed in their workshops after completing the period of apprenticeship, shall be established by the Central Union of Artisan Co-operatives, with the advice of the Minister of Labour.

2. Act No. 14 concerning the organization and functioning of artisan co-operation, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 64, of 15 May 1968, states:

Article 1. Artisan co-operatives are socialist organizations of an economic nature, arising from the association, at the initiative of artisans, of persons who have served as apprentices in co-operative workshops, and of persons who wish to qualify at their place of work for one of the co-operative crafts. Artisan co-operatives engage in production and perform services for the people, using collective resources, and also conduct training programmes. Through their activities, artisan co-operatives are helping to complete the establishment of socialism in the Socialist Republic of Romania.

Artisan co-operatives provide their members with suitable employment and enable them to improve their standard of living.

Article 2. The purposes of artisan co-operatives are:

- (a) To fulfil orders and perform services;
- (b) To produce consumer goods;
- (c) To make popular *objets d'art* and handicraft items;
- (d) To give productive employment to disabled persons;
- (e) To manufacture products in co-operation with State industrial concerns, and fulfil orders submitted by such concerns;
- (f) To sell goods.

Article 4. The organizations of artisan co-operation are:
—artisan co-operatives;

- unions of artisan co-operatives;
- the Central Union of Artisan Co-operatives.

Organizations of artisan co-operation also include subsidiary bodies established by the unions of artisan co-operatives and by the Central Union of Artisan Co-operatives.

Article 5. The formation, organization and development of artisan co-operatives shall conform to statutes adopted in the general assemblies. The co-operatives shall be administered by bodies elected in conformity with such statutes.

Article 6. Artisan co-operatives may form unions, organized either on a territorial basis—the units of organization being districts and the municipality of Bucharest—or by sectors of production.

The Central Union of Artisan Co-operatives is the headquarters of the artisan co-operative system, and is an association of the unions of artisan co-operatives.

...

Article 8. Recognition of the formation of artisan co-operatives and of unions of co-operatives shall be the responsibility of the council of the next highest organization of artisan co-operation. Newly formed co-operative organizations shall acquire legal status by registering in conformity with the law.

The Central Union of Artisan Co-operatives shall acquire legal status under this Act following the adoption of its statute by the Congress of Artisan Co-operation.

...

Article 21. The property of organizations of artisan co-operation shall be under the protection of the State.

The State, through the bodies, shall assist the organizations of artisan co-operation in attaining their goals, in the following ways:

By granting loans;

By supplying raw materials, equipment, machinery and means of transport on the basis of allocations from central stocks, and by authorizing the organizations to procure these items directly in order to fill their production quotas;

By granting holdings in usufruct out of State lands;

By allocating to service units buildings or parts of buildings on State lands;

By establishing a tax scheme designed to promote the development of production and of services rendered to the people;

By granting tax reductions and exemptions to co-operatives and to units of disabled persons;

By providing technical and specialized assistance, at the request of organizations of artisan co-operation;

By taking other measures considered necessary for the steady improvement of the activities of artisan co-operation.

The State economic and financial authorities shall assist the organizations of artisan co-opera-

tion in exercising control in their respective fields of competence.

...

Article 26. The artisan co-operative system shall organize its own social security scheme.

Article 27. The right to material security shall be upheld through the following benefits awarded under the social security scheme of the artisan co-operative system: pensions, social welfare, material aid in case of temporary incapacity for work, assistance in preventing sickness and in recovery and convalescence, maternity and death allowances, and provision for treatment at spas and rest centres.

The members of the family of insured persons shall be entitled to survivors' pensions and social welfare, and material assistance in event of the death of the head of the family.

Students and apprentices in artisan co-operatives who are disabled during, and as a result of, their professional work shall be entitled to pensions for disability caused by occupational injury or disease.

During the formative years of socialism, the artisan co-operative system has developed to the point where it includes more than 300 co-operatives with 154,000 participants and employees, organized as an autonomous system and managed by their own bodies, which are elected in conformity with their statutes.

III. REGULATIONS CONCERNING IMPROVEMENT OF LIVING CONDITIONS

(Article 25, paragraph 1, of the Universal Declaration of Human Rights)

1. Act No. 53 concerning the adoption of the State economic plan for 1969, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 162, of 19 December 1968, in addition to assigning tasks for increasing industrial and agricultural production, lays down concrete measures to improve the living conditions of the people, such as an increase in real wages of 5.1 per cent over the 1968 level, and provides for the construction of an increased number of apartments.

2. Act No. 9 concerning the expansion of building construction, the sale of State-owned buildings to the people, and the construction of privately-owned buildings, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 57-58, of 9 May 1968, states:

Article 1. The number of buildings shall be increased by means of construction financed with central investment funds of the State, funds from State enterprises and economic organizations, funds from co-operatives and other social organizations, and private resources furnished by the people.

...

Article 8. The State shall support the construction of privately-owned buildings by extending long-term loans, by granting land in

perpetual usufruct, by ensuring the supply of materials, and by planning and carrying out projects. In order to encourage the building of houses, zoning regulations shall specify areas where privately-owned buildings may be constructed.

...
Article 13. The State shall grant bank loans to citizens who have concluded contracts for the construction of privately-owned buildings, in an amount equal to the difference between the price specified in the contract and the down payment made by the recipient.

To obtain loans, after concluding contracts for the construction of privately-owned buildings with State or co-operative organizations, recipients must deposit with the Building Fund a sum of money equal to, or greater than, the minimum down payment specified in the contract.

...
Article 31. Without regard to their place of residence, citizens may use their own resources to construct, with the aid of the State, a single private house intended for recreation or tourism, for themselves and for their families.

Citizens may own, in addition to a privately-owned home, a single private house intended for recreation and tourism. The State shall support the construction of houses intended for recreation or tourism by granting land in perpetual usufruct, by planning and carrying out construction projects, and by providing construction materials.

3. *Decision No. 2160* of the Council of Ministers concerning certain free travel privileges granted to retired persons, to persons receiving social assistance who suffer from grade I disability, and to blind persons, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 67, of 20 May 1968, states:

Article 1. Retired persons and persons receiving social assistance who suffer from grade I disability shall be entitled to two free round-trip railway journeys per calendar year.

Article 2. Blind persons shall be entitled to the privileges specified in article 1, and also to free travel on urban mass transit facilities, if they are in one of the following categories:
 —economically active;
 —enrolled as students in academic, specialist, technical, or vocational schools;
 —enrolled as university students;
 —retired.

IV. REGULATIONS CONCERNING THE RIGHT TO REST AND LEISURE

(*Article 24 of the Universal Declaration of Human Rights*)

1. Decision No. 1149 of the Council of Ministers on the criteria to be used in determining the places of work where working conditions justify the granting of supplementary vacation leave and the places of work where such leave may exceed twelve working days, published in the

Official Bulletin of the Socialist Republic of Romania, No. 95, of 14 July 1968, states:

...

Article 2. (1) In conformity with article 2, paragraph 2, of Act No. 26/1967, in cases where working conditions justify the granting of supplementary vacation leave exceeding twelve working days, the duration of such leave shall be as follows:

(a) 24 working days for persons working in radioactive mines;

(b) 21 working days for guards working in difficult climates who are not subject to a reduced work schedule;

(c) 21 working days for other persons working in a radioactive environment;

(d) 18 working days for other persons working in difficult climates;

(e) 15 working days for aircraft personnel, including the personnel of jets and turbo-jets, helicopters and aircraft used for chemical spraying.

(2) In accordance with article 5, paragraph 2, of Act No. 26/1967, total annual leave calculated by adding leave granted on the basis of seniority, supplementary leave provided for in paragraph 1 above, and supplementary leave granted to persons in management positions may not exceed 39 working days for persons covered by sub-paragraphs (a) or (b) above or 36 working days for persons covered by sub-paragraphs (c), (d) or (e) above.

V. REGULATIONS ON THE RIGHT TO TAKE PART IN THE GOVERNMENT OF THE COUNTRY THROUGH FREELY CHOSEN REPRESENTATIVES

(*Article 21 of the Universal Declaration of Human Rights*)

1. Act No. 56 amending certain articles of the Constitution of the Socialist Republic of Romania, published in the *Official Bulletin of the Socialist Republic of Romania* of 26 December 1968, states:

Article 1. Articles 80, 88, 105 and 107 (second paragraph) of the Constitution of the Socialist Republic of Romania shall be amended as follows:

1. Article 80 shall be supplemented by paragraph 6 which shall read as follows:

"6. It shall elect and dismiss, in accordance with the law, judges, people's assessors and the Chief Procurator of the district or of the municipality of Bucharest."

2. Article 88 shall be supplemented by a second paragraph which shall read as follows:

"Between the sessions of the people's council, the Executive Committee shall exercise its functions, except those enumerated in article 80, paragraphs 1, 2, 4, 5 and 6, the decisions adopted being submitted for ratification by the people's council at its first session."

3. Article 105 shall read as follows:

“Article 105. The Procurator’s Office of the Socialist Republic of Romania shall keep watch over the activities of the penal prosecuting organs and the organs responsible for the execution of sentences and, in accordance with the law, shall ensure respect for legality and the defence of the socialist system, the legitimate rights and interests of the socialist organizations, and other bodies corporate as well as those of citizens.”

In order to implement the constitutional provisions of article 101 which establishes the principle that judges and people’s assessors shall be elected, it was necessary to decide which executive body was responsible for the arrangements for their election. At the same time, article 105 of the Constitution was reformulated in order to increase the efficiency of the Procurator’s Office and to strengthen legality.

2. Act No. 57 concerning the organization and functioning of the people’s councils, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 168, of 26 December 1968, states:

Article 1. The people’s councils shall constitute the local organs of State power elected by universal, equal, direct and secret ballot through which the people shall exercise State power in the districts, the municipality of Bucharest and its sectors, and other municipalities, towns and communes.

In order to implement the constitutional provisions, by which the power of the people is founded on the worker-peasant alliance, the people’s councils shall secure the development and the strengthening of the unity of the working class, the peasantry, the intellectuals, and all working people, without distinction as to nationality.

The entire activity of the people’s councils shall have as its purpose the strengthening of the socialist system, the judicious utilization of material and manpower resources, the development of production forces and the diversification of the local economy, a continuous increase in the people’s material and cultural well being, the preservation of human freedom and dignity and the many-sided affirmation of the human personality.

The people’s councils shall organize large-scale activities to develop in the masses of the people a spirit of devotion to the homeland and the cause of socialism, internationalism and the solidarity of working people everywhere.

...
Article 3. The people’s councils shall base their activities upon the principles of socialist democracy, organizing the direct participation of all citizens, without distinction as to nationality, race, sex or religion, in discussions on State and public affairs at the local level and the implementation of decisions and measures adopted. The people’s councils shall strengthen their links with mass and public organizations and shall extend any assistance they require to fulfil their tasks. They shall strive to promote in economic, social and State life the principle

of co-operative work and guidance at the local level.

...
Article 6. The people’s councils shall enjoy a wide measure of autonomy in the exercise of State power at the local level. They shall exercise guidance over and be responsible for the entire State activity, including the complex and many-sided economic, social, cultural and local government development of the territorial administrative units in which they have been elected, and the protection of socialist property.

The people’s councils shall secure the protection of the rights of citizens, socialist legality and the maintenance of law and order.

Article 7. The people’s councils shall analyse economic, social and cultural problems of local or national interest within the administrative units in which they have been elected and, where necessary, shall find a solution or submit proposals for their solution to the competent organs, while participating in the elaboration of appropriate measures.

If, during the discussion of a problem of national interest concerning State activity at the local level, the opinion of the people’s council differs from that of a central organ, the Council of Ministers shall be notified.

...
Article 9. In the exercise of their functions, the people’s councils shall adopt decisions, in accordance with the law.

The decisions of the people’s councils shall be binding in the territorial administrative units in which they have been elected.

Article 10. General supervision over the activity of the people’s councils shall be exercised by the Grand National Assembly.

Between the sessions of the Grand National Assembly the decisions of the people’s councils shall be subject to control by the State Council.

The people’s councils shall exercise control over the decisions of hierarchically lower people’s councils.

In the exercise of control, the hierarchically superior organs of State powers shall have the right to cancel illegal acts by subordinate organs.

Article 11. The executive committees of the people’s councils elected from among the deputies shall be the local organs of State administration with general competence in the territorial-administrative units in which the people’s councils have been elected.

Article 12. The executive committees of the people’s councils shall be responsible to the people’s councils which have elected them and to the executive committees of hierarchically superior people’s councils.

...
Article 33. Deputies shall have the following rights and obligations:

(a) To participate in every activity of the people’s council to which they have been elected, and to take part in discussions and in the adoption of decisions;

(b) To be elected to the executive committee, or a standing or temporary commission of the people's councils and to participate in their activities;

(c) To approach the executive committee of the people's council and the specialized local organs of State administration and to request their assistance with a view to the solution of problems of concern to the population of the electoral districts in which they were elected;

(d) To put questions and to address interpellations to the executive committee, to any of its members, and to the leaders of the specialized local organs of State administrations, economic organizations, enterprises and institutions subordinated to them in the people's council, regarding their activity; persons questioned shall be required to reply in the course of the same session; in the event that they are unable to reply during the same session, they shall be obliged to reply before the following session of the people's council;

(e) To require and obtain from the executive committees the information needed for their participation in discussions and the preparation of interpellations;

(f) To organize meetings with citizens from electoral districts in which they were elected, to agree on the topics which are to be discussed in the sessions and on the organization and implementation of certain actions of a civic nature;

(g) To present regular reports on their activity and on the activity of the people's councils to the electorate of the electoral districts in which they were elected;

(h) To take an active interest in the petitions, complaints and proposals of citizens, by ascertaining the manner in which such questions have been resolved.

...

Article 50. Decisions of a normative character by the executive committees shall be brought to the attention of the citizens by posters or any other form of publicity. In the territorial-administrative units also inhabited by a population of other than Romanian nationality, these decisions shall be brought to the attention of citizens in the language spoken by the respective nationality.

The people's councils are the local organs of State power made up of deputies elected by universal, equal, direct and secret ballot. They carry out party State policy at the local level, guaranteeing all citizens, without distinction as to nationality, sex, race or religion, equal rights in all fields of economic, political, legal, social and cultural activity.

The law contains provisions concerning the organization and functioning of the people's councils in the districts, municipalities, towns and communes and of the local organs of State administration: the executive committees of the people's councils and the specialized local organs of State administration.

VI. REGULATIONS ON THE RIGHT TO HAVE RECOURSE TO AN ORGAN OF THE JUDICIARY, AND TO A FAIR HEARING WITH RESPECT FOR ALL THE REQUIREMENTS OF JUSTICE

(Articles 8 and 10 of the Universal Declaration of Human Rights)

1. Act No. 58 concerning the organization of the judiciary published in the *Official Bulletin of the Socialist Republic of Romania*, No. 169, of 27 December 1968, states:

Article 1. In the Socialist Republic of Romania justice shall be administered by the judicial organs.

The courts shall be responsible for defending the socialist and States system and the legitimate rights and interests of persons and for ensuring respect for the law by the State organs, institutions, co-operative organizations and other public organizations and by all citizens, individuals and bodies corporate.

By their judiciary activity, the courts shall seek to educate the citizens in the spirit of devotion to the homeland, respect for the law and norms of social life, special regard for socialist property, and a correct attitude towards civic obligations.

Article 2. The courts shall be responsible for:

(a) Judgement of civil cases;

(b) Judgement of penal cases;

(c) Judgement of any other case within their competence.

In the cases provided for by the law, the courts shall exercise control over the decisions of administrative and public organs with jurisdictional activities.

The courts shall judge the claims of those whose rights have been infringed against as a result of administrative acts and are empowered to make pronouncements, in keeping with the law, respecting the legality of such acts.

...

Article 5. In the cases provided for by the law, the proceedings shall be conducted with the participation of the people's assessors.

Article 6. The judges and the people's assessors shall be independent in trial proceedings and shall be subject to the law alone.

Article 7. In the Socialist Republic of Romania, justice shall be administered equally for all persons.

Article 8. During the proceedings the Romanian language shall be used.

In those territorial-administrative units inhabited by populations of other than Romanian nationality, the mother tongue of such populations shall be used.

Parties who do not speak the language in which the judicial proceedings are being conducted shall be given the opportunity to take cognizance, through a translator, of the documents in the case and shall have the right to

address the court and submit conclusions in their mother tongue.

Article 9. The right of defence of the parties shall be guaranteed during the trial.

Enjoyment of this right shall be guaranteed by the fact that the courts are organized and operate in accordance with procedures prescribed by the law, and by the provision of legal aid.

Article 10. The proceedings shall take place in public except in those cases provided for by the law.

...

Article 42. The presidents of district courts, the president of the Bucharest municipal court, the judges of the aforesaid courts and the judges of civil courts of the first instance shall be elected and dismissed by the people's district councils or, as the case may be, by the people's council of the municipality of Bucharest, on the proposal of the Ministry of Justice.

In order to fill places vacated in the district courts, the Bucharest municipal court and other civil courts of the first instance, partial elections shall be organized during the first session of the people's council of the district, or the people's council of the municipality of Bucharest, after the vacancy has been announced.

The elections referred to in the first and second paragraphs shall be held for the duration of the mandate of the people's council. Persons elected shall serve until new elections of presidents and judges are organized.

Persons who:

(a) Are Romanian citizens and are not under any statutory disability;

(b) Hold a doctorate or degree in law;

(c) Have not been convicted of a criminal offence and are of good moral character are eligible for judgeships.

In the territorial-administrative units also inhabited by populations of other than Romanian nationality, judges shall know the mother tongue of such populations also.

...

Article 67. Any person who is a Romanian citizen, has reached the age of 23, has not been convicted of a criminal offence, is not under any statutory disability, is a graduate of a school of general education and is of good moral character may become a people's assessor.

The strengthening of socialist democracy and the new administrative organization of the territory as well as legislative changes have entailed an improvement in the organization of the judiciary. The main provisions of the law relate to the powers and competence of the courts, their proceedings, the guarantee of the rights of parties during judicial proceedings, the procedure for electing judges and the solemn nature of legal proceedings. In order to ensure the constitutional principles of the eligibility of judges, a procedure for the election of judges by the people's councils has been established. Judges of the Supreme Court are elected by the Grand National Assembly.

2. Act No. 60 concerning the organization and operation of the Procurator's Office of the Socialist Republic of Romania, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 169, of 27 December 1968, states:

Article 2. Throughout its activities, the Procurator's Office of the Socialist Republic of Romania shall exercise supervision of the fair and uniform application of the law, the prevention of crime and infringements and other violations of the law, and the education of citizens in the spirit of respect for the law and the standards of social life.

...

Article 6. The Procurator General shall perform his duties without interfering in the activity of other State organs, and it is his responsibility, within the limits of his authority, to act solely to ensure respect for the law.

...

Article 18. The Procurator General shall examine legal decisions, and when he considers them unjustified or irregular, he shall make use of the remedies prescribed by law.

In civil cases, the application of the provisions of the preceding paragraph shall be mandatory only in cases of decisions communicated to the Procurator General, in accordance with the law, or when such cases are brought to his attention by persons unable to lodge an appeal.

Article 27. The Procurator shall receive, examine and resolve complaints from socialist organizations and from citizens concerning violations of the provisions of the law, committed by the employees of socialist organs and organizations, in accordance with article 7.

The foregoing provisions shall apply only to requests within the competence of the courts or other organs with jurisdictional activities.

...

Article 57. The Procurator General shall be responsible to the Grand National Assembly for the activities of the Procurator's Office and shall be responsible to the Council of State between sessions.

Article 43. Persons who:

(a) Are Romanian citizens in full enjoyment of civil and political rights;

(b) Hold a doctorate or a degree in law;

(c) Have not been convicted of a criminal offence and are of good moral character are eligible for the post of Procurator.

Article 44. The Procurator General shall be elected by the Grand National Assembly, at its first session, for the duration of the legislative term and shall serve until the election of the new Procurator General at the first session of the next legislative term.

The assistants of the Procurator General shall be appointed by decree of the State Council, on the proposal of the Procurator General.

Article 45. Chief Procurator of districts and the chief Procurator of the municipality of

Bucharest shall be elected and dismissed by the people's councils of the district or by the people's council of the municipality of Bucharest, on the proposal of the Procurator General.

Chief Procurators of districts and the chief Procurator of the municipality of Bucharest shall annually present reports regarding respect for legality in the territorial-administrative units in which they have been elected to the sessions of people's councils of the district and of the people's council of the municipality of Bucharest.

VII. REGULATIONS CONCERNING EDUCATION

1. *The right to free primary education*

(a) Act. No. 11 on education in the Socialist Republic of Romania, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 62, of 13 May 1968, affirms the democratic nature of education in the Socialist Republic of Romania. It guarantees the exercise of the right to education to all citizens, without distinction as to nationality, race, sex or religion and without any discriminatory restriction. The Act is a statement of the absolute equality of rights of the citizens, and advocates, in accordance with the provisions of the Constitution, that for the co-inhabiting nationalities, education at all levels shall be given in their own language.

The exercise of the right to education is guaranteed by the fact that education is free at all levels and by other forms of material support, such as scholarships, hostels, meals in canteens, free textbooks, medical care, rest periods in holiday camps, excursions, etc.

The Act establishes the educational system covering pre-school education, compulsory general education, secondary education, vocational and technical education, higher education and post-graduate education.

The Act on education contains the following provisions:

SECTION I — GENERAL PROVISIONS

Article 1. In the Socialist Republic of Romania education, the main source of culture and factor of civilisation, contributes to the development and prosperity of the Socialist regime and nation, and to the multilateral affirmation of the human personality.

The aim of education is to enable citizens to acquire general culture and the necessary knowledge, to exercise a profession useful to society, to develop a materialist-dialectical conception of nature and society, to provide intellectual, moral, aesthetic and physical instruction and to inculcate love for the motherland and people and for the ideals of peace and social progress.

Education is closely co-ordinated with the advance of science and technics, as well as

with the demands of economy, culture and the building of Socialism and Communism.

...

Article 3. Education in the Socialist Republic of Romania is State education.

School and church are separate. Religious denominations, congregations or communities may set up and maintain special schools for the training of their clergy.

Article 4. Citizens of the Socialist Republic of Romania have the right to education, irrespective of nationality, race, sex or religion and without any limitation which might constitute discrimination.

Article 5. In the Socialist Republic of Romania education is organized in the following manner:

- Pre-school education;
- Compulsory general education;
- Secondary education;
- Vocational and technical education;
- Higher education
- Post-graduate education.

Article 6. Basic general culture is provided for all citizens by a 10-year course of compulsory education. Access to all grades of education is open to all, in accordance with proven desire and aptitude and with the demands of Socialist economy and culture.

Article 7. All grades of education are free of charge.

Article 8. The State maintains a system of State grants, in order to ensure the right to education by affording material assistance.

As laid down by law, schoolchildren and students receive grants and other forms of material assistance, such as: accommodation in hostels or children's homes, meals at canteens, textbooks, transportation to and from home at the beginning and end of vacations, and to place of practical work in production, medical care, holidays in camps and excursions.

Article 9. In all grades of education tuition is in Romanian. In accordance with the provisions of the Constitution, for the cohabiting nationalities tuition is also provided in their mother-tongue in all grades of education.

The Ministry of Education trains teachers required for tuition in the mother-tongue of the cohabiting nationalities.

Candidates sitting for the entrance examinations laid down in the present Law are entitled to submit papers in their mother-tongue in the subjects which they have studied in that tongue.

Article 10. In certain schools tuition may be provided in one or another of the modern languages of international usage.

Article 11. In the Socialist Republic of Romania the State provides posts for graduates from specialized secondary education, vocational education, technical and higher education.

...

SECTION III—COMPULSORY GENERAL EDUCATION
AND SECONDARY EDUCATION

Chapter I—Organization

...

Part 1—Compulsory General Education

Article 25. Compulsory general education provides pupils with a general cultural grounding, contributes to their intellectual and physical development and to their moral-civic formation, cultivates interest and love for work, forms practical habits, guides and trains them according to their aptitudes, in order that they may pursue their studies in higher educational units or may carry on useful activity in the various sectors of production.

Article 26. Compulsory general education is for a period of 10 years. All children who have reached the age of 6 at the beginning of the schoolyear are enrolled in general education.

Enrolment in general education of less-developed children may be postponed for one year.

Article 27. Pupils who graduate from the VIIIth form of general education may pursue their studies at general secondary schools or specialized secondary schools.

Pupils who graduate from the IXth or Xth forms of general schools may pursue their studies, according to each individual case, in the second or third years of secondary schools, in accordance with the regulations laid down by the Ministry of Education.

Article 28. Compulsory general education is given at day schools.

In accordance with the regulations laid down by the Ministry of Education, evening classes and home study may be organized.

...

Part 2—General Secondary Education and
Specialized Secondary Education

Article 31. General secondary education provides pupils with multilateral general culture, educates them in the spirit of the high obligations pertaining to citizens of the Socialist motherland and guides them in order that they may pursue their studies in higher education or may carry on useful activity in the various sectors of production.

Article 32. General secondary schools may be day schools with a four-year course of study, or may take the form of evening classes or home study, with a five-year course of study.

Article 33. General secondary schools are divided into two sections: modern and classical.

Some general secondary schools, or certain classes of these schools, have a special curriculum, in order to cultivate talents and develop aptitude.

...

Chapter III—Pupils

Part 1—Rights and Obligations

...

Part 2—Grants and Other Forms of Material Aid

Article 61. Grants may be made in order to ensure attendance in compulsory general education and to assist pupils in secondary education, taking into account the pupil's progress in school and the parents' means.

Article 62. Hostels for pupils and school canteens may be attached to general schools and secondary schools for those pupils who need such material aid, as laid down by law.

Article 63. Textbooks are distributed free of charge to pupils in compulsory general education and secondary education.

Article 64. Pupils are given medical care by the Ministry of Health, by means of school medical officers and the network of medical units.

Article 65. As laid down by law, pupils are granted aid for holidays in camps and participation in excursions and sporting activities organized by the school.

Article 66. Pupils maintained by the State in children's homes, those under the guardianship of these homes and pupils maintained in schools for physically or intellectually-handicapped children are provided with free transportation at the beginning and end of vacations.

*Chapter IV—Management and Administration
of General Schools and Secondary Schools*

...

Article 70. Parents' committees are attached to all schools as the chief instruments of collaboration between school and family.

The activity of parents' committees is carried on in accordance with the regulations laid down by the Ministry of Education.

SECTION IV—VOCATIONAL EDUCATION
AND TECHNICAL EDUCATION

Chapter I—Organization

Article 71. Vocational education is given at vocational schools and by apprenticeship at place of employment.

Technical education is given at foremen's schools and post-secondary specialization schools.

Vocational education and technical education are also given by means of qualification courses and finishing courses for workers and medium-level specialized personnel.

Part 1—Vocational Education

1. Vocational Schools

Article 72. Vocational schools train qualified workers for the trades necessary to the national economy or for social and cultural activities.

Article 73. The course of study in vocational schools is 1-2 years and is laid down by the classified list for each trade, according to the complexity of said trade.

The course of study may exceed 2 years for certain occupations specific to co-operative organizations.

Vocational schools may be both day and evening schools.

Vocational schools with special courses of study and curricula, in accordance with the type of handicap, may be set up to qualify physically or intellectually-handicapped persons.

...

Article 75. Vocational schools are set up at enterprises or other Socialist organisations by ministries, other central authorities of State administration, the Executive Committees of Country People's Councils and the Executive Committee of the Bucharest Municipal People's Council, or by the central authorities of co-operative organizations.

Article 76. Admission to vocational schools is by entrance examinations held in accordance with the regulations laid down by the Ministry of Education. Graduates from general schools, who have not passed the age of 18 in the calendar year when they enter their names for the entrance examination, may sit for entrance examinations to day schools. For some trades, the Ministry of Education may lay down other age-limits on the proposal of the interested authorities.

Persons who have graduated from general school or who possess equivalent studies, irrespective of age, and who work in the trade for which they wish to train, may sit for entrance examinations for evening classes.

2. Apprenticeship at Place of Employment

Article 77. Apprenticeship at place of employment is another method of training qualified workers. By this method of education, youths are given practical training during the daily working process at production units or at those serving the public, while theoretical training is provided by evening vocational classes or at day schools for periods of 2 to 3 months a year, when apprentices are withdrawn from production.

...

Part 2—Technical Education

1. Foremen's Schools

Article 80. Foremen's schools train the technical personnel required for the organization and conduct of the production process.

Foremen's schools hold evening classes; they may also be day schools.

Article 81. The course of study in foremen's schools is 2 years for evening classes and 1 year for day schools.

...

Article 83. Admittance to foremen's schools is by entrance examination, held in accordance with the regulations laid down by the Ministry of Education. Qualified workers included in one of the last two categories of qualification, who have graduated from vocational schools, other equivalent schools or general secondary schools, have performed their military service and are recommended by the Socialist organization which employs them, may sit for entrance examinations.

For some specialities laid down in the classified list, qualified workers who have graduated from general schools may sit for entrance examinations, in accordance with the other conditions provided in the preceding paragraph. In this case the course of study is 2 years at day school.

2. Post-secondary Specialization Schools

Article 84. Post-secondary specialization schools train graduates of general secondary schools for medium-level technical or social-cultural activities.

Article 85. The course of study in post-secondary specialisation schools is 1-2 years and is established by the classified list for each speciality. A course of study of maximum 3 years may be established for certain specialities by order of the Council of Ministers.

Post-secondary specialization schools may be either day or evening schools. Home study may be organized for certain specialities.

...

Article 88. Graduates from general secondary schools who have passed the matriculation examination or graduates holding diplomas from other equivalent schools may sit for entrance examinations.

Persons who possess the studies laid down in the preceding paragraph and who work in the field of the speciality for which they wish to train may sit for entrance examinations to evening classes and home study.

The Ministry of Education may lay down certain specialities for which graduates from general secondary schools who have not passed the matriculation examination may sit for entrance examinations.

Chapter II—Methods of Study

Article 89. Methods of study in vocational and technical schools are those set forth in art. 42, 43 and 46 to 49 inclusive, applied in an appropriate manner and completed with those laid down in the present chapter.

Article 90. Instructional and educational activity is carried on in accordance with curricula, school syllabi and textbooks.

Curricula and syllabi for subjects of general culture are drawn up by the Ministry of Edu-

cation. Syllabi for speciality subjects are drawn up by the interested ministries and other central authorities, and are approved by the Ministry of Education.

Textbooks are drawn up by the Ministry of Education in collaboration with the other ministries and central authorities that set up schools.

Article 91. After graduating from the last year of study pupils of vocational schools, foremen's schools, post-secondary specialization schools and apprentices take a graduation examination, on the basis of which they are granted graduation diplomas.

In accordance with the provisions of the preceding paragraph, apprentices are granted vocational school graduation diplomas.

In order to complete their practical training, graduates from vocational schools work in production, as probationer workers, for a period of 3 to 12 months.

The rights conferred by graduation diplomas or certificates are those laid down by law.

Chapter III—Pupils

Part 1—Rights and Obligations

Article 92. Enrolment of pupils in the first year of vocational and technical schools is made by petition, on the basis of the result of the entrance examination; for the other years this depends on promotion from the preceding year, in accordance with the regulations laid down by the Ministry of Education.

When enrolling for the first year at day schools, pupils sign contracts with Socialist organizations, by which they bind themselves to work at those organizations for a period of 2 to 3 years after graduation from school and qualification. Pupils of less than 18 years of age sign contracts with the consent of their parents or of other legal guardians. The clauses of the contract are laid down by order of the Council of Ministers.

Article 93. Pupils enrolled for day or evening school may repeat a year of study once only; those enrolled for home study may repeat it twice at most.

At foremen's schools the year of study may only be repeated for well-founded reasons and with the consent of the Socialist organization which made the recommendation.

The provisions of the preceding paragraph of this article do not apply when the year of study is repeated for medical reasons.

Article 94. For well-founded reasons, pupils may obtain a transfer from one school to another, with the consent of the respective schools, but only in the same specially or trade.

Transfer from one type of school to another, from one trade or speciality to another, as well as from one form of school to another—day school, evening class or home study—may be made in accordance with the regulations laid down by the Ministry of Education.

Article 95. The provisions of art. 57 to 59 inclusive apply in the same manner to pupils at vocational and technical schools.

Article 96. Graduates from vocational day schools, foremen's day schools and post-secondary specialization day schools are allotted to posts in production, in accordance with their specialities.

Article 97. Graduates from vocational schools can enrol at secondary schools after passing the supplementary examinations laid down by the Ministry of Education.

Article 98. Graduates from foremen's schools who are not graduates from secondary schools may sit for the matriculation examination held by secondary schools, after completing their studies in accordance with the regulations laid down by the Ministry of Education.

Articles 99. Graduates from post-secondary specialization schools who hold a matriculation diploma may enrol for higher education, in accordance with the regulations laid down by the Ministry of Education.

Part 2—Grants and Other Forms of Material Aid

Article 100. Pupils of vocational schools, foremen's schools and post-secondary specialization schools have the right to grants and other forms of material aid, as laid down by law for each type of school. Young apprentices are given the material aid legally provided for training by apprenticeship at place of employment.

Chapter V—Qualification and finishing courses for workers and medium-level specialized personnel

Article 104. Enterprises and other State Socialist organizations may set up qualification courses to train workers and medium-level specialized personnel at their place of employment.

Enterprises and other State Socialist organizations may set up finishing courses at the place of employment, in order to provide qualified workers and medium-level specialized personnel with theoretical and practical knowledge regarding new and improved plant and manufacturing technologies introduced in production or to widen their knowledge in a limited field of their trade or speciality, in accordance with the demands of their place of employment.

SECTION V—HIGHER EDUCATION

Chapter I—Organization

Article 118. Higher education trains the highly-qualified specialists required in the

various fields of social life and contributes to the advance of science, technics and culture.

Higher education is provided by higher educational establishments.

Part 1—Organization of higher educational establishments

Article 119. Higher educational establishments are: universities, institutes, academies and conservatoires.

...

Article 125. The course of study at higher educational establishments is from 3 to 6 years. At certain faculties and sections that train teachers for compulsory general education, the course of study may be from 2 to 3 years.

At sub-engineers and architect-overseer institutes the course of study is from 2 to 3 years.

Courses of study are laid down, within the limits of the preceding paragraph, by order of the Council of Ministers, according to the speciality and aim of training.

Article 126. Courses at higher education establishments are given by day.

At certain faculties for specialists established by order of the Council of Ministers, evening classes and home study may be organized, with a course of study one year longer than that laid down for day courses.

...

Article 128. Higher education establishments are run by a professoral council.

At some higher education establishments designated by the Ministry of Education, the professoral council is known as the senate.

Article 129. The professoral council consists of the chancellor, as chairman, vice-chancellors, masters of faculties, 2 to 4 representatives of each faculty elected by the faculty professoral council from among heads of departments or other professors or lecturers for a term of 4 years, and the representative of the Romanian Communist Party organization, as members. The professoral council also includes 1 to 3 consulting professors appointed by the council itself.

A representative of the teachers' trade union, the Union of Communist Youth and the Students' Association attend meetings of the professoral council.

The number of representatives of each faculty is established by the chancellor, in accordance with the regulations laid down by the Ministry of Education.

The professoral council elects a scientific secretary from among its members.

The professoral council is convoked by the chancellor to monthly ordinary sessions and to extraordinary sessions whenever need arises.

...

Article 131. The following are the main tasks incumbent on the professoral council:

—to decide on instructional, educational and scientific activity, in accordance with the regu-

lations laid down by the Ministry of Education; —to decide on amendments to curricula made by professoral councils of faculties;

—to approve the central cultural-educational plan of the said higher education establishment;

—to submit to the Ministry of Education scientific research plans, to supervise the carrying out of the latter and the results of scientific activity and to allocate the material resources affected to this end;

—to draw up the plan for publication of courses and textbooks and to submit this to the Ministry of Education;

—to submit the proposed structure of departments to the Ministry of Education, in consultation with the professoral councils of faculties; to appoint heads of departments on the proposal of the professoral councils of faculties; —to appoint the professors or lecturers who will sit on the professoral councils of faculties as members;

—to decide, on the recommendation of the professoral councils of faculties, on the result of competitive examinations for posts of professor and lecturer;

—to confirm the decisions taken by the professoral councils of faculties regarding the result of competitive examinations for posts of assistant lecturer;

—to decide on dismissal of assistant lecturers and probation assistant lecturers;

—to resolve disputes regarding expulsion of students and complaints regarding refusal to re-enrol;

—to approve recommendations for the award of degrees of merit, as laid down by law;

—to decide on the conferring of the title of doctor honoris causa, in accordance with legal provisions.

...

Article 133. The chancellor is responsible for effective conduct and resolves all problems referring to the current instructional, educational, scientific and domestic activity of the higher educational establishment.

The chancellor represents the higher educational establishment in all relations with persons or organizations.

The chancellor also:

—sees to the implementation of decisions taken by the professoral council and submits to the latter reports on the activity of the higher educational establishment;

—supervises the regularity of promotion procedures and the competitive examination for posts of lecturer;

—appoints and dismisses assistant lecturers and probationer assistant lectures, in accordance with decisions taken by the professoral council;

—appoints and dismisses technico-administrative and domestic personnel;

—decides on enrolment, expulsion and re-enrolment of students;

—issues certificates of study;

- organizes conduct and supervision of student hostels and canteens, with the assistance of youth organizations;
- confirms the decisions of doctorate commissions;
- confers scientific titles, in accordance with legal provisions;
- carries out any other duties laid down by law.

...

Article 136. The chancellor is appointed by Minister of Education for a term of 4 years from among 3 members of the professoral council, proposed by the latter by uninominal vote.

For well-founded reasons, the chancellor may be relieved of his post by the Minister of Education before the expiry of the 4-year term.

Article 137. The vice-chancellors are appointed by the Minister of Education for a term of 4 years from among professors and lecturers on the staff of the establishment, on the proposal of the chancellor, reached in consultation with the professoral council.

For well-founded reasons, vice-chancellors may be relieved of their posts by the Minister of Education before the expiry of the 4-year term.

...

Part 2—Organization of Faculties

Article 139. Each faculty is run by a professoral council.

Article 140. The professoral council of the faculty consists of the master, as chairman, deans, heads of departments and other professors or lecturers appointed by the professoral council of the higher educational establishment on the proposal of the master, and the representative of the Romanian Communist Party organization, as members. The professoral council also includes 1 or 2 consulting professors appointed by the council itself.

A representative of the teachers' trade union, the Union of Communist Youth and the Students' Association also attend meetings of the professoral council.

The professoral council elects a scientific secretary from among its members.

The professoral council is convoked by the master to monthly ordinary sessions and to extraordinary sessions whenever need arises.

...

Article 142. The following are the main tasks incumbent on the professoral council of the faculty:

- to decide on the instructional, educational and scientific activity of the faculty and to make proposals regarding the scientific research plan, in accordance with the regulations laid down by the Ministry of Education;
- to make amendments to curricula, in accordance with the provisions of art. 155;

- to approve syllabi, in accordance with the regulations laid down by the Ministry of Education;

- to report on the result of competitive examinations for posts of professor and lecturer;

- to decide on promotions to posts of lector and on the result of competitive examinations for posts of lector and assistant lecturers;

- to approve the decisions taken by the commissions set up to advise on the award of the title of Reader-Doctor in Science.

Article 143. Between sessions of the professoral council, a bureau, consisting of the master, deans and scientific secretary, is responsible for the conduct of activity.

Article 144. The master is responsible for effective conduct and resolves all problems referring to the current instructional, educational and scientific activity of the faculty.

The master represents the faculty in all relations with persons and organizations.

The master also:

- sees to the implementation of decisions taken by the professoral council;

- applies disciplinary sanctions to students, excepting expulsion.

...

Article 146. The master is appointed by the Minister of Education, for a term of 4 years from among 3 members of the professoral council of the faculty, proposed by the latter by uninominal vote. The proposal put forward by the professoral council of the faculty shall be approved by the chancellor.

For well-founded reasons, the master may be relieved of his post by the Minister of Education before the expiry of the 4-year term.

Article 147. The deans are appointed by the chancellor for a term of 4 years, on the proposal of the master, reached in consultation with the professoral council of the faculty.

For well-founded reasons, deans may be relieved of their posts by the chancellor, following the same procedures, before the expiry of the 4-year term.

Part 3—Organization of Departments

Article 148. Departments consists of a teaching staff which carries out instructional, educational and scientific activity within the framework of a discipline or several related disciplines.

Article 149. The department is run by a head of department appointed, with the agreement of the Ministry of Education, by the professoral council of the higher educational establishment on the proposal of the professoral council of the faculty, from among staff members of the department.

...

Part 4—Admission to Higher Education

Article 151. Admission to higher education is by entrance examination.

Persons holding matriculation diplomas or equivalent diplomas may sit for entrance examinations.

Only those persons who work in the field of the speciality they wish to study may sit for entrance examinations for evening classes.

Chapter II—Course of study

Article 161. Studies at higher educational establishments are concluded by a diploma-examination, aimed at gauging the candidates' ability to synthesize and apply the knowledge acquired during their years of study.

The diploma-examination is held in accordance with the procedure laid down by order of the Council of Ministers.

Candidates who obtain a minimum mark of 6 at this examination obtain a pass.

Article 163. Graduates from day courses at higher educational establishments work for a probation period of 2-3 years in the speciality for which they have been trained or a related speciality, in order to perfect their training.

This probation period is effected in economic organizations, educational establishments, scientific research establishments or other social-cultural institutions, as well as in the State apparatus.

In order to ensure posts for all graduates, Socialist organizations are compelled to respect certificates of assignment for probation periods.

Infringement of the provisions of the preceding paragraph constitutes an infraction and is punishable by law.

Accomplishment of the probation period entitles graduates to a permanent appointment in the Socialist organization where they have effected their probation period or in other Socialist organizations.

Chapter III—Students

Part 1—Rights and Obligations

Article 164. Enrolment in the first year at a higher educational establishment is made by the chancellor on the student's request, on the basis of the results of the entrance examination.

At the time of enrolment in the first year of day courses, the chancellor, as the delegate of the State, and the student draw up a contract. This contract binds the State to provide the student with adequate conditions for study; it binds the student to respect rules of university activity and conduct and to effect the probationary period laid down in art. 163 at the place of employment to which he will be assigned. The clauses of the contract are established by order of the Council of Ministers.

Article 172. Diplomaed graduates of one faculty may take courses at another faculty without entrance examination, with exemption from attendance or by home study and with equivalence of examination for disciplines with similar or identical content, in accordance with the regulations laid down by the Ministry of Education.

Part 2—Grants and Other Forms of Material Aid

Article 173. Students may be given grants for the entire period of their studies, in accordance with their proficiency in study and respect for university discipline, and taking into account their parents' means.

Article 174. Students with grants who do not reside in the university centre where they are studying are provided with accommodation in hostels and meals at canteens. Students who do not receive grants may also reside in hostels and have their meals at canteens, against payment, within the limits of available space.

Article 175. Textbooks and university courses, as well as the other speciality works required for study, are made available to students at the libraries of higher education establishments.

Article 176. Students are provided with free transportation at the beginning and end of vacations and to place of practical work in production, in accordance with the conditions laid down by law.

Article 177. The provisions of art. 64 and art. 65 apply also to students *mutatis mutandis*.

Article 178. Students who obtain exceptional results in study may be granted scholarships of merit or scholarships and other forms of material aid, as laid down by law, in order to pursue their studies abroad.

Chapter IV—Scientific research

Article 179. Higher educational teaching personnel engages in scientific research organized in the framework of annual and long-term plans; this is aimed at the solution of important scientific and technical problems, related to the demands of the Romanian economy and culture.

Scientific research is organized in each department or group of departments.

Chapter V—Scientific titles

Article 185. In accordance with legal provisions, higher educational establishments confer the scientific titles of doctor, reader-doctor in science and doctor honoris causa.

Article 186. Higher educational establishments organize doctorates in various branches of science, in view of obtaining high scientific speciality qualifications.

Chapter 6—Annexed establishments and enterprises

Article 190. As laid down by law, annexed establishments may function in subordination to higher educational establishments: libraries, museums, botanical gardens, experimental scientific or didactical centres, as well as annexed publishing polygraphic enterprises.

...

SECTION VI—POST-GRADUATE EDUCATION

Article 194. According to the needs of ministries and other central authorities concerned, higher educational establishments may organize post-graduate courses in order to ensure:

- professional perfectionment by acquiring knowledge of new achievements in the speciality;
- deeper knowledge of a limited field of the speciality or of a related branch;
- the acquiring of new research methods and technics;
- the training of cadres specialized in management and organization of production.

Post-graduate courses organized in accordance with the provisions of the preceding paragraph may also be set up at research institutes or leading economic centres.

...

SECTION VIII—THE MATERIAL BASIS OF EDUCATION

Article 216. Expenditures for the setting up and functioning of units of pre-school education, compulsory general education, secondary education, vocational and technical education are supported by the State budget and paid by central authorities of State administration or the Executive Committees of the People's Councils that set up these units.

Schools set up by central authorities of cooperative organizations are financed by the latter out of their own funds.

Expenditures for the setting up and functioning of higher educational establishments are supported by the State budget and paid through the payments plan of the Ministry of Education.

...

SECTION X—FINAL AND TRANSITORY PROVISIONS

...

Article 227. Stateless persons residing in the Socialist Republic of Romania and foreign citizens are entitled to schooling, in accordance with international agreements.

Foreign citizens may be admitted to educational establishments in the Socialist Republic of Romania on the basis of approval by the Ministry of Education, without entrance examination and independent of the school attendance plan.

...

Article 229. In order to bring up and educate children who have no parents or no possibility of being raised by their family, pre-school and schoolchildren's homes are organized to fulfil the role of the home. Admittance to children's homes and the operation of the latter are established by order of the Council of Ministers.

...

VIII. REGULATIONS CONCERNING THE PROTECTION OF COPYRIGHT

(Article 27, paragraph 2, of the Universal Declaration of Human Rights)

1. Decree No. 1172 amending decree No. 321/1956 on copyright, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 174, of 30 December 1968, states:

Article 1. Article 40 of Decree No. 321/1956 on copyright is amended to read as follows:

"*Article 40.* Any unauthorized appropriation of the copyright in a scientific, literary or musical work, in a work in the plastic arts, architecture or physical planning, or in any creative work of the intellect shall be punished by a term of imprisonment of from one month to one year or by a fine.

— "Criminal proceedings shall be instituted upon a prior complaint by the author, by the appropriate professional union or association, or by the competent Government department."

2. Decree No. 1173 amending Decree No. 884/1967 on inventions, innovations and efficiency schemes, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 174, of 30 December 1968, states:

Article 1. Decree No. 884/1967 on inventions, innovations and efficiency schemes is amended as follows:

"1. Article 62, paragraph 2, shall read as follows:

'Any unauthorized appropriation of the originator's rights in an invention, innovation or efficiency scheme shall be punished by a term of imprisonment of from one month to one year or by a fine.'

"2. The following paragraph shall be inserted after article 62, paragraph 2:

'Criminal proceedings in the cases provided for in paragraph (2) shall be instituted only upon a prior complaint by an injured party.'

IX. GENERAL REGULATIONS ESTABLISHING RESTRICTIONS FOR THE PURPOSE OF SECURING DUE RECOGNITION OF AND RESPECT FOR THE RIGHTS AND FREEDOMS OF OTHERS AND OF MEETING THE JUST REQUIREMENTS OF MORALITY, PUBLIC ORDER AND THE GENERAL WELFARE OF SOCIETY

(Article 29 of the Universal Declaration of Human Rights)

1. Act No. 15 (Penal Code), published in the *Official Bulletin of the Socialist Republic of Romania*, No. 79-79 bis, of 21 June 1968, states:

Article 1. The criminal law is intended to protect the Socialist Republic of Romania, the sovereignty, independence and unity of the State, socialist property, the person and the rights of the person, and the entire legal order against offences.

Article 10. The criminal law shall apply to criminal offences committed while it is in force.

Article 11. The criminal law shall not apply to acts which, on the date on which they were committed, were not deemed to be criminal offences.

Article 12. The criminal law shall not apply to acts committed under the former law except to the extent they are covered by the new law. In such cases, the execution of penalties and security and corrective measures, prescribed under the former law, and any penal consequences of judicial decisions relating to such acts shall cease on the entry into force of the new law.

The law providing for security or corrective measures shall also apply to criminal offences on which a final decision has not been awarded on the date of the entry into force of the new law.

Article 13. Where more than one criminal law has been in force between the time at which an offence is committed and the time at which final judgment is pronounced, the most favourable law shall apply.

When the previous law is more favourable, any supplementary penalties for which there are corresponding provisions in the new penal law shall no longer apply.

Article 14. If, after a final sentence is pronounced imposing the maximum penalty and before the term of imprisonment has been completed or the fine paid in full, a new law comes into force prescribing a lighter maximum penalty for the offence concerned, the penalty imposed shall be reduced to the new maximum.

If between a final sentence imposing the death penalty and the administration thereof a new law comes into force prescribing a term of imprisonment for the offence concerned, the death penalty shall be commuted to the maximum term of imprisonment prescribed for such an offence.

If the new law provides for replacement of imprisonment by a fine, the sentence imposed

shall be replaced by a fine, subject to the special maximum prescribed in the new law not being exceeded.

Any supplementary penalties or security and corrective measures which have not been enforced and for which no provision is made in the new law shall not be enforced; where provision is made for them in the new law they shall be enforced according to the terms and within the limits thereof.

When a provision of the new law relates to penalties imposed in the final instance, account shall be taken, in the case of penalties served up to the date of entry into force of the new law, of the reduced or substitute penalty, in accordance with the provisions of the foregoing paragraphs.

Article 15. If between final sentence and completion of the term of imprisonment a new law comes into force providing for a lighter penalty and the penalty imposed was less than the special maximum provided for in the new law, the original sentence may be either upheld or reduced, having due regard to the offence committed, the person of the prisoner, his conduct following pronouncement of the sentence or during performance of the penalty, and the length of the term of imprisonment he has served. However, the penalty may not be reduced to a term which would be proportionally less than the reduced term of the maximum penalty prescribed for the offence committed.

The provisions of article 14, paragraph 5, shall likewise apply to any sentences referred to in this article that may have been served before the new law came into force, the penalty imposed being thereby reduced by one-third.

Article 19. There is culpability when the act constituting a social danger is performed with intent or through negligence.

1. An act is performed with intent if the offender:

(a) Foresees the result of his act and proceeds with it;

(b) Foresees the result of his act and, although he does not proceed with it, accepts the responsibility that it may take place.

2. An act is performed with culpability if the offender:

(a) Foresees the result of his act but does not accept it, unjustifiably considering that it will not take place;

(b) Does not foresee the result of this act, although he should and could have foreseen it.

An act performed with culpability does not constitute an offence unless the law expressly provides so.

A failure to act constitutes an offence when it is intentional or when it is accompanied by culpability, except where the law penalizes it only when it is intentional.

Article 52. A penalty is a means of constraining and re-educating the offender. The aim of a penalty is to prevent recurrence of the offence.

Penalties are executed in order to encourage a proper attitude to work, law and order and rules of life in society. The execution of the penalty should not cause physical suffering to or humiliate the offender.

Article 53. Penalties are principal, supplementary and accessory.

1. The principal penalties are:

(a) Imprisonment for a period of from fifteen days to twenty-five years;

(b) A fine of from 500 to 5,000 lei.

2. Supplementary penalties are:

(a) Forfeiture of specific rights for a period of from one to ten years;

(b) Dismissal from the armed forces or reduction in rank;

(c) Confiscation of property, in part or in whole.

An accessory penalty is the forfeiture of specific rights expressly provided for by law.

Article 54. Exceptionally, the death penalty may be imposed for the most serious offences, in the circumstances and conditions provided for by law.

The death penalty may not be imposed on an offender who is under eighteen years of age when the offence is committed.

Similarly, the death penalty may not be imposed on a woman who is pregnant or who has a child under three years of age at the time when the offence is committed or judgment is pronounced. In such circumstances, a sentence of twenty-five years' imprisonment shall be imposed.

When the law stipulates that the death penalty may not be imposed, the principal penalty of imprisonment shall be supplemented by the confiscation of property, where the law so provides for the offence committed, and by the forfeiture of specific rights for the maximum period.

Article 55. The death penalty may not be administered if the condemned woman is pregnant or has a child under three years of age; in such circumstances, the death penalty shall be commuted to imprisonment for twenty-five years.

The death penalty shall be commuted to imprisonment for twenty-five years where the condemned person was present when judgment was pronounced and the penalty has not been administered within two years thereof, and where the condemned person was not present when judgment was pronounced or subsequently absconded from justice and the penalty has not been administered within two years from the date on which he gave himself up or was apprehended, or within seven years from the date on which the sentence was declared final.

Where a death sentence handed down in the final instance is commuted to a term of imprisonment, the penalty imposing confiscation of property shall be confirmed. The court must impose forfeiture of specific rights for the maximum term.

...
Article 64. The supplementary penalty of forfeiture of specific rights shall consist of the forfeiture of one or more of the following rights:

(a) The right to elect, and to be elected to, the organs of State power and elective Government or other public posts;

(b) The right to hold a post involving the exercise of State authority;

(c) The right to hold a post or to carry on a profession of the same kind as that which the condemned person used to commit the offence;

(d) Paternal rights;

(e) The right to act as tutor or guardian.

Forfeiture of the rights referred to in (b) must be accompanied by forfeiture of the rights referred to in (a), except where the law provides otherwise.

...

Article 71. An accessory penalty consists of the forfeiture of all the rights referred to in article 64.

A sentence to a term of imprisonment shall automatically imply forfeiture of the rights referred to in the foregoing paragraph, from the time at which the sentence is declared final until completion of the term of imprisonment, full pardon or remission of the remainder of the sentence, or until the time-limit for the execution of the sentence has elapsed.

...

Article 90. Criminal responsibility may be replaced by any of the procedures used to influence the individual through public opinion, or by an administrative penalty to be imposed by the court.

...

Article 92. The administrative penalties to be imposed by the court in lieu of criminal responsibility shall be:

(a) Reprimand;

(b) Reprimand with warning;

(c) A fine of from 100 to 1,000 lei.

Article 99. Minors under fourteen years of age shall not be criminally responsible.

Minors between fourteen and sixteen years of age shall be criminally responsible only if it is proved that the offence was committed with due understanding of its significance.

Minors over sixteen years of age shall be criminally responsible.

In the over-all system of law, an important part is played by criminal legislation, which, by specifying those acts which constitute offences and by laying down adequate penalties for such violations of the law, makes an effective contribution to the protection and consolidation of democratic rights and freedoms.

The previous penal code, adopted over thirty years ago in different historical circumstances, contained provisions which, notwithstanding the amendments made thereto, had become out-of-date.

The regulations contained in the penal code are intended to protect the revolutionary conquests of the people, the social and political system, the sovereignty and independence of the country, national property, the fundamental rights and freedoms of citizens, and the whole system of law.

The texts reproduced relate specifically to certain provisions which had no counterpart in the old penal code or which contain amendments to the previous penal code.

The new penal code curtails the area in which the constraint afforded by penal sanctions is to be applied. Many acts deemed to be offences in the past are removed from the penal code, others are declared to be infringements, while some are no longer condemned by the criminal law when they are committed for the first time. Likewise, in view of the increased role of public opinion, the penal code provides for the possibility of replacing criminal responsibility by the application of certain measures through which public opinion may influence the individual, or by certain administrative penalties.

As the purpose of a penalty is to prevent offences and to re-educate those who infringe the law, provision is no longer made for life imprisonment, and the arrangements for executing the penalty are unitary and based on labour.

2. Act No. 29 (Code of Penal Procedure), published in the *Official Bulletin of the Socialist Republic of Romania*, No. 145-156, of 12 November 1968, states:

Article 1. The purpose of penal proceedings is the timely and complete ascertainment of acts constituting offences in order that any person who has committed an offence may be punished in accordance with his culpability and that no innocent person is held responsible for the offence.

The proceedings must contribute to the defence of the social regime of the State, the defence of socialist property and the strengthening of legality; they must contribute towards preventing offences and educating citizens in the spirit of respect for the rules and regulations of social life.

Article 2. In both investigative and court proceedings the action shall be conducted in accordance with the provisions of the law.

The acts necessary for the conduct of the trial shall be performed *ex officio* unless the law provides otherwise.

Article 3. During the course of the trial, steps must be taken to establish the truth of the facts and circumstances of the case and the identity of the accused.

Article 4. The prosecuting authorities and the courts are obliged to play an active part in the conduct of the trial.

Article 5. During the penal proceedings no person may be detained or arrested except in the circumstances and conditions prescribed by the law.

Article 6. The accused and other defendants shall be guaranteed the right of defence throughout the trial in the conditions established by the law.

Article 7. The trial shall be conducted in the Romanian language.

In judiciary bodies of administrative-territorial units inhabited by persons of a nationality other than Romanian, the use of that population's mother-tongue shall be guaranteed.

Article 8. Parties who do not speak the language in which the trial is conducted shall be guaranteed the opportunity to consult the documents in the case and the right to address the court and ask questions through an interpreter.

Article 46. Judges and *assessors* who are married or closely related to each other may not form part of the same bench.

Article 47. Any judge or *assessor* who has taken part in the hearing of a case may not participate in the trial of the same case before a superior court or in the trial of the case after an appeal has been lodged.

Similarly, any judge or *assessor* who has previously expressed an opinion on the manner in which the case should be decided may not participate in the trial of the case.

Article 48. A judge or *assessor* shall also be disqualified if in the case in question:

(a) He has instituted proceedings, issued the warrant for arrest, arranged the accusation or, as procurator, has suggested conclusions relating to substance in court;

(b) Has represented or defended one of the parties;

(c) Has been an expert or a witness;

(d) There are circumstances as a result of which he, his wife or one of his close relations is involved.

Article 50. The disqualified person shall be obliged to declare, depending on circumstances, to the President of the court, the Procurator supervising the investigation or the next most senior Procurator, that he is abstaining from participating in the trial, indicating the disqualification which is the reason for the abstention.

The statement of abstention shall be made as soon as the person obliged to make it has become aware of the existence of the disqualification.

Article 51. If the disqualified person has not made a statement of abstention, an objection may be entered against him both during penal proceedings and during the trial by either of the parties, as soon as the party has discovered the existence of the disqualification.

The objection shall be made orally and in writing and shall indicate the disqualification constituting the reason for the objection.

Article 55. The Supreme Court shall transfer the trial of a case from the competent court to another court of equal standing when, recognizing the validity of the reasons for the transfer, it considers that the normal conduct of the case will be guaranteed thereby.

The transfer may be requested by the party concerned, by the Procurator or by the Minister of Justice.

...

Article 62. With a view to establishing the truth, the prosecuting authorities and the court are obliged to clarify all aspects of the case, on the basis of evidence.

...

Article 69. The statements made by the accused during the trial may serve to establish the truth only to the extent that they are corroborated by facts and circumstances resulting from all the relevant evidence.

...

Article 136. In the case of offences punishable by imprisonment, in order to ensure the good conduct of the trial and to prevent the accused from evading prosecution, trial or enforcement of the punishment, one of the following preventive measures may be taken:

- (a) Detention;
- (b) Obligation not to leave the locality;
- (c) Remand in custody.

Measure (a) may be taken by the prosecuting authorities but measures (b) and (c) may be taken only by the Procurator or the court.

The choice of the measure to be taken shall depend on the purpose of the measure, the degree of social danger implied by the offence, the health, age, antecedents and other information relating to the person concerned.

...

Article 140. The preventive measures shall lapse automatically:

- (a) Upon expiry of the limits laid down by the law or established by the courts;
- (b) If the penal proceedings or trial are discontinued or in case of acquittal.

Preventive arrest shall also lapse automatically when, before sentence is pronounced in the lower court, the time spent under arrest is equal to half the maximum penalty prescribed by the law, and in other cases for which special provision is made by the law.

In the cases mentioned in sub-paragraph (b) and the second paragraph above, the procurator during the penal proceedings, *ex officio* or upon receipt of information from the prosecuting authority or the court, is obliged to order the immediate release of the person detained or arrested by sending to the administrator of the place of detention a copy of the order or an extract from it containing the following information: data necessary to identify the accused; number of the warrant for arrest, number and date of the order or decision ordering release together with the legal grounds for the release.

Article 141. The Procurator or the accused may appeal against the conclusions of the lower court ordering the institution, revocation, alteration or discontinuance of a preventive measure. The time limit for appeal shall be three days after the decision for persons present and three days from the communication of the decision for those absent.

An appeal against the conclusions resulting in the institution of a preventive measure does not suspend enforcement.

...

Article 161. When an offender responsible for a minor, a person placed under restraint, a person placed in wardship or a person who because of age, sickness or for any other reason is in need of assistance, has been detained or remanded in custody, the competent authority must be informed in order that the necessary protective measures may be taken. Responsibility for conveying the information shall rest with the judicial body which has ordered the detention or remand in custody.

...

Article 171. The accused shall be entitled to be assisted by a defence counsel throughout the trial.

Legal assistance shall be obligatory when the accused is a minor or a member of the armed forces on active service. Similarly, legal assistance shall be obligatory when the accused is under arrest, even if in connexion with another case.

During the course of the trial legal assistance shall also be obligatory in cases where, under the law, the offence is punishable by imprisonment for more than five years or when the court realizes that the accused would be unable to conduct his own defence.

If, in cases where legal assistance is obligatory, the accused has not chosen a defence counsel, steps shall be taken to appoint such counsel automatically.

The assignment of the counsel appointed automatically shall cease when a selected defence counsel appears.

If, during the trial of the case, the defence counsel is absent and cannot be replaced, the case shall be adjourned.

...

Article 216. The Procurator, in exercising supervision of respect for the law in penal proceedings, shall ensure that any offence is discovered, that any offender is held penally responsible and that no person is subjected to penal action unless there is valid evidence that he has committed an offence punishable under penal law.

The Procurator shall also ensure that no person is detained or arrested except in the circumstances and conditions prescribed by the law.

In exercising his supervisory functions, the Procurator shall take the necessary steps or order the prosecuting authorities to do so.

The Procurator shall take measures and give orders in writing together with a statement of reasons.

Article 275. Any person may complain against the measures and actions of the penal procedure if his legitimate interests have been prejudiced.

The complaint shall be sent to the Procurator supervising the work of the prosecuting authority.

Institution of the complaint shall not suspend enforcement of the measure or of the action complained against.

...

Article 287. The court shall exercise its functions energetically so as to establish the truth and ensure the educative role of the trial.

...

Article 289. The case shall be tried by the court constituted in accordance with the law and the proceedings shall be public, oral, direct and open to comment by both parties.

...

Article 291. The trial before the court may take place only if the parties are legally summoned and the procedure has been completed.

...

Article 294. In cases where it is obligatory to appoint a defence counsel, the President of the court shall take steps to appoint the defence counsel at the same time as he establishes the time limit for the trial.

The accused, the other parties and the defence counsels shall have the right to consult the documents throughout the trial.

If the accused is in detention, the President of the court shall take steps to enable him to exercise the right provided for in the preceding paragraph and to contact his defence counsel.

...

Article 306. The court shall deliberate and announce its decision after the closure of the proceedings. For valid reasons, the deliberation and the announcement may be adjourned for a maximum of fifteen days.

Article 307. Only those members of the court before whom the debate was conducted shall take part in the deliberation.

The members of the court shall deliberate in secret.

Article 308. The decision must be the result of the agreement of the members of the court on the solutions given to the questions submitted for their deliberation.

When unanimity cannot be achieved, the decision shall be taken by majority vote.

If the deliberation results in more than two opinions, the judge advocating the severest solution must support the solution nearest to his opinion.

The dissenting opinion must be accompanied by a statement of reasons.

If the court consists of two judges and unanimity cannot be reached, the trial of the case shall be referred to another court.

...

Article 345. The court shall decide on the accusation brought against the accused by finding him guilty, acquitting him or dismissing the case.

A sentence of guilty shall be pronounced if the court finds that the act occurred, that it constitutes an offence and that it was committed by the accused.

Acquittal or discontinuance of the trial shall be pronounced under article 11 (2).

If the court decides that penal responsibility does not rest with the accused, it shall, at the same time as ordering discontinuance of the trial, apply the provisions of articles 94, 95 or 96 of the penal code.

...

Article 361. Appeals may be lodged against the sentences.

Except in the cases mentioned in articles 141 (1), 162 (6), 188 (2), 303 (3) and whenever the law provides otherwise, appeals may be lodged against the findings of the court of first instance only simultaneously with appeals against the substance of the case.

Appeals lodged against the sentence shall be considered to apply also to the findings even if the latter were reached after sentence was passed.

...

Article 386. Definitive penal decisions may be quashed in the following cases:

(a) When service of summons on the defendant for the date prescribed for trial of the case by the appeals court was not affected according to the law;

(b) When the defendant proves that he was unable to appear on the date prescribed for trial of the case or to inform the court that he was unable to appear;

(c) When the appeals court has not taken a decision on one of the reasons for the discontinuance of the trial prescribed in article 10, sub-paragraphs (f) to (i), concerning which there is evidence in the file;

(d) When two definitive decisions have been pronounced against a single person for the same act.

...

Article 393. Both the penal and civil aspects of judicial decisions may be subject to review.

If a decision relates to several offences or persons, the review may be requested for any of the acts or any of the guilty persons.

Article 394. The review may be requested if:

(a) It is discovered that in deciding the case the court had overlooked certain facts or circumstances;

(b) During the case to be reviewed, a witness, an expert or an interpreter gave false evidence;

(c) A document on which the decision to be reviewed was based has been declared false;

(d) A member of the court, the Procurator or the person who carried out the penal investigation has committed an offence connected with the case to be reviewed;

(e) Two or more definitive legal decisions cannot be reconciled.

The situation covered in sub-paragraph (a) shall provide a ground for review if, on the basis of new facts or circumstances, the verdict

of acquittal, discontinuance of trial or guilty can be proved invalid.

The situations covered in sub-paragraphs (b), (c) and (d) shall provide grounds for review if they have resulted in the adoption of an illegal or unfounded decision.

In the situation covered in sub-paragraph (e), all decisions which cannot be reconciled shall be submitted for review.

...

Article 409. An extraordinary appeal may be lodged by the Procurator General or by the Minister of Justice against definitive penal decisions when it is considered that such decisions seriously undermine the law or are manifestly groundless.

...

Article 461. Enforcement of the penal decision may be appealed against in the following cases:

(a) When a non-definitive decision has been enforced;

(b) When enforcement is directed against a person other than the one to which the sentence relates;

(c) When there is a misunderstanding concerning the decision which is being enforced or when enforcement is prevented;

(d) When a state of amnesty, a statutory time-limit, the granting of a pardon or any other reason is invoked for the extinction or reduction of the penalty or any other unusual incident has occurred during the enforcement.

In the situations covered in sub-paragraphs (a), (b) and (d), the appeal shall be lodged, depending on the case, before the courts prescribed in paragraphs 1 or 6 of article 460 and, in the situation covered in sub-paragraph (c), before the court which pronounced the decision being enforced.

Appeals against acts of enforcement concerning the seizure of property shall be decided by the civil courts in accordance with civil law.

...

Article 504. Any person who has been definitively sentenced is entitled to damages by the State for injuries suffered if, following retrial of the case, it is established by definitive trial that he had not committed the act imparted to him or that the act was not committed.

Persons who have been arrested and subsequently, for the reasons mentioned in the preceding paragraph, released or acquitted, shall also be entitled to damages.

Persons who, during the penal proceedings or trial before the court, have, deliberately or fraudulently, prevented, or tried to prevent the search for truth, shall not be entitled to damages.

If the persons referred to in paragraphs 1 and 2 were employed before being arrested, account shall be taken, in calculating length and continuity of service, of the time spent under arrest.

The new penal code has necessitated a new set of penal regulations based on the same principle. The aim is to ensure that offenders cannot evade the punishment prescribed by law and that innocent persons cannot be arrested or convicted.

In this way, the guarantees ensuring respect for the citizen's basic constitutional rights have been increased. The principles of democracy and socialist humanism—legality, formality, the search for truth, the active role of the judicial organs, the guarantee of personal freedoms, inviolability of the home, the right of defence and use of mother-tongue—have been upheld in the conduct of penal proceedings.

The successive phases of the penal proceedings—preliminary investigation, trial and enforcement of penal decisions—have been regulated. The competence of the prosecuting organs has been established, the Procurator, who is the only person capable of instituting penal action, being able to effect any act of penal procedure.

With a view to the most effective verification possible of judicial decisions, the procedure for lodging an extraordinary appeal—a means of appeal used only by the Procurator General or the Minister of Justice—has also been regulated.

3. Act No. 32 concerning the definition of and penalties for petty offences, published in the *Official Bulletin of the Socialist Republic of Romania*, No. 148, of 14 November 1968, states:

Article 1. A petty offence is an act committed with culpability, less dangerous to society than an offence defined and punished as such by the laws, decrees and regulations of the bodies mentioned in this Act.

...

Article 5. Petty offences shall be punished by warnings or by fines.

The penalties shall be applied to individuals who have committed petty offences.

Notwithstanding the provisions of the preceding paragraph, penalties may also be applied to legal entities if so provided by law or decree. Legal entities subjected to fines shall charge them to the guilty individuals.

In other cases of petty offences against the prescribed obligations of socialist organizations, the penalties shall be applied to the employee or member of the co-operative or other social organization responsible for fulfilling those obligations under the provisions of a regulation, a contract or an internal State ruling, or on the basis of a written assignment from the chief of the socialist organization empowered to delegate such a task. The penalty shall be applied to the chief of the socialist organization in default of the necessary written assignment.

...

Article 10. Acts defined by law or by other regulations as petty offences shall be punished even if committed without intent, unless otherwise provided by the regulations.

Acts committed in self-defence, in unforeseeable or unavoidable situations, and under

duress in material error or by absolute necessity, shall not constitute petty offences.

Similarly, acts committed by a person who, by reason of his mental state or infirmity, cannot be held responsible for the act imputed to him, shall not constitute petty offences.

Article 11. Acts committed by minors under fourteen years of age shall not constitute petty offences.

In the event of petty offences being committed by minors over fourteen years of age, the minimum and maximum fine shall be half the minimum and the maximum fine laid down in the regulation governing the act committed.

Article 12. If, under a new regulation, the act is no longer considered as a petty offence, it shall not be punished, even if it had been committed before the entry into force of the new regulation; the penalty determined but not executed at that date shall become void.

If the penalty laid down in the new regulation is lighter, it shall be applied and fines determined in accordance with the old regulation shall not exceed the maximum fine laid down in the new regulation. If the new regulation prescribes a heavier penalty, the petty offence committed prior to its entry into force shall be punished in accordance with the provisions of the regulation in force on the date when it was committed.

Article 13. The time-limit for the application of penalties for petty offences shall be three months after the date of commission.

When the act committed has been treated by the court as an offence and it has been established that it constituted only a petty offence, the time-limit for the application of the penalty shall not operate during the time the case is before the court or the tribunal if the proceedings take place within the time-limit established in paragraph 1. However the time-limit shall apply if the penalty has not been applied within the space of one year from the date of the commission of the act.

The provisions of the preceding paragraph shall apply also to cases which have been before the judgment commission.

In cases of petty offences against the legal and financial regulations concerning taxes and insurance benefits, the time-limit for the application of the penalty shall be one year from the date of the commission of the act.

Article 14. The time-limit shall apply to the execution of the penalty if the notification of the petty offence and, in certain cases, the summons for payment of the fine have not been delivered to the convicted person within a month from the date of the determination of the penalty. The time-limit for the execution of the penalty shall also be one year from the date of determination even if the person in question has appealed the penalty. The time-limit for the execution of the penalty shall not apply as long as execution has been deferred or staggered at the request of the detained.

...

Article 31. Complaints may be lodged against the notifications of the petty offence within fifteen days of its receipt.

The injured party may lodge a complaint only with respect to damages established in accordance with the appropriate scale, and the owner of the confiscated articles, other than the author of the petty offence, may lodge a complaint only with respect to the confiscation.

A complaint shall suspend execution. Complaints by persons envisaged in the second paragraph shall suspend execution only with respect to damages or confiscation.

In Romanian law, petty offences do not constitute criminal but administrative offences. The new law was adopted in order to enhance the educational effectiveness of the penal system for petty offences. The law limits the number of State organs empowered to enact regulations which define petty offences and which lay down the penalties applicable to them, the investigatory and penal procedure and the manner in which appeals may be lodged.

B. Extracts from Supreme Court decisions taken during the year 1968 concerning human rights

Decision No. 7 of 5 September 1968, published in the *Romanian Legal Review*, No. 10/1968, page 124, concerns the legal procedure whereby wage-earners may claim damages for occupational accidents.

The procedure whereby wage-earners seek payment of damages by their employer after an occupational accident is the subject of labour litigation. Defining the litigation as such, the Plenum of the Supreme Court made it possible for injured persons, when necessary, to appeal to labour tribunals, thus introducing a highly simplified and inexpensive procedure to uphold their right to compensation.

C. International conventions

During the year 1968, the following international conventions relating to human rights entered into force:

(1) Convention between the Government of the Socialist Republic of Romania and the Government of the People's Republic of Hungary concerning the abolition of entry and exit visas for official and private travel, and transit visas, adopted by Decision of the Council of Ministers No. 75 of 22 January 1968.

(2) Agreement concerning the abolition of visas between the Government of the Socialist Republic of Romania and the Government of the Republic of Turkey, which entered into force on 15 February 1968.

(3) Agreement between the Government of the Socialist Republic of Romania and the Government of the Czechoslovakia Socialist Republic concerning international road transport, adopted by Decision of the Council of Ministers No. 639 of 27 March 1968.

(4) Convention between the Government of the Socialist Republic of Romania and the People's Republic of Mongolia, ratified by Decree No. 299 of 3 April 1968.

(5) Convention between the Government of the Socialist Republic of Romania and the Government of the Czechoslovak Socialist Republic concerning international road transport, adopted for official and private travel, and transit visas, adopted by Decision of the Council of Ministers No. 816 of 16 April 1968.

(6) Agreement between the Socialist Republic of Romania and the Kingdom of Denmark concerning the abolition of entry and exit visas for travellers, concluded on 28 April 1968 and published in the *Official Bulletin*, No. 133, of 24 October 1968.

(7) Scientific and technical co-operation Agreement between the Government of the Socialist Republic of Romania and the Government of the United Arab Republic, adopted by Decision of the Council of Ministers No. 909 of 11 May 1968.

(8) Agreement between the Government of the Socialist Republic of Romania and the Government of the Polish People's Republic concerning international road transport, adopted by Decision of the Council of Ministers No. 1047 of 15 May 1968.

(9) Economic, industrial and technical co-operation Agreement between the Government of the Socialist Republic of Romania and the Government of Sweden, adopted by Decision of the Council of Ministers No. 1162 of 27 May 1968.

(10) Economic and technical co-operation Agreement between the Government of the Socialist Republic of Romania and the Government of India, adopted by Decision of the Council of Ministers No. 1177 of 31 May 1968.

(11) Agreement between the Socialist Republic of Romania and the Republic of Finland concerning the abolition of visas which entered into force on 1 June 1968 (*Official Bulletin*, No. 117, of 6 September 1968).

(12) Agreement between the Socialist Republic of Romania and the Government of the Kingdom of Sweden concerning the abolition of visas which entered into force on 1 July 1968 (*Official Bulletin*, No. 117, of 6 September 1968).

(13) Agreement between the Government of the Socialist Republic of Romania and the Government of the Republic of Finland concerning international road transport, adopted by Decision of the Council of Ministers No. 1466 of 4 July 1968.

(14) Consular Convention between the Socialist Republic of Romania and the Government of the United Republic of Tanzania, adopted by Decision of the Council of Ministers No. 1868 of 2 September 1968.

(15) Scientific and technical co-operation Agreement between the Government of the Socialist Republic of Romania and the Government of the United Republic of Tanzania, adopted by Decision of the Council of Ministers No. 1868 of 2 September 1968.

(16) Cultural and scientific co-operation Agreement between the Socialist Republic of Romania and the Islamic Republic of Pakistan, ratified by Decree No. 982 of 23 September 1968.

(17) Scientific and technical co-operation Agreement between the Government of the Socialist Republic of Romania and the Government of the Democratic and Popular Republic of Algeria, adopted by Decision of the Council of Ministers No. 2192 of 4 October 1968.

(18) Scientific and technical co-operation Agreement between the Government of the Socialist Republic of Romania and the Government of the Kingdom of Morocco, adopted by Decree of the Council of Ministers No. 2317 of 17 October 1968.

(19) Economic and technical co-operation Agreement between the Government of the Socialist Republic of Romania and the Government of Colombia, adopted by Decree of the Council of Ministers No. 2790 of 20 December 1968.

(20) Basic Agreement relating to economic and technical co-operation between the Government of the Socialist Republic of Romania and the Government of the Republic of Chile, adopted by Decision of the Council of Ministers No. 2793 of 20 December 1968.

(21) Consular Convention between the Socialist Republic of Romania and the French Republic, ratified by Decree No. 1178 of 28 December 1968.

(22) Cultural co-operation Agreement between the Government of the Socialist Republic of Romania and the Government of the Socialist Republic of Czechoslovakia, adopted by Decree of the Council of Ministers No. 2914 of 28 December 1968 (*Official Bulletin*, No. 5, of 10 January 1969).

RWANDA

ACT OF 28 FEBRUARY 1968 CONCERNING THE MINIMUM PERSONAL TAX¹

Chapter I

BASIS AND SCOPE OF APPLICATION OF THE TAX

Article 1. A minimum personal tax shall be established, payable by those of the individuals referred to in articles 3, 4 and 5 who receive any of the revenues defined in article 2.

Article 2. The revenues to which the present Act applies shall be:

- (1) Income from the renting of buildings and land situated in Rwanda;
- (2) Earned income;
- (3) Such income other than that referred to in sub-paragraphs 1 and 2 as shall be specified by the Minister of Finance.

They include, in particular, the cash equivalent of personal consumption.

Article 3. The minimum personal tax shall be payable by adult individuals effectively residing in Rwanda.

The following shall be considered as effectively residing in Rwanda:

- (1) Persons irrespective of their nationality, who have established real, actual and continuous residence in the Republic;
- (2) Persons whose home, family, centre of activity and place of management for business and occupational purposes are in the Republic;
- (3) Persons who have established in the country the place of management of their fortune.

By the words "place of management" shall be understood, not the place where property is situated, but the place from which the owner administers it or supervises its administration or the place from which he departs only to return when the reason for his departure has ceased to apply, that is, the place in which he is so established that he is considered to be absent when he is not there and that his absence is terminated when he returns to it.

Article 4. All persons eighteen years of age or over on the first day of the fiscal year concerned shall be deemed to be adults.

Article 5. The tax shall be payable by the wife of a monogamous taxpayer, or the first wife of a polygamous taxpayer, whose activities are not confined exclusively to the home and who receives income of the types referred to in article 2 (1) and (2).

Article 11. The following shall be exempt from the minimum personal tax:

(1) Taxpayers who, at the time when the minimum personal tax is levied, are on active service with the National Guard, the National Police or the communal police forces;

(2) Students following a regular course of studies;

(3) Members of religious orders of any denomination provided that they do not receive a personal allowance or salary from the Treasury;

(4) All disabled persons, pensioners, the aged and persons who have been ill for a period of six successive months, who, in addition to furnishing a medical certificate, are not carrying on an occupation yielding earned income and not receiving—even if they are exempted for reasons of age—revenue from rents;

(5) Adult unmarried women who receive only the income covered by article 2 (3);

(6) Military personnel who are members of the National Guard Reserve or who have been discharged from it, and former officers of the National Police who have resigned or been discharged.

The last-named exemption is valid for two years, reckoned from the first of January following their demobilization or discharge.

Article 11 (6) shall not apply to military personnel or police officers who have been dismissed.

The exemptions provided for in the present article shall be granted, on the basis of individual applications, by the Prefect of the Prefecture concerned and in the presence of the communal council at the chief town of the commune.

¹ *Journal officiel de la République rwandaise*, No. 6, of 15 March 1968.

ACT OF 5 JULY 1968 APPROVING AND RATIFYING THE CHARTER
OF THE AFRICAN AND MALAGASY COMMON ORGANIZATION

Signed at Tananarive on 27 June 1966²

SOLE ARTICLE

The Charter of the African and Malagasy Common Organization, signed at Tananarive on 27 June 1966, is hereby confirmed, approved and ratified, and accordingly comes into full effect, in accordance with the provisions of article 22 of the Charter.

² *Ibid.*, No. 14, of 15 July 1968. For extracts from the Charter of the African and Malagasy Common Organization, see *Yearbook on Human Rights for 1966*, p. 464.

SAN MARINO

NOTE ¹

(a) With regard to article 13 of the Universal Declaration of Human Rights:

Two bilateral agreements were concluded or entered into force in 1968 to facilitate tourist traffic by abolishing entry visas (Agreement between Malawi and San Marino and Agreement between the Socialist Federal Republic of Yugoslavia and San Marino); some formalities have been eased in respect of San Marino citizens by the United States of America and by Canada (an official announcement of these changes appears in *Bollettino Ufficiale* No. 3, page 37).

(b) With regard to articles 23-25 of the Universal Declaration of Human Rights:

1. The system of social insurance in respect of invalidity, old age and industrial accidents and occupational diseases, which entered into force in San Marino on 1 January 1965 (Act No. 37 of 30 June 1964), was extended to self-employed professional persons and businessmen by Act No. 27 of 5 July 1968.

With these additional provisions, the vast majority of San Marino citizens are now insured against the above-mentioned risks. Of all San Marino citizens, only women who are employed exclusively within the family (housewives) are not covered under the social insurance system.

Act No. 27 of 5 July 1968 is published on page 54 of the *Bollettino Ufficiale* No. 5.

2. The Act instituting daily compensation in the event of a suspension of work or a reduction in the hours of work (Act No. 17 of 17 March) has been amended for the benefit of workers in that:

(a) The minimum contribution required for entitlement to compensation has been reduced;

(b) The provision that no compensation whatsoever shall be paid in the event of unemploy-

ment for a period of forty-eight hours has been eliminated;

(c) The amount of compensation has been increased from 60 per cent to 65 per cent of the wages;

(d) The periods of unemployment are computed for the purposes of the payment of a bonus on the birth of a child.

These amendments were approved in Act No. 41 of 6 December 1968 (*Bollettino Ufficiale* No. 7, page 83).

3. Under Act No. 42 of 6 December 1968 (*Bollettino Ufficiale* No. 7, page 86), the Family Allowance Fund was established to eliminate any possibility of discrimination in hiring workers with larger families which might result from the direct payment of family allowances by the employer to the employee, as provided for under Act No. 8 of 20 February 1946.

The Act stipulates that family allowances in the standard amount of 7,500 lire for each member dependent on officials of the public administration, persons employed by private individuals, persons receiving a pension from the State or from the Institute of Social Security, employed workers and self-employed agricultural workers (tenant farmers, sharecroppers and farmers cultivating their own land) are paid directly by the Institute of Social Security through a Fund established with contributions from employers and the State.

4. Under Decrees No. 3 of 6 February 1968 (cf. *Bollettino Ufficiale* No. 1, page 9) and No. 43 of 10 December 1968 (*Bollettino Ufficiale* No. 7, page 89), employed persons who are taking vocational training or further training courses are covered by the provisions regarding insurance against industrial accidents contained in Act No. 37 of 30 June 1964 both during the course and during the examination at the end of the course.

¹ Note furnished by the Government of San Marino.

SENEGAL

ACT No. 68-27 OF 24 JULY 1968 RELATING TO THE STATUS OF REFUGEES ¹

Article 1. This Act shall apply to any alien having taken refuge in Senegal who comes under the authority of the United Nations High Commissioner for Refugees or who satisfies the definitions given in article 1 of the Geneva Convention relating to the Status of Refugees of 28 July 1951,² as extended by the Protocol adopted by the United Nations General Assembly on 16 December 1966,³ and who has been recognized as such in the manner specified in article 3 hereof.

Article 2. Refugee status under this Act shall be forfeited in the circumstances described in article 1, section C, of the Convention of 28 July 1951, and if the refugee leaves Senegal without a proper travel document or fails to return to Senegal prior to the expiry of the period of validity of the travel document which he holds.

Article 3. Decisions according a person refugee status or establishing the loss of such status shall be taken by a Commission presided over by a judge and including representatives of the principal departments concerned. A representative of the United Nations High Commissioner for Refugees shall attend the Commission's meetings as an observer and may be heard on each case considered.

Appeals against decisions of the Commission may be made to the Supreme Court on the grounds that the Commission has exceeded its authority.

Article 4. Persons enjoying refugee status may not be expelled from the territory of Senegal save for reasons of national security or public policy such as that they are interfering in national policy or indulging in activities contrary to public

policy, or have been sentenced to imprisonment for acts deemed to be crimes or offences of especial seriousness.

Except when compelling reasons of national security obtained, expulsion may be decreed only after consultation with the Commission referred to in the foregoing article, before which the person concerned shall be allowed to defend himself. Subject to the same exception, expulsion decrees shall allow the persons concerned a reasonable period within which to seek legal admission to another country.

Article 5. No measure of expulsion against a person enjoying refugee status may be carried out during the time allowed for appeal against excess of authority or if leave to appeal has been granted before the end of the proceedings. These provisions shall also apply to persons who have been refused such status or have been the subject of a decision establishing the loss of such status during the time allowed for appeal against the decision on the grounds of excess of authority or, if leave to appeal has been granted before the end of the proceedings.

Article 6. The provisions of articles 3-34 of the Convention of 28 July 1951 shall apply to all persons enjoying refugee status, except where the following articles hereof, or legislation implementing them, contain more favourable provisions.

Article 7. For the purpose of pursuing an occupation, persons enjoying refugee status shall be on an equal footing with foreign nationals of the country which has concluded with Senegal the most favourable convention on establishment in respect of the occupation concerned.

Where laws, regulations or conventions require reciprocity, such requirement shall be considered to have been fulfilled by persons enjoying refugee status, however long their period of residence may have been.

¹ Text communicated by the Government of Senegal.

² See *Yearbook on Human Rights for 1951*, pp. 581-588.

³ See *Yearbook on Human Rights for 1966*, p. 452.

Article 8. Persons enjoying refugee status shall receive the same treatment as nationals in respect of access to education, study grants, the right to work and social benefits.

Article 9. Measures to implement this Act shall be embodied in decrees, particularly in respect of:

The administrative authorities competent in refugee matters;

The composition and operation of the Commission provided for in article 3;

Conditions for the issue to refugees of documents substantiating their status and their identity, enabling them to travel, or having the force of civil registry certificates.

SIERRA LEONE

NOTE ¹

The Newspaper Decree, 1967 (National Reformation Council, Decree No. 4 of 1967), referred to in the *Yearbook on Human Rights for 1967* (see p. 291), was repealed by the Newspaper (Repeal) Decree, 1968 (National Interim Council Decree No. 1 of 1968), which came into effect on 20 April 1968, and which restored the original Newspaper Act (Cap. III) suspended by Decree No. 4 of 1967.

¹ Note furnished by the Government of Sierra Leone.

SINGAPORE

HUMAN RIGHTS IN SINGAPORE IN 1968 ¹

I. LEGISLATION

1. In 1968 the following three Acts of Parliament were passed in Singapore affecting questions of human rights:

- (i) Extradition Act, 1968;
- (ii) Employment Act, 1968;
- (iii) Singapore Council of Social Services Act, 1968.

2. The Extradition Act, 1968, provides for the extradition of fugitives to and from Commonwealth countries and foreign States. The provisions of this Act is in accord with article 14 of the Universal Declaration of Human Rights because sections 7 (and similarly section 20) of the Act provides that "a person shall not be liable to be surrendered to a foreign State if the offence to which the requisition for his surrender relates is or is by reason of the circumstances in which it is alleged to have been committed or was committed an offence of a political character". Further protection is provided by section 7 (2) of the Act in that he may only be detained or tried in that foreign State for the offence for which the requisition for his surrender relates. By section 8 the Minister is expressly debarred from authorizing the apprehension, or ordering the surrender, of a fugitive if he has substantial grounds for believing that the requisition for the surrender of the fugitive was made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions or that if the fugitive is surrendered to that State, he may be prejudiced at his trial, or punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions.

3. The Employment Act, 1968, goes a long way towards the fulfilment of the objectives set out in articles 23 to 25 of the Universal Declaration of Human Rights. It is essentially a consolidating statute, which repealed and re-enacted with amendments the Labour Ordinance,

1955, the Clerks Employment Ordinance, 1957, and the Shop Assistants Employment Ordinance, 1957. Broadly, the Act applies to all persons who are employed under a contract of service other than those employed in a managerial, executive or confidential position. It contains provisions governing contract of services, how payment of salary to be made, hours of work, rest days and holidays and other conditions of service. Every employee is entitled to one whole day rest in each week and he is not required to work for more than eight hours in one day or more than forty-four hours in one week. The sick leave entitlement of employees is 14 days per year where no hospitalization is involved or 60 days per year where hospitalization is necessary. Special provision are also enacted to protect children and young persons in employment. No child may be employed unless he has attained twelve years of age, and no child shall be employed in any occupation or in any place or under working conditions, injurious or likely to be injurious to the health of the child. Regarding the employment of women, they are entitled to maternity benefits under section 95.

4. The Singapore Council of Social Service Act, 1968, establishes and incorporates in Singapore a central body to co-ordinate voluntary welfare activities carried out by voluntary organizations. This central body, called the "Singapore Council of Social Services", has among its objects the maintenance and improvement in standards of voluntary social works, the raising and administration of such funds and goods in kind as are entrusted to it and the dissemination of information to members of the public in social welfare matters in order to encourage their participation therein. It may also make recommendations to the Government on matters pertaining to legislation in the field of social welfare.

II. JUDICIAL DECISIONS

In regard to the administration of justice in Singapore, the law, having adopted the English

¹ Note furnished by the Government of Singapore.

Common Law and consequently the rules of natural justice as well, the courts have never failed to ensure that those rules of natural justice are closely complied with by all subordinate judicial or quasi-judicial bodies. Three judgements of the Courts in Singapore in three separate cases (including one judgement of the Privy Council, the highest Court of Appeal in this land) have in their respective context upheld that

the rules of natural justice must be complied with in all judicial or quasi-judicial proceedings. These three cases are:

Vasudevan Pillai v. City Council of Singapore (1968) 2 M.L.J. 16.

Visvasam v. Singapore Toddy Tappers' Union (1968) 2 M.L.J. 205.

Ling How Doong v. Attorney-General, Singapore (1968) 2 M.L.J. 253.

SOUTH AFRICA

THE CRIMINAL PROCEDURE AMENDMENT ACT, 1968

Act No. 9 of 1968, assented to on 29 February 1968¹

...

2. The following section is hereby inserted in the principal Act⁽²⁾ after section 4:

"4A. (1) Whenever any person is alleged to have committed an offence within the area in respect of which a particular attorney-general has been appointed, the Minister may, if he deems it in the interests of the administration of justice, by notice served on such person, direct that the trial of that person in respect of such offence shall take place at a place specified in the notice within the area in respect of which any other attorney-general has been appointed, and thereupon the provisions of this Act and of the laws referred to in sections 3 and 4 shall apply as if such person had committed such offence at the place so specified.

"(2) The direction of the Minister shall be final and not subject to appeal to any court."

3. Section 87 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) No accused against whom a preparatory examination has been instituted shall before the issue of the warrant for his committal for trial or sentence be entitled to be released on bail: Provided that the magistrate may, subject to the provisions of section 108*bis*, in his discretion release the accused on bail before the preparatory examination is concluded."

4. The following section is hereby substituted for section 88 of the principal Act:

"88. Every person committed for trial or sentence in respect of any offence is, subject to the provisions of section 108*bis*, entitled as soon as the warrant of committal for his trial or sentence is issued, to be released on bail: Provided that where any person has been committed for trial or for sentence upon a charge of any offence, the magistrate to whom application for bail is made, may if he has reason to believe that notwithstanding any conditions of a recognizance, such person is not likely to appear as required or to comply with any condition imposed (without prejudice to such person's rights under section 97) refuse to admit him to bail."

5. The following section is hereby substituted for section 91 of the principal Act:

"91. (1) A magistrate to whom an application for bail is made under section 90 shall, within twenty-four hours thereafter, give his decision thereon and, if the application is granted, fix the amount of the bail.

"(2) The charge against the accused as recorded on the warrant of committal shall be accepted by the magistrate as the charge upon which the accused has in fact been committed."

6. The following section is hereby substituted for section 98 of the principal Act:

"98. Subject to the provisions of section 108*bis* and any other law, a superior court having jurisdiction in respect of any offence may at any stage of any proceedings taken in any court in respect of that offence, release the accused on bail."

...

8. Section 108 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

¹ *Statutes of the Republic of South Africa, 1968.*

² By principal Act is meant the Criminal Procedure Act, 1965 (Act No. 56 of 1955). Extracts therefrom appear in the *Yearbook on Human Rights for 1955*, pp. 235-243, and amendments thereto are to be found in the *Yearbook for 1956*, p. 328; the *Yearbook for 1958*, p. 227; the *Yearbook for 1959*, p. 296; the *Yearbook for 1961*, p. 311; the *Yearbook for 1965*, pp. 274-278; and *Yearbook for 1966*, p. 337.

"(1) If any person under the age of eighteen years is charged with an offence, any court which or any magistrate or policeman who may under any provision of this Chapter release such person on bail, may, instead of releasing him on bail, or instead of detaining him, place him in a place of safety as defined in section 1 of the Children's Act, 1960 (Act No. 33 of 1960), pending his appearance or further appearance before a court or magistrate, or until he is otherwise dealt with according to law or, unless he is charged with treason, murder, contravention of any provision of the Suppression of Communism Act, 1950 (Act No. 44 of 1950), or that Act as applied by any other law, in respect of which a minimum or compulsory punishment applies, or contravention of section 21 of the General Law Amendment Act, 1962 (Act No. 76 of 1962), or section 2 or 3 of the Terrorism Act, 1967 (Act No. 83 of 1967)—

"(a) Release him without bail and warn him to appear before a court or magistrate at a time and on a date then fixed by the court, magistrate or policeman; or

"(b) Release him without bail to the care of the person in whose custody he is and warn that person to bring him or cause him to be brought before a court or magistrate at a time and on a date then fixed as aforesaid."

9. Section 108*bis* of the principal Act is hereby amended—

(a) By the substitution for the proviso to subsection (1) of the following subsections:

"1(A) If no evidence has been led against a person referred to in subsection (1) at a preparatory examination or trial within a period of ninety days after his arrest, he may at any time after the expiry of that period on notice in writing to the attorney-general apply to a judge or a court or magistrate in whose area of jurisdiction he is being detained, to be released on bail.

"1(B) The judge, court or magistrate to whom or to which the application is made, may in his or its discretion order the release of the applicant on bail on such terms and conditions as he or it may direct, or he or it may dismiss the application or otherwise deal with it as he or it deems fit;" and

(b) By the insertion in subsection (2) of the following paragraph, the existing subsection becoming paragraph (a):

"(b) Whenever any person arrested for an offence referred to in subsection (1) applies to be released on bail or otherwise and the public prosecutor informs the judge, court or magistrate to whom or to which the application is made that the matter has been referred to the attorney-general concerned with a view to the issuing of an order in terms of subsection (1), such person shall, pending the decision of the attorney-general, not be released on bail or otherwise: Provided that, if no such order is issued within the period of fourteen days immediately following upon the date on

which such judge, court or magistrate is so informed, such person may again apply to be released on bail or otherwise and may, subject to the provisions of any law, be so released."

...

11. Section 211 of the principal Act is hereby amended—

(a) By the substitution for subsection (1) of the following subsection:

"(1) If any person summoned to attend at any criminal proceedings or who during his attendance at any criminal proceedings was warned by the court to attend those criminal proceedings again, fails to attend the criminal proceedings concerned at the hour and on the day specified in the summons or warning, or if he attended but failed to remain in attendance, and the court in which the said proceedings are conducted, is satisfied from a statement under oath or from the return of the person who was required to serve the summons or from the record of the said proceedings that a summons to attend the said proceedings was directed to and duty served on such person, or that he is evading service of the said summons or that he was warned in terms of this section to attend the said proceedings or that he attended but failed to remain in attendance, the court may issue a warrant directing that he be arrested and brought, at a time and place stated in the warrant, or as soon thereafter as possible, before the court or any magistrate."; and

(b) By the substitution for subsection (3) of the following subsection:

"(3) The court may in a summary manner enquire into the said person's failure to obey the summons or to comply with the warning referred to in subsection (1) or to remain in attendance, and unless it is proved that the said person has a reasonable excuse for such failure, the court may sentence him to pay a fine not exceeding twenty-five pounds or to imprisonment for a period not exceeding three months."

...

15. Section 258 of the principal Act is hereby amended by the substitution for the proviso to subsection (1) (b) of the following proviso:

"Provided that if the offence to which he pleads guilty is such that the court is of opinion that it does not merit punishment of imprisonment without the opinion of a fine or of whipping or of a fine exceeding twenty-five pounds, it may, if the prosecutor does not tender evidence of the commission of the offence, convict the accused of such offence upon his plea of guilty, without other proof of the commission of the offence, and thereupon impose any competent sentence other than imprisonment or any other form of detention without the option of a fine or whipping or a fine exceeding twenty-five pounds, or it may deal with him otherwise in accordance with law."

16. The following section is hereby substituted for section 264 of the principal Act:

"264. The entries in ledgers, day-books, cash-books and other account books of any bank shall be admissible as *prima facie* evidence of the matters, transactions and accounts therein recorded, on proof being given by the affidavit in writing of a director, manager or officer of that bank, or by other evidence that such ledgers, day-books, cash-books or other account books are or have been the ordinary books of such bank, and that the said entries have been made in the usual and ordinary course of business, and that such books are in, or come immediately from, the custody or the control of such bank."

17. Section 309 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) If any person fails to appear at the hour and on the day appointed for his appearance to answer any charge, and the court is satisfied upon the return of the person required to serve the summons that he was duly summoned or if it appears from evidence given under oath that he is evading service of the summons, or if it appears from such evidence that he attended but failed to remain in attendance, the court in which the said criminal proceedings are conducted may issue a warrant, directing that he be arrested and brought, at a time and place stated in the warrant, or as soon thereafter as possible, before the court or any magistrate."

18. Section 309*bis* of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If a peace officer has reasonable grounds for believing that an inferior court will on convicting any person of any offence, impose a sentence of a fine not exceeding twenty-five pounds and hands to such person a written notice in the prescribed form calling upon him to appear to answer a charge of having committed such offence, such person shall, except for the purposes of section 310 (2), be deemed to have been duly summoned under section 309 to appear to answer the charge at the time and place stated in the notice."

19. Section 311 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) If the accused has been released on bail, the court shall cause a notice to be served on him stating that the case has been remitted to it to be dealt with and requiring him to appear at the hour and on the day appointed for the trial."

20. The following section is hereby inserted in the principal Act after section 335:

"335A. (1) Whenever a court is bound to impose upon a person convicted by it of an offence, a punishment prescribed by section 334*ter* (2), 334*quat* (2) or 335 (2) and is of opinion that there are circumstances which justify the imposition of a lighter sentence than such prescribed punishment, it shall enter those circumstances on the record of the proceedings and shall—

"(a) If it is bound to sentence such person to the punishment prescribed by section 334*ter* (2), impose upon him, in lieu thereof, a sentence of imprisonment for a period not exceeding two years;

"(b) If it is bound to sentence such person to the punishment prescribed by section 334*quat* (2), impose upon him, in lieu thereof, a sentence of imprisonment for a period not exceeding five years; or

"(c) If it is bound to sentence such person to the punishment prescribed by section 335 (2), impose upon him, in lieu thereof, a sentence of imprisonment for a period not exceeding nine years.

"(2) Notwithstanding anything to the contrary in any law contained, a magistrate's court shall be competent to impose the punishment prescribed by subsection (1) (a) and the court of a regional division shall be competent to impose the punishments prescribed by subsection (1) (b) and (c)."

...

24. The following section is hereby substituted for section 363 of the principal Act:

"363. (1) An accused convicted of any offence before a superior court whether sitting with or without a jury, may within a period of fourteen days of the passing of any sentence as a result of such conviction, or within such extended period as may on application (in this section referred to as an application for condonation) on good cause be allowed, apply—

"(a) If the conviction was by a special criminal court, to that court, or any judge who was a member of that court, or if no such is available, to any judge of the provincial or local division within whose jurisdiction the special criminal court sat; and

"(b) If the conviction was by any other court, to the judge who presided at the trial, or if he is not available, or if in the case of a conviction before a circuit court, the said court is not sitting, to any other judge of the provincial or local division of which the aforesaid judge was a member when he so presided,

for leave to appeal to the appeal court against his conviction or against any sentence or order following thereon (in this section referred to as an application for leave to appeal), and an accused convicted of any offence before any such court on a plea of guilty may, within the same period, apply for leave so to appeal against any sentence or any order following thereon."

...

25. The following section is hereby substituted for section 364 of the principal Act:

"364. (1) If an accused thinks that any of the proceedings in connection with or during his trial, whether by jury or not, before a superior court are irregular or not according to law, he may, either during his trial or within a period of fourteen days after his conviction, or within such extended period as may upon application (in this section referred

to as an application for condonation) on good cause be allowed, apply for a special entry to be made on the record (in this section referred to as an application for a special entry) stating in what respect the proceedings are alleged to be irregular or not according to law and such a special entry shall, upon such application for a special entry, be made unless the court to which or the judge to whom the application for a special entry is made is of opinion that the application is not made *bona fide*, or that it is frivolous or absurd, or that the granting of the application would be an abuse of the process of the Court."

26. Section 386 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsection:

"(1) If an accused is charged with an offence referred to in section 64 (5) no person shall at any time (subject to the provisions of subsection (4)) publish by radio or in any document any information relating to the said charge

or any information disclosed at any proceedings relating to such charge, unless the judge or officer presiding at such trial has, after having consulted the person against or in connection with whom the offence charged is alleged to have been committed (or if he is a minor, his guardian), given his consent, conveyed in a document signed by himself or by the registrar or clerk of the court, to such publication.

"(2) No person shall at any time publish in any manner described in subsection (1), the name, address, school, place of occupation or any other information likely to reveal the identity of any person under the age of eighteen years who is being or has been charged with any offence: Provided that, if the Minister or if the judge or judicial officer who presides or presided at the trial of such person is of the opinion that such publication would be just and equitable and in the interest of any particular person, he may, subject to the provisions of subsection (1), by order dispense with the prohibition contained in this subsection to such an extent as may be specified in the order."

THE MARRIAGE AMENDMENT ACT, 1968

Act No. 19 of 1968, assented to on 15 March 1968³

1. The following section is hereby substituted for section 16 of the Marriage Act, 1961 (hereinafter referred to as the principal Act):

"16. (1) Banns of marriage or a notice of intention to marry published in a country outside the Union shall for the purposes of this Act be regarded as having been published in the Union, but a marriage officer shall not solemnize any marriage in pursuance thereof unless there is produced to him the prescribed proof that such banns were or such notice of intention to marry was duly published according to the law of such country.

"(2) The provisions of section 21 shall *mutatis mutandis* apply with reference to such banns or notice."

2. Section 19 of the principal Act is hereby amended by the addition of the following subsection:

"(7) A special marriage licence issued in the territory of South-West Africa according to the law of such territory, shall for the purposes of this Act be regarded as a licence which has been issued in the Republic in terms of this Act."

3. The following section is hereby substituted for section 22 of the principal Act:

"22. If in the case of any marriage solemnized before or after the commencement of this Act, the provisions of this Act or, as the case may be, any prior law relating to the publication of banns or notice of intention to marry or to the issue of special marriage licences, or the applicable provisions of any law of a country outside the Union relating to the publication of banns or the publication of notice of intention to marry or the applicable provisions of any law of the territory of South-West Africa relating to the issue of special marriage licences, have not been strictly complied with owing to—

"(a) An error committed in good faith by either of the parties to such marriage in interpreting those provisions; or

"(b) Any error, omission or oversight of any person who made any such publication or issued a special licence,

but such marriage has in every other respect been solemnized in accordance with the provisions of this Act or, as the case may be, a former law, that marriage shall, provided there was no other lawful impediment thereto, be as valid and binding as it would have been if the

³ Statutes of the Republic of South Africa, 1968.

said provisions had been strictly complied with.”

4. The following section is hereby substituted for section 29 of the principal Act:

“29. (1) A marriage officer may solemnize a marriage at any time on any day of the week but shall not be obliged to solemnize a marriage at any other time than between the hours of eight in the morning and four in the afternoon.

“(2) A marriage officer shall solemnize any marriage in a church or other building used for religious service, or in a public office or private dwelling-house, with open doors and in the presence of the parties themselves and at least two competent witnesses, but the foregoing provisions of this subsection shall not be construed as prohibiting a marriage officer from solemnizing a marriage in any place other than a place mentioned therein if the marriage must be solemnized in such other place by reason of the serious or longstanding illness of, or serious bodily injury to, one of both of the parties.

“(3) Every marriage—

“(a) Which was solemnized in the Orange Free State or the Transvaal before the com-

mencement of this Act in any place other than a place appointed by a prior law as a place where for the purposes of such law a marriage shall be solemnized; or

“(b) Which by reason of the serious or longstanding illness of, or serious bodily injury to, one or both of the parties was solemnized before the commencement of the Marriage Amendment Act, 1968, in a place other than a place appointed by subsection (2) of this section as a place where for the purposes of this Act a marriage shall be solemnized,

shall, provided such marriage has not been dissolved or declared invalid by a competent court and provided further that neither of the parties to such marriage has after such marriage and during the life of the other, already lawfully married another, be as valid and binding as it would have been if it had been solemnized in a place appointed therefor by the applicable provisions of the prior law or, as the case may be, of this Act.

“(4) No person shall under the provisions of this Act be capable of contracting a valid marriage through any other person acting as his representative.”

THE PROHIBITION OF MIXED MARRIAGES AMENDMENT ACT, 1968

Act No. 21 of 1968, assented to on 15 March 1968⁴

1. Section 1 of the Prohibition of Mixed Marriages Act, 1949, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If any male person who is a South African citizen or is domiciled in the Republic enters into a marriage outside the Republic which cannot be solemnized in the Republic in terms of subsection (1), such marriage shall be void and of no effect in the Republic.”

...

⁴ *Ibid.*

THE SOUTH AFRICAN INDIAN COUNCIL ACT, 1968

Act No. 31 of 1968, assented to on 26 March 1968⁵

1. With effect from a date determined by the State President by proclamation in the *Gazette*, there shall be a council to be known as the South

African Indian Council, which shall consist of so many members, but not exceeding twenty-five, as the Minister may determine.

2. (1) The members of the Council shall be appointed by the Minister and shall represent the

⁵ *Ibid.*

province of the Cape of Good Hope, the province of Natal and the province of the Transvaal in such proportion as the Minister may deem equitable.

(2) When the Minister appoints a member of the Council the Minister shall indicate which of the said provinces such member is to represent.

3. No person shall be appointed as a member of the Council—

- (a) If he is not an Indian;
- (b) If he is not permanently resident in the Republic;
- (c) If he holds a post in the public service.

13. (1) The Council shall have power—

(a) To advise the Government at its request on all matters affecting the economic, social, cultural, educational and political interests of the Indian population of the Republic;

(b) To receive and consider recommendations and resolutions of the Education Advisory Council established under section 31 (1) of the Indians Education Act, 1965 (Act No. 61 of 1965);

(c) To make recommendations to the Govern-

ment in regard to all matters affecting the economic, social, cultural, educational and political interests of the Indian population of the Republic, or to make recommendations to the Government in regard to any planning calculated, in the opinion of the Council, to promote the interests of the said population;

(d) Generally to serve as a link and means of contact and consultation between the Government and the said population.

(2) For the purposes of subsection (1) the Government shall be represented by the Secretary for Indian Affairs.

(3) The Minister and the Secretary for Indian Affairs and any officer of the Department of Indian Affairs designated by the said Secretary for the purpose, may attend any meeting of the Council or the executive committee and take part in the proceedings thereat, but shall not have the right to vote at any such meeting.

(4) The Minister may subject to the laws governing the public service make available officers in the public service to assist the Council in the performance of its functions.

...

THE PROHIBITION OF POLITICAL INTERFERENCE ACT, 1968

Act No. 51 of 1968, assented to on 28 May 1968⁶

1. In this Act, unless the context otherwise indicates—

- (i) "population group" means the persons who from time to time belong to any one of the following population groups:
 - (a) the Bantu population group;
 - (b) the white population group;
 - (c) the Coloured population group;
 - (d) the Indian, Chinese and Other Asiatics population group;
- (ii) "the Bantu population group" means the persons who are Bantu as defined in the Population Registration Act, 1950 (Act No. 30 of 1950), including all persons who have in terms of the said Act been classified as Bantu;
- (iii) "the Coloured population group" means the persons who are coloured persons as defined in the Population Registration Act, 1950, and are members of the Cape Coloured, Malay or Griqua group or the Other Coloured group as prescribed and defined by proclamation under section 3 of the said Act, including all persons who have in terms of the said Act been classified as members

of the one or the other of the said groups;

- (iv) "the Indian, Chinese and Other Asiatics population group" means the persons who are coloured persons as defined in the Population Registration Act, 1950, and are members of the Indian or Chinese group or the group Other Asiatics as prescribed and defined by proclamation under section 5 of the said Act, including all persons who have in terms of the said Act been classified as members of the one or the other of the said groups;
- (v) "the white population group" means the persons who are white persons as defined in the Population Registration Act, 1950, including all persons who have in terms of the said Act been classified as white persons.

2. No person who belongs to one population group, may—

(a) Be a member of any political party of which any person who belongs to any other population group, is a member;

(b) Render assistance as agent, or be a member of an election committee, of a political party of which any person who belongs to any other

⁶ *Ibid.*

population group, is a member, or of any person who belongs to any other population group and who has been nominated or may be nominated as a candidate for an election in terms of the Electoral Consolidation Act, 1946 (Act No. 46 of 1946), or the Transkei Constitution Act, 1963 (Act No. 48 of 1963), or any law made thereunder, or the Coloured Persons Representative Council Act, 1964 (Act No. 49 of 1964), or any other law to which the State President has by proclamation in the *Gazette* applied the provisions of this paragraph; or

(c) Address any meeting, gathering or assembly of persons of whom all or the greater majority belong to any other population group or groups, for the purpose of furthering the interests of a political party or the candidature of any person who has been nominated or may be nominated as a candidate for an election referred to in paragraph (b).

3. (1) No political party or member of such a party and no other person shall from outside the Republic receive within the Republic, or bring or cause to be brought into the Republic, any money which, on the ground of a donation or on any other ground, is intended to be used, or in the discretion of such political party, member, person or any other person may be used, to further the interest of any political party or

the candidature of himself or any other person who has been nominated or may be nominated as a candidate for any election referred to in section 2 (b) or to combat any aim or principle of a political party.

(2) For the purposes of this Act "money" includes anything which can be cashed or be converted into money.

4. (1) Any person who contravenes any provision of this Act shall be guilty of an offence and liable on conviction—

(a) In the case of a first conviction, to a fine of not less than three hundred rand or more than six hundred rand or imprisonment for a period of not less than six months or more than twelve months or to both such fine and such imprisonment; and

(b) In the case of a second or subsequent conviction, to a fine of not less than one thousand rand or more than two thousand rand or imprisonment for a period of not less than one year or more than two years or to both such fine and such imprisonment.

(2) No prosecution in respect of an offence under this section shall be instituted except on the express direction of the attorney-general concerned.

THE COLOURED PERSONS REPRESENTATIVE COUNCIL AMENDMENT ACT, 1968

Act No. 52 of 1968, assented to on 5 June 1968⁷

...
4. Section 4 of the principal Act is hereby amended—

(a) By the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of this Act and any other Act every Coloured person who is a South African citizen and is over the age of twenty-one years, and who is not subject to any of the disqualifications mentioned in section 5, shall have the right to be registered as a voter on the Coloured voters’ list and shall take the prescribed steps to have himself registered as such a voter.”; and

(b) By the addition of the following subsection:

“(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand or to imprisonment for a period not exceeding three months.”

5. Section 6 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every Coloured person who is under the provisions of section 4 (1) required to take steps to have himself registered as a voter on the Coloured voters’ list, shall post or deliver an application for registration in accordance with the provisions of subsection (2) to—

- (a) an electoral officer appointed under section 7 (b) of the Electoral Act;
- (b) a regional office of the Department of Coloured Affairs;

⁷ *Ibid.*

⁸ By principal Act is meant the Coloured Persons Representative Council Act, 1964.

- (c) an office of the South African Police; or
 (d) a magistrate's office."

6. The following section is hereby substituted for section 7 of the principal Act:

7. (1) If application for registration as a voter is made by any person who is unable to read or write or who by reason of physical infirmity or physical disability is unable to sign an application for registration as a voter, the application may, subject to the provisions of subsection (2), be signed on his behalf by any other competent adult Coloured person.

(2) Any such application shall be completed and signed in the presence of the applicant and of a magistrate, an electoral officer, a justice of the peace or a commissioner of oaths, and shall have endorsed thereon—

(a) A statement by the person signing it on behalf of the applicant stating that the applicant is unable to read or write or setting forth the nature of the physical infirmity or disability in question, as the case may be, and stating that the applicant has authorized him to sign the applications on his behalf; and

(b) A statement by the magistrate, electoral officer, justice of the peace or commissioner of oaths that the application was completed and signed on behalf of the applicant in the presence of the applicant and himself and that the contents thereof were explained to the applicant."

THE DEVELOPMENT OF SELF-GOVERNMENT FOR NATIVE NATIONS IN SOUTH-WEST AFRICA ACT, 1968

Act No. 54 of 1968, assented to on 6 June 1968⁹

1. This Act as well as any amendment thereof shall apply in the territory of South-West Africa, including that part of the said territory known as the Eastern Caprivi Zipfel and referred to in section 38 (5) of the South-West Africa Constitution Act, 1968 (Act No. 39 of 1968).

2. The following areas shall be areas for the different native nations:—

(a) Damaroland, consisting of the area at Okambahe and the farms Zessfontein and Franzfontein referred to in paragraphs (3), (4) and (5), respectively, of the First Schedule to Government Notice No. 122 of 1923 of the territory of South-West Africa, and the area at Otjohorong referred to in Government Notice No. 108 of 1925 of the said territory of South-West Africa, and any other land or area which may, after the commencement of this Act, be reserved and set apart in terms of any law for the exclusive use of and occupation by Damaras;

(b) Hereroland, consisting of the areas Otjituo and Epukiro referred to in paragraphs (4) and (5), respectively, of the Second Schedule to Government Notice No. 122 of 1923 of the territory of South-West Africa, the Waterberg East Reserve referred to in Government Notice No. 156 of 1936, and the Eastern Reserve referred to in paragraph (d) of Government Notice No. 374 of 1947, of the said territory of South-West Africa, and any other land or area

which may, after the commencement of this Act, be reserved and set apart in terms of any law for the exclusive use of and occupation by Hereros;

(c) Kaokoland, consisting of the Kaokoveld referred to in paragraph (e) (1) of Government Notice No. 374 of 1947 of the territory of South-West Africa;

(d) Okavangoland, consisting of the Okavango area referred to in Proclamation No. 32 of 1937 of the territory of South-West Africa;

(e) Eastern Caprivi, consisting of the Eastern Caprivi Zipfel referred to in section 38 (5) of the South-West Africa Constitution Act, 1968 (Act No. 39 of 1968);

(f) Ovamboland, consisting of the area referred to in regulation 1 of Proclamation No. 27 of 1929 of the territory of South-West Africa;

(g) Such other land or area as may after the commencement of this Act be reserved and set apart for the exclusive use of and occupation by any native nation and recognized by the State President by proclamation in the *Gazette* as an area for such nation.

3. The State President may, after consultation with the native nation concerned and by proclamation in the *Gazette*, establish a legislative council for any area referred to in section 2.

4. (1) Subject to the provisions of this Act a legislative council referred to in section 3 shall be constituted in the manner determined by the State President by proclamation in the *Gazette*

⁹ *Statutes of the Republic of South Africa, 1967.*

after consultation with the native nation concerned.

(2) Without prejudice to the generality of the power conferred by subsection (1) any proclamation in terms of that subsection may also provide for—

(a) The election by way of voting in the territory referred to in section 1, and the designation of the members of a legislative council, the filling of vacancies, and the qualifications of voters and of candidates for such elections;

(b) The period of office and conditions of service of such members;

(c) The attendance of sessions of a legislative council by representatives of the Republic.

(3) A proclamation in terms of subsection (1) may be withdrawn or amended by like proclamation.

5. (1) Any legislative council referred to in section 3 may—

(a) For the area for which it has been established, make enactments, not inconsistent with this Act . . . ;

(b) With the approval of the State President previously obtained, provide in any such enactment for the enforcement thereof in respect of members of the native nation in question who are or reside outside that area but within the territory referred to in section 1, and may make different such enactments for different regions or places and different categories or groups of persons.

(2) No enactment made in terms of subsection (1) shall have any force or effect until it has been approved by the State President and made known by notice in the *Gazette*, and the State President may, before approving any enactment, refer it back to the legislative council concerned for reconsideration.

6. (1) The executive government of any area for which a legislative council has been established in terms of section 3, . . . ; shall vest in an executive council which shall be constituted from among the members of the legislative council in such manner as the State President may determine in the relevant proclamation referred to in section 4 (1).

7. (1) The State President may by proclamation in the *Gazette*—

(a) If there exists in a tribe or community a tribal or community government functioning in accordance with the law and customs observed by that tribe or community, recognize, after consultation with such tribe or community, such government as a tribal authority or a community authority in respect of that tribe or community;

(b) If there does not exist in a tribe or community any government referred to in para-

graph (a), or if there exists in any tribe or community such a government but it is considered expedient, whether or not the government in question has been recognized in terms of the said paragraph, to replace that government, establish after such consultation as is contemplated in the said paragraph, a tribal authority or a community authority in respect of that tribe or community and determine, after such consultation, the manner in which such authority is to be constituted;

(c) In respect of—

(i) any portion of an area referred to in section 2; or

(ii) two or more tribal authorities or community authorities jointly, or one or more tribal authorities and one or more community authorities jointly,

establish, after consultation with the people concerned, a regional authority and determine, after such consultation, the manner in which such authority is to be constituted.

(2) The provisions of subsection (2) and (3) of section 4 shall *mutatis mutandis* apply to a proclamation in terms of this section.

8. Subject to the provisions of this Act—

(a) A tribal authority and a community authority recognized or established in terms of section 7 shall exercise such powers and perform such functions and duties . . . as the State President may by proclamation in the *Gazette* determine;

(b) A regional authority established in terms of section 7 shall, in relation to any matter referred to in the Schedule, exercise such powers (including the power to make enactments) and perform such functions and duties as the State President may so determine:

Provided that if there exists in respect of the area in question a legislative council established in terms of section 3, a determination in terms of paragraph (a) or (b) shall only be made after consultation with such council.

...

17. (1) Where a native nation, a group of persons, a tribe or a community is required to be consulted in terms of this Act, such consultation shall take place in a manner which the State President may either generally or in any particular case determine and by means of which, in his opinion, a representative view on the matter concerned may best be obtained.

(2) In determining the manner of consultation in terms of subsection (1) the State President shall have regard to the powers, functions and duties of legislative councils, executive councils and authorities referred to in this Act, and of chiefs, headmen and other recognized leaders.

...

SPAIN

NOTE ¹

During the year 1968, the Spanish legislative authorities and Government gave evidence of their great respect for the human rights proclaimed in the Declaration adopted by the General Assembly of the United Nations on 10 December 1948. Apart from the commemoration of International Year for Human Rights, which was celebrated very solemnly and meaningfully throughout the nation, the following brief summary of the most important legislation passed during that period shows how fundamental human rights were safeguarded and also how concern for the unimpeded and effective development and exercise of those rights frequently influenced the legal rules and regulations which were promulgated.

I. RIGHTS TO EQUALITY, FREEDOM, SECURITY OF PERSON AND SOCIAL SECURITY

(a) INDEPENDENCE OF EQUATORIAL GUINEA

The year 1968 saw the culmination of the process of Equatorial Guinea's independence, initiated by the Basic Law governing the autonomy of that Territory which was approved by a referendum held on 13 December 1963. At that time, the Spanish Government announced officially that Spain would agree to change the political status of the Territory when the population made its wishes known on the subject.

Since 1960, Spain had been transmitting to the United Nations information on the situation and conditions in its colonial territories, as it had been agreed to classify them as Non-Self-Governing Territories in the process of decolonization. When it was ascertained by various means that the population wished to change the legal link between Equatorial Guinea and Spain, a Constitutional Conference was convened on 30 October 1967, Decree-Law No. 3/1968 of 17 February 1968 suspended the régime of self-government and the Government was authorized

to grant independence to Equatorial Guinea by Act No. 49/1968 of 27 July 1968.

Prior to the granting of independence, the text of the Constitution prepared by the Conference ¹ was submitted in a referendum to all Guinean adults.

The Constitution proclaims the State of Equatorial Guinea to be a presidential, democratic and social Republic, in which all acts of racial, ethnic or religious discrimination are not only unlawful but also punishable by Law. It provides that all nationals of Equatorial Guinea shall have the right to vote and to be elected, and the organs of the State (President, Assembly of the Republic, Government and Council of the Republic) and the two Provinces into which the Territory is divided are harmonized and balanced to the extent required in a State which has to ensure the equality of rights of all its citizens, even if they belong to minority ethnic groups.

Decree No. 2070/1968 of 16 August 1968 declared that the previously published text of the Constitution had been approved by referendum and called for general elections. In accordance with the electoral provisions of the Constitution, the convening notice had to cover elections for the President of the Republic, Deputies of the National Assembly and Provincial Councillors, guaranteeing the equality of opportunity of all candidates and all the political groups to which they might belong through the establishment of a high-level independent body called the Electoral Commission.

The Electoral Commission already established for the referendum by Decree No. 1746/1968, of 27 July 1968, was composed of two Spanish professional judges and four persons of Guinean birth and of recognized impartiality and ability.

Decree No. 2467/1968 of 9 October 1968 proclaimed the results of the elections, confirming that the President elect of the new Republic had been designated, and declared the independence

¹ Note furnished by the Government of Spain.

¹ Extracts from the Constitution appear in the section on Equatorial Guinea, p. 119.

of Equatorial Guinea as of noon on 12 October 1968, on which date a ceremony was held transferring power to the President of the Republic of Equatorial Guinea, Francisco Macías Nguema.

(b) CONSTITUTIONAL REMEDIES AGAINST
UNCONSTITUTIONAL ACTS

The Statute of Rights of the Spanish Citizen (Act of 17 July 1945, amended by the Organic Law of the State of 10 January 1967, approved by referendum) and the Labour Charter specifically define the constitutional rights and duties of Spaniards and protect their exercise. The Statute of Rights of the Spanish Citizen provides, *inter alia*, for equality of rights (art. 3), respect of the family and personal honour (art. 4), the right to education (art. 5), freedom of religion (art. 6), the right to participate in public office (art. 10 and 11), freedom of expression (art. 14), inviolability of the domicile (art. 15), freedom of assembly and association for lawful purposes (art. 16), legal security and guarantees of due process (art. 17, 18 and 19), and the right to work (art. 24), which is fully covered in the above-mentioned Labour Charter.

Hence the fundamental nature of these two legislative texts, like that of other similar provisions which are equivalent to genuine constitutional provisions makes it necessary to have a special procedure for checking on any laws and regulations which may infringe those constitutional laws.

Act No. 8/68 of 5 April regulates this special remedy against unconstitutionality (*contrafuero*), a remedy which is deeply rooted in Spanish legal history in its essential meaning of a guarantee against abuses of power. The decision concerning this very important remedy lies with the Head of State and the National Council and the Standing Committee of the *Cortes* are responsible for its implementation by virtue of their institutional powers.

With regard to the application of the remedy, the Act provides that all persons entitled to exercise the right of petition may denounce the existence of an unconstitutional act; this ensures the genuine and effective participation of public opinion in political affairs, but without implying usurpation of the powers which institutionally are vested in the relevant organs.

The Act lays down that any provision which is unconstitutional is null and void, without prejudice to the need to respect acts based on the invalidated provision when the relevancy and stability of the juridical relations and situations deriving from them so require.

(c) IMPROVEMENT OF THE PRISON SYSTEM

The regulations for the prison services were approved by a Decree of 2 February 1956. Subsequently it was found desirable to improve them technically in order to apply the latest solutions of penology to the complex problems of the re-education and social rehabilitation of offenders.

Decree No. 162/1968 of 25 January 1968 consequently amended various articles of the regu-

lations, restructuring the prison establishments and the rules governing observation, classification and treatment, based on the progressive system which includes a final stage known as pre-release that depends on the personality of the prisoner and his behaviour. Amendments were also made to the articles referring to conditional sentence, whereby two or more sentences imposed on an offender were regarded as one single sentence, and to the articles on redemption through work.

(d) LOSS OF NATIONALITY OF PERSONS SERVING IN
ARMED FORCES ABROAD

The problem of mercenaries has evoked worldwide attention at various times. The purpose of Decree No. 3144/1967 of 28 December 1967, published on 13 January 1968, is to deprive of nationality those Spaniards who are voluntarily serving in armed forces abroad, the object being to contribute to peace, as the foundation and primary objective of co-existence among nations. The *Ministerio Fiscal*, which was made responsible for taking the appropriate action, will have to abide by the Circular published to that effect by the State Counsel of the Supreme Court on 20 February 1968.

(e) CIVIL LIABILITY FOR NUCLEAR DAMAGE

On 30 October 1961, Spain ratified the Convention on civil liability in the field of nuclear energy of 29 July 1960 and, on 30 April 1965, the Additional Protocol of January 1964. Civil liability for nuclear damage is a logical concern of all the Governments of countries in which the degree of development of nuclear energy or the relationships with other countries which use it, make it conceivable that damage of this kind may occur.

Consequently the introduction of an effective system for guaranteeing financial compensation for nuclear damage was an obvious concern of Act No. 25/1964 of 29 April 1964, and of the corresponding Regulations approved by Decree No. 2177/1967 of 7 November 1967. Subsequently, as a follow-up to those provisions, Decree No. 2864/1968 of 7 November 1968 fixed the maximum liability of the operator of a nuclear installation at 350 million pesetas, which has to be duly guaranteed by one of the procedures laid down by the Act (security or bond), raising the amount originally indicated in the Regulations.

This concern on the part of the Government is logical, in view of the magnitude of the possible damage, but the guaranteed amount may also be automatically raised pursuant to any international commitments which Spain might enter into, as is expressly stipulated in article 18 of the Regulations.

(f) REVISED TEXT OF THE ACT GOVERNING THE USE
OF MOTOR VEHICLES AND VEHICULAR TRAFFIC

To meet the concern of the Spanish legislative authorities that there should be proper compensation for victims of traffic accidents, Act

No. 122/1964 of 24 December 1964 was promulgated; its purpose, to defend and protect the victims of this type of accident, was set forth in the preamble and article 1.

The section of the Act covering penalties and procedures was subsequently incorporated into the Penal Code and the Code of Criminal Procedure, while the section concerning civil liability—the fundamental part of the special law—underwent some important changes, including the important amendment effected by Act No. 3/1967 of 8 April 1967, aimed at strengthening to the maximum the position of the victim *vis-à-vis* the underwriter of the civil liability of the driver who caused the damage. As a result of all this, and on the basis of the authorization granted to the Government by the third additional clause of Act No. 3/1967 of 8 April 1967, Decree No. 632/1968 of 21 March 1968 approved the revised text of the Act governing the use of motor vehicles and vehicular traffic, which is one of the most progressive legal norms ever devised for this type of civil liability. Particular attention is paid to the proper compensation of the victims, because of the recognized social importance of traffic accidents and the huge casualty lists which are frequently compared to those of a real war.

(g) ACT CONCERNING FOREST FIRES

Act No. 81/68 concerning forest fires was promulgated on 5 December 1968. Its purpose is to facilitate the prevention and extinguishing of forest fires, which are a real public disaster in areas where the economy is based on this type of resources, and to protect the persons and goods involved. In view of the social importance of the problem and its impact on general safety, the Act is applicable whoever the owner of the woodlands concerned may be.

Title II, chapter 1, of the Act sets out general preventive measures, while chapter 2 deals with the measures relating to what are known as "danger zones". Title III lays down the measures which can be adopted for extinguishing fires and Title IV the measures for reconstituting the resources affected. But perhaps one of the Act's most socially significant innovations is the establishment of a Forest Fire Compensation Fund (Title V) which, in the case of a disaster, guarantees the owners of the woodlands involved monetary compensation in proportion to the value of the losses caused by the fire, and also payment of the costs incurred in the fire-fighting work and damages for any accidents suffered by persons who assisted in that work. This Fund has been incorporated in the Insurance Compensation Consortium. The contributions to its financing are paid as follows:

(a) By the State Forest Authority, for the woodlands under its responsibility, or owned by the State or by consortia of which the State is a member;

(b) By local authorities, communities and public corporations which own woodlands;

(c) By owners of private woodlands, provided that they are not part of a consortium.

This Act is obviously important in that it contains the provisions necessary for preventing damage which may affect the safety of persons and property, and for compensation when such damage occurs.

(h) GENERAL SAFETY

Various provisions designed to enhance the personal safety of all residents in Spain were promulgated during 1968, apart from those already mentioned.

Decree No. 2992/68 amended several articles of the Regulations concerning marine salvage, which facilitate the reactivation of a ship or aircraft involved in emergency action in connexion with a rescue, salvage, towage, etc.

The Spanish Government, desiring to contribute to the standardization of the authorized limits for the load lines of ships on international routes, having regard to the need to safeguard human life and property at sea, ratified, by an instrument dated 6 June 1968, the International Convention on Load Lines adopted in London on 5 April 1966 by the Conference of Plenipotentiaries of the Inter-Governmental Maritime Consultative Organization.

The Traffic Code was also ratified by Decree No. 3268/1968, which is very interesting because it includes a whole new chapter, No. XVII, dealing with "Safety Measures" which are to be adopted urgently for vehicles or their drivers. Among these measures is the immediate removal from the road of any vehicles which, for various reasons, constitute a danger to traffic, and the cancellation of the driving licences of persons who are no longer fit to drive.

A strange, but logical and effective, provision is the Resolution of the Safety Department of 25 August which forbids people to bring in or sell, in places where sporting events, bullfights or similar entertainments are taking place, beverages in containers made of glass or any other material which, if thrown, might cause personal injuries. Another Resolution of 24 September authorizes containers made of plastic or similar materials.

II. RIGHTS CONCERNING THE FAMILY

(a) PROTECTION OF MINORS

Previous reports have indicated that absolute respect is guaranteed for the rights concerning the family proclaimed in article 16 of the Universal Declaration of Human Rights. During 1968, nothing occurred to invalidate that guarantee. On the contrary, concern for the strengthening of the family has been expressed in various provisions of a tutelary nature, particularly as regards minors.

First of all, the Society for the Protection of Minors was reorganized by Decree No. 1480/68 of 11 July 1968. But perhaps the most interesting provision in this connexion is the Circular of

the State Counsel of the Supreme Court of 17 July concerning the corruption of minors, pornography, drug traffic and other excesses. Greater laxity in behaviour, which is visible in everybody, and the overt conflict of certain values, including family authority and educational media, lead to the emergence, as the State Counsel points out, not only of individual types of behaviour, but also and especially of collective or group behaviour, affecting areas somewhere on the fringes of typical delinquency and creating a field of action which not only threatens but also violates the code of criminal law, since the indeterminate areas of pre-delinquency frequently lead to overt delinquency. The Circular next examines the corruption of minors and offences concerning prostitution. It refers to Spain's accession to the international Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, signed on 21 March 1950 at Lake Success, and points out that among the purposes of the State is that of protecting the freedom, security and morality of the family against any attempt to disrupt it. Therefore Volume Two, Title XII, of the Penal Code prescribes penalties for failure to fulfil the duties of economic and moral assistance (desertion of the family) or conduct which may endanger the life of the minor (desertion of children), and also the condoning of persons under whose custody or authority a minor may be exposed to corruption or prostitution (article 452 *bis e*).

The Circular deals with the problem of pornography, drug traffic and other behaviour affecting public morality; it is of such importance that it is reproduced *in extenso* as annex No. 5 to this report.

(b) PROTECTED HOUSING

From another point of view but in connexion with the satisfaction of the fundamental needs of the family, note should be taken of the Regulations concerning State-protected housing, approved by Decree No. 2114/1968 of 21 July 1968. It is a lengthy document of 176 articles and twelve interim and additional provisions setting out the rules governing the system, established by the Act, of State-protected housing; they cover the promotion of such housing, tax benefits, building loans, interest-free advances, building subsidies and bonuses, compulsory expropriation of land and the legal régime of the housing with respect to use, rental and sale.

(c) LIFE INSURANCE COVERING PERSONAL ACCIDENTS TO HOLDERS OF HOUSE-PURCHASE SAVINGS ACCOUNTS

An Order of the Ministry of Finance regulates the contracting of this insurance by holders of credit accounts, in order to obviate the possibility that the holder may be unable to meet his obligations on account of an accident. The Order of 13 November extends this regulation to insurance contracted for by holders of a series of special savings accounts, such as fishery co-operative and stock exchange savings accounts, and including so-called house purchase savings

accounts intended for setting up a house-purchase fund.

(d) PAYMENT OF ADVANCES FOR THE CONSTRUCTION AND SALE OF DWELLINGS

In contracts for the sale of houses, it frequently happens that there are special conditions applying to the tender, whereby the buyer is forced to pay certain amounts before or during the construction because of his urgent need for a family dwelling.

In view of the justified alarm created among the public by the commission of abuses which, firstly, seriously disrupt social harmony and, secondly, constitute offences which cause irreparable harm to those who have accepted the tenders in good faith, general preventive rules have had to be established to guarantee both the real and effective utilization of the advance payments made by the future users and their return if the construction is not completed.

Without prejudice to the criminal proceedings referred to in the Circular of the State Counsel of the Supreme Court of 1 December 1965, it was necessary to devise a series of civil guarantees to avoid the bankruptcy of the buyer. This was the purpose of Act No. 57/1968, of 27 July 1968, which provided for two types of guarantees: a security or endorsement guaranteeing the possible recovery and utilization of the advances, and the necessity for those advances to be paid into special accounts which are to be opened only when the prior guarantee has been honoured.

The rights conferred on future buyers by this Act cannot be waived.

(e) ASSISTANCE TO THE HANDICAPPED

Decree No. 2421/68 of 20 September established the Social Welfare Service for subnormal minors. Minors of 18 years of age and under who are included in one of the following groups are regarded as handicapped:

1. The blind;
2. Deaf-mutes and the deaf;
3. Persons deprived of the use of all, or of the essential parts, of the two upper and lower limbs, or of one upper and one lower limb;
4. Paraplegics, hemiplegics and quadriplegics;
5. Mentally retarded persons with an intelligence quotient of less than 0.50;
6. Persons with cerebral palsy.

The main benefits of this assistance consist of financial help and of courses and treatments in centres to be established for the purpose.

(f) HOUSEWIVES' ASSOCIATIONS

Housewives' associations have spread all over the national territory and are an effective instrument for defending interests of all kinds connected with the various aspects of the housewife's function and with her moral and material situation.

Under the legal code of these associations and Act No. 191/1964 of 21 December 1964, the

National Federation of Housewives' Associations was constituted. Its statutes were approved by an Order of 9 October 1968.

III. THE RIGHT TO WORK

As is to be expected in a field so important as that of labour, various highly important new regulations were issued during 1968.

(a) EMPLOYMENT, LABOUR AND ESTABLISHMENT OF FOREIGNERS

The regulations governing the labour of foreigners in Spain were amended because of the pressing need to combine in one instrument the various provisions issued since the Decree of 29 August 1935 and to incorporate in the regulations certain rules approved by international bodies of which Spain is a member. Hence Decree No. 1870/1968 was promulgated. It follows the world trend in favour of the mobility of manpower, but without overlooking the need to protect the national working population from competition which might lessen the effectiveness of State action in the field of vocational training and advancement.

Another important feature of this new instrument is that it provides for greater decentralization of functions, simplifies the procedure for granting and renewing work permits and abolishes the tax on enterprises now assessed in proportion to the wages or salaries paid to foreign employees.

(b) HEALTH SERVICE BENEFITS FOR FOREIGN WORKERS

In order to provide maximum health service coverage for the workers of the two countries, Spain and Portugal have adopted the Agreements of 16 May 1968 on this subject and on other procedures for implementing the General Convention on social security between the two countries dated 20 January 1962.

(c) ENTRY INTO FORCE OF THE UNEMPLOYMENT INSURANCE CONVENTION WITH GERMANY OF 20 APRIL 1966

On 10 November 1967 an Agreement was signed between the Government of the Federal Republic of Germany and the Government of the Spanish State for the purpose of implementing the Unemployment Insurance Convention of 20 April 1966. By an exchange of notes effected on 26 March 1968, in accordance with article 12 of the above-mentioned Agreement, the Convention came into force with retroactive effect from 1 December 1967.

(d) RULES OF PROCEDURE OF THE LABOUR COURT

One of the basic guarantees of the right to work is a labour court which is independent and specializes in this type of dispute. The Labour

Court, composed of judges of the Bench and the State Counsel's Office, has been given new rules of procedure by Decree No. 1874/1968 of 27 July 1968.

(e) COLLECTIVE AGREEMENTS AND MINIMUM WAGE

The need for a periodic review of the minimum inter-occupational wage, in order to maintain its purchasing power and allow the workers to share in the benefits of economic development, is undeniable. This concern of the Government was met by Decree No. 2187/1968, which fixed the minimum wage and the scale of social security contributions.

Furthermore, the policy of collective agreements between employers and workers, as a means of regulating their contractual relationships and avoiding collective disputes, continued to develop and bore fruit during 1968. The general agreements concluded and approved during the year include the following:

1. The Inter-provincial Trade Union Collective Agreement of Coruña and Pontevedra regarding the catching and processing of whales, concluded on 21 March 1966 and approved by a Resolution of 25 September 1968.

2. The Inter-provincial Trade Union Collective Agreement of the fucula, starch and glucose industry, approved by a Resolution of 30 September 1968.

3. The Inter-provincial Trade Union Collective Agreement of the pharmaceutical chemistry industry, also approved by a Resolution of 30 September 1968.

(f) INTERNATIONAL CONVENTIONS CONCERNING THE RIGHT TO WORK

1. On 6 November, the day of the convention's entry into force for Spain, Spain deposited the instrument of ratification of the Convention of 29 June 1951, drawn up by the General Conference of the International Labour Organisation, concerning equal remuneration for men and women workers for work of equal value.

2. On the same day Spain deposited the instrument of ratification of the Convention of 25 June 1957 concerning the abolition of forced labour, drawn up by the above-mentioned Conference.

3. Spain also ratified on the same date the Convention of 25 June 1958 concerning Discrimination in Respect of Employment and Occupation.

4. Lastly, Spain ratified on the same date the Convention of 22 June 1965 concerning the minimum age for underground work.

IV. THE RIGHT TO EDUCATION

One of the most outstanding aspects of the Government's action in the educational field in 1968 is probably its efforts to establish new centres of education. For example, in secondary

education a large number of new institutes or departments were established by the relevant Ministerial Orders. Branches or subsidiaries of this type of institute were established in Ceuta, Tarrasa, Avila, Bilbao, Santurce, Carballo, Gandia, Madrid, Barcelona, Palma de Mallorca, Sestao, Zafra, Pola de Siero, Las Palmas, Carrizo de la Ribera, Ebeiyin (Rio Muni, Equatorial Guinea), Valladolid, Málaga, Murcia and many other places.

But there are also a number of regulations which, since they help to facilitate the access of all Spaniards to education, deserve to be emphasized:

(a) TRAINING FELLOWSHIPS FOR RESEARCH WORKERS

Since the development of scientific and technical research in Spain makes it necessary to have an adequate supply of research personnel and in order to adapt the training of new research workers to the present needs of the various branches of production and science, the Order of 16 August introduced a programme of fellowships to be awarded by open competition.

(b) EVENING COURSES FOR WORKERS AND WAGE STIPENDS

This type of education was initiated by a Decree of 17 January 1963. Subsequently the Order of 10 July 1968 laid down the conditions governing the authorization, curricula, teaching staff, fees and extension courses, including evening courses.

Another Order, dated 11 July, established the wage-stipends and the rules for awarding them. This stipend consists of financial assistance to persons who, upon completing the higher *bachillerato*, wish to follow university-level courses at technical institutions. The purpose of this arrangement is to cover the costs of education and to compensate for the possible loss of earnings which the recipient of the stipend might have contributed to his family income.

(c) REORGANIZATION OF TECHNICAL EDUCATION

Decree No. 636/1968 of 21 March 1968 approved the revised text of the Technical Education Restructuring Act of 29 April 1964, and the relevant provisions of earlier legislation.

V. OTHER LEGISLATION

Many general provisions could be cited in this paragraph as improvements in Spain's legal system, such as Act No. 10/1968 of 20 June 1968 which extended the jurisdiction of the Provincial Courts in civil matters, or Decree No. 1530/1968 of 12 June 1968, which approved the Rules of Procedure of the Ministry of Justice. Other provisions were enacted to stimulate the economy as a whole, through incentives to corporations to consolidate farmlands (Order of 17 July), the granting of loans for agricultural training (Order of 13 July) or the Acts of 27 July concerning internal settlement and the régime for land acquired by the National Institute for Land Settlement and Local Woodlands, which accords recognition to a special system of collective ownership that is rooted in the history and social system of certain regions. Among these instruments we should also mention, because of its great importance, the Act of the same date concerning rural planning and the rules governing it.

An Act regulating military service was also promulgated on the same date; and on that date also another Act was promulgated concerning the incompatibilities of high offices. And, to conclude this summary outlining of the general legislation enacted in 1968, let us mention the Act of 20 June which established the Fund for the regulation and stabilization of agricultural commodities and prices (FORPA) and the Act of the same date concerning the régime of ports and harbours.

SUDAN

THE CONSTITUENT ASSEMBLY ELECTIONS ACT, 1968

Provisional Order No. 1 of 1968¹

Chapter II

PROVISIONS RELATING TO ELECTORAL CONSTITUENCIES AND TO QUALIFICATIONS

4. (1) There shall be territorial constituencies for the general elections.

(2) Upon the coming into force of this Act, the Council of Ministers shall, by order, specify the name and boundaries of every constituency. The distribution of population among the constituencies all over the country shall be by an equal numerical ratio so that the number of population in any one constituency shall not be less than fifty thousand persons and shall not exceed seventy thousand persons according to the last general census preceding the elections.

5. A voter shall be qualified to vote for the Constituent Assembly in a Constituency if he is:—

(a) A Sudanese;

(b) At least eighteen years of age on the date on the date fixed by the Commission for the closing of registration in the Electoral Roll;

(c) Of sound mind; and

(d) Ordinarily resident for a period of not less than six months before the closing of the Electoral Roll in the Constituency in which his name has been registered. Provided that this condition shall not apply to Sudanese Nomads and semi-nomads.

6. A person shall be qualified to stand as a candidate for the membership of the Constituent Assembly if he is:—

(a) A Sudanese; and

(b) At least thirty years of age at the date fixed by the commission for the closing of applications for nomination as candidates; and

(c) Of a sound mind; and

(d) Able to read and write.

7. No person shall be qualified to stand as a candidate for membership of the Constituent Assembly if he:—

(a) Is occupying an office of profit or remuneration in the government of the Sudan unless he is a Minister or occupying an office declared by law as not disqualifying the holder thereof; or

(b) Was sentenced to imprisonment during the seven years immediately preceding his nomination as a candidate:

(i) in an offence involving normal turpitude . . . ;
or

(ii) in an offence involving corrupt practices in any elections conducted under this Act; or

(iii) in an offence threatening the security of the State.

Chapter III

ELECTIONS AND THE CONDUCT THEREOF

8. The Constituent Assembly elections shall be direct.

9. (1) The Supreme Commission, after taking the opinion of the Council of Ministers, shall, by order, fix the date of the commencement of the general elections and the date of the suspension or continuation thereof.

(2) Whenever the date of the commencement of elections is fixed, the Commission shall announce the date on or before which nominations of candidates for elections shall be filed.

10. (1) There shall be for each constituency an Electoral Roll which shall be prepared in accordance with the Rules to be made in this behalf by the Election Commission.

¹ *Special Legislative Supplement to the Republic of the Sudan Gazette*, No. 1051, of 13 February 1968, Supplement No. 1: General Legislations.

(2) No person shall be registered in an Electoral Roll unless he satisfies the qualifications set out in section 5 of this Act.

(3) No person shall be registered in an Electoral Roll for more than one constituency nor shall he be registered more than once in any constituency.

...

12. (1) Any Sudanese may appeal to a District Judge of the First or Second Grade designated by the Supreme Civil Court in the following cases:—

(a) When the registration of the name of any voter in an Electoral Roll has been rejected;

(b) Where the name of any voter did not appear in the electoral list after it has been published;

(c) Where a name of a candidate has been entered by mistake.

(2) Any person whose name has been rejected as a candidate may appeal to the court mentioned in subsection (1) of this section.

...

13. No elections shall be held in any constituency, unless all appeals under section 12 (1) and (2) have been disposed of; provided that the courts shall hear and determine such appeals before three weeks of the date fixed for the ballot.

14. (1) Voting in constituencies shall be secret, and voters shall cast their votes by means of a ballot paper or a voting token handed over directly to the voter in the polling station. Such ballot paper or voting token shall not be signed, or in any other manner marked so as to identify the voter; otherwise it shall be deemed void.

(4) A voter in any constituency shall put in person the ballot paper or the voting token in

the box prepared for that purpose: Provided that, subject to such conditions as may be prescribed by the commission, this requirement may be waived in the case of a voter present at the polling station and who by reason of blindness, incapacity or other illness is unable to cast a vote or put the ballot paper or the voting token in the case.

(3) No court, Board of Discipline, Commission of Enquiry, Police authorities or any other official authorities shall require during any proceedings before it from any voter the disclosure of the name of the person for whom he has voted.

15. No voter shall vote or attempt to vote in more than one polling station or vote or attempt to vote in the name of another person and whoever contravenes the provisions of this section shall be punished with imprisonment for a period not exceeding six months or with fine not exceeding LS 100 or with both.

The Commission shall stamp with chemical substance every person voting in a polling station to evade any fraud.

...

17. (1) Every employer shall, on the polling day, allow every voter in his employment a reasonable period of absence for voting, and no employer shall make any deductions from the pay or other remuneration of any such voter or impose upon him any penalty by reason of his absence during such period.

(2) An employer who directly or indirectly contravenes the provisions of the preceding subsection shall be punished with imprisonment for a period not exceeding three months or with fine not exceeding LS 50 or with both.

...

THE CONSTITUENT ASSEMBLY ELECTIONS RULES, 1968

Legislative Rule and Order No. 4 of 1968²

Part I

PRELIMINARY

...

2. In these Rules unless the context otherwise requires the following words and phrases shall have the meanings herein respectively assigned to them:—

“Act” means the Constituent Assembly Elections Act, 1968;

“Commission” means the General Elections Commission;

“Schedule” means the schedule attached to these Rules;

“Voter” includes a female voter.

Part II

ELECTION OFFICERS

3. (1) The Commission shall appoint a Chief Election Officer in each Province.

² Special Legislative Supplement to the Republic of the Sudan Gazette, No. 1053, of 1 March 1968, Supplement No. 1: General Legislations.

(2) The Chief Election Officer shall supervise, control and direct the elections and all matters connected therewith in his Province.

4. The Commission shall appoint at least one Assistant Chief Election Officer for each Province to assist the Chief Election Officer and work under his directions and to act for him in his absence.

5. (1) The Chief Election Officer shall appoint, for each Constituency, a Returning Officer and such assistants to them as he may consider necessary.

(2) The Returning Officer shall be responsible for the conduct of elections in his Constituency. An Assistant Returning Officer shall assist the Returning Officer in carrying out his functions and shall act for him in his absence

Part III

NOMINATIONS

10. The Commission shall fix a date or dates on which polling may take place; either generally or with reference to any one or more Constituencies.

The list of valid nominations shall contain the names of candidates arranged in alphabetical order and their political colours as shown in their nomination applications.

16. After the Court gives its decisions on the appeals if any, under section 10 (1) (c) and 10 (2) of the Act, the Returning Officer shall correct the list of nominations accordingly, if necessary, and shall immediately affix the final list of candidates in conspicuous place in front of his office—in the manner shown in Rule 15 above.

Part IV

AGENTS

17. 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.

18. No person shall be qualified to be an Election Agent unless he is a Sudanese and not less than 30 years of age; but he shall not be a person:—

(a) Who holds an office of profit under the Government of the Sudan other than an office declared by law not to disqualify its holder from membership of the Constituent Assembly; 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 a corrupt practice or any abettment thereof at any Parliamentary or Local Government Election; or

(d) ... insound mind; or

(e) Who is an illiterate.

19. Save for matters which should, either by express provision in the Act or the Rules made thereunder 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 connexion with the election.

Part VII

MISCELLANEOUS

41. (1) No person shall convene, hold or attend any public meeting within any Constituency on the date or dates on which a poll is taken for election in that Constituency.

(2) Any person who contravenes the provision of sub-rule (1) above shall be punishable with a fine which may extend to fifty Sudanese pounds.

42. (1) 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 vote of any voter; or

(c) Persuading any voter not to vote for a candidate; or

(d) Persuading any voter not to vote in the election; or

(e) Exhibiting any notice or sign (other than the official ones relating to the election).

(2) Any person contravening this rule shall be punishable with a fine which may extend to fifty Sudanese pounds.

43. (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.

44. (1) Any person who, during the hours fixed for the poll at any polling station, misconducts himself or fails to obey the lawful direction 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 up to three months or with fine or with both.

45. Any policeman may without a warrant arrest any person who contravenes rules 41, 42, 43 and 44 and shall forthwith take or send the person arrested before a magistrate or before the officer in charge of the nearest police station.

48. (1) If the Returning Officer is of the opinion that the result of the election has been materially affected by any irregularity, illegality or

discrepancy, he shall report the full facts to the Commission and to the Chief Election Officer.

(2) The Commission may, of its own motion, or on receipt of a report under sub-rule (1) decide whether the result of an election has been materially affected by any such irregularity, illegality or discrepancy and whether the election shall be set aside and a fresh election held in the Constituency.

(3) No election shall be invalidated merely by reason of any irregularity or any non-compliance with these rules if the Commission is satisfied that the Election was conducted substantially in accordance with the provisions of the Act and these Rules and that any such irregularity or non-compliance did not materially affect the result of the election.

THE SUDAN YOUTH-CARE CORPORATION ACT, 1968

Act No. 10 of 1968³

CHAPTER II

3. (1) There shall be established a corporation to be known as "The Sudan Youth-Care Corporation" whose functions shall be to take care of the youth and to establish the foundations necessary for the promotion of its well-being.

6. The Council shall carry out the following functions:—

(a) To draw the general policy of youth-care and to guide the youth within the lines of the national policy of the country. To strive and co-ordinate the activities of youth organizations and of those bodies concerned with youth affairs for the achievement of the aims of the corporation.

(b) To consider the studies and proposals submitted to it by the Technical and Executive Committees and to issue its decisions upon such proposals and pass them immediately to the competent authorities for execution.

(c) To delegate any of its functions to the chairman of the Council or his deputy to meet incidental circumstances.

(d) To issue by-laws for the regulation of its meetings, delegation of its powers and the organization of the bodies under its supervision.

(e) To keep the property of the corporation, to prepare its annual budget and to deal with it in the manner it prescribes.

(f) To take care of and give guidance and assistance to the existing youth organizations in order that they may contribute to the education of youth and the enhancement of its efforts in the campaigns for social reform.

(g) To work for the co-ordination and development of the social and cultural activities of the youth through the construction of athletic grounds, sport cities, youth homes, and the organization of labour camps.

(h) To take care of the youth in schools, institutions and in government departments and to strive to assist it in the development of its sport and social activities and in seeking the best forms for spending its leisure time.

(i) To pay due care to the Boy Scouts and the Girl Guides movements and assist them in carrying out their role in the bringing up of youth with a spirit of discipline and responsibility.

(j) To establish a Technical Committee, an Executive Committee and any other committees and to determine the functions and proceedings followed by such committees.

(k) To establish Regional Councils in the provinces as well as Rural and Municipal Committees and to determine the functions and proceedings to be followed by such councils and committees.

10. (1) The Council shall establish Regional Councils in the provinces as well as Rural and Municipal Committees composed of public and official personalities. The Senior Officer of Information and Social Affairs in the province shall be Secretary of the Regional Council.

(2) The Regional Councils in the provinces as well as the Rural and Municipal Committees shall

³ *Legislative Supplement to the Republic of the Sudan Gazette*, No. 1063, of 15 August 1968, Supplement No. 1: General Legislations.

deal with the problems of youth in the regions. It shall endeavour to assist the youth in organising and co-ordinating its activities for achieving the general purposes of youth-care.

THE CONSTITUENT ASSEMBLY ELECTIONS (AMENDMENT) ACT, 1968

Provisional Order No. 22 of 1968 ⁴

2. The Constituent Assembly Elections Act, 1968 shall be amended as follows:—

Section 16 of the above-mentioned Act shall be repealed and the following substituted therefor:—

“16—Where a seat in the Constituent Assembly becomes vacant, and the remaining period of its duration is at least six months, the Speaker shall report this vacancy to the Election Commission to conduct a by-election to fill the vacancy, and the Election Commission shall call upon the voters in the said Constituency, by notification, and shall carry out the necessary measures to conduct the said by-election in the nearest practical possibility.”

⁴ *Legislative Supplement to the Republic of the Sudan Gazette*, No. 1066, of 15 October 1968, Supplement No. 1: General Legislations.

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, 1968

Act No. 38 of 1968 ⁵

2. The Code of Criminal Procedure is hereby amended as follows:—

Section 119 B is hereby repealed and the following section substituted therefor:—

TAKING OF FINGER-PRINTS AND PHOTOGRAPHS

“119 B (1) A court or Magistrate holding a trial or inquiry or a policeman conducting an investigation may cause the finger-prints and photograph of any person to be taken if satisfied that it is desirable in furtherance of the purposes of the trial, inquiry or investigation.

“(2) Such finger-prints and photograph may be kept for six months but if not already destroyed shall then be destroyed unless the person concerned has been convicted of an offence.”

⁵ *Special Legislative Supplement to the Republic of the Sudan Gazette*, No. 1068, of 30 December 1968, Supplement No. 1: General Legislations.

SWAZILAND

THE CONSTITUTION OF THE KINGDOM OF SWAZILAND ¹

Chapter II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

2. Whereas every person in Swaziland is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

(a) Life, liberty security of the person and the protection of the law;

(b) Freedom of conscience, of expression and of assembly and association; and

(c) Protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Chapter shall have effect for the purpose of affording protection, to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

PROTECTION OF RIGHT TO LIFE

4. (1) No person shall be deprived of his life intentionally save in execution of the sentence of

¹ Text appears as the Schedule to the Swaziland Independence Order, 1968, published as Legal Notice No. 50 of 1968 in the *Supplement to the Swaziland Government Gazette, Extraordinary*, No. 316 of 16 September 1968. Swaziland became an independent State on 6 September 1968.

a court in respect of a criminal offence under the law of Swaziland of which he has been convicted.

(2) Without prejudice to any liability for a contravention to any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

(a) For the defence of any person from violence or for the defence of property;

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) For the purpose of suppressing a riot, insurrection or mutiny; or

(d) In order to prevent the commission by that person of a criminal offence;

or if he dies as the result of a lawful act of war.

PROTECTION OF RIGHT TO PERSONAL LIBERTY

5. (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say—

(a) In execution of the sentence or order of a court, whether established for Swaziland or some other country, in respect of a criminal offence of which he has been convicted;

(b) In execution of the order of a court punishing him for contempt of that court or of another court or tribunal;

(c) In execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;

(d) For the purpose of bringing him before a court in execution of the order of a court;

(e) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Swaziland;

(f) In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(g) For the purpose of preventing the spread of an infectious or contagious disease;

(h) In the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(i) For the purpose of preventing the unlawful entry of that person into Swaziland, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Swaziland or for the purpose of restricting that person while he is being conveyed through Swaziland in the course of his extradition or removal as a convicted prisoner from one country to another; or

(j) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Swaziland or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Swaziland in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(a) For the purpose of bringing him before a court in execution of the order of a court; or

(b) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought without undue delay before a court; and where he is not brought before a court within forty-eight hours of his arrest or from the commencement of his detention, the burden of proving that the person arrested or detained has been brought before a court without undue delay shall rest upon any person alleging that the provisions of this subsection have been complied with.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon any suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in paragraph (b) of subsection (3) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled

to compensation therefor from that other person or from any other person or authority on whose behalf that other person was acting.

PROTECTION FROM SLAVERY AND FORCED LABOUR

6. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include—

(a) Any labour required in consequence of the sentence or order of a court;

(b) Labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(c) Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;

(d) Any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(e) Any labour reasonably required as part of reasonable and normal communal or other civic obligations.

PROTECTION FROM INHUMAN TREATMENT

7. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Swaziland immediately before 6th September 1968.

PROTECTION FROM DEPRIVATION OF PROPERTY

8. (1) No property shall be compulsorily taken possession of, and no interest in or right over property shall be compulsorily acquired except where the following conditions are satisfied, that is to say—

(a) The taking of possession or acquisition, is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit;

(b) The necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(c) Provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation.

(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right to direct access to the High Court for—

(a) The determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled; and

(b) The purpose of obtaining prompt payment of that compensation:

Provided that if any law for the time being in force in Swaziland so provides in relation to any matter referred to in paragraph (a) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter.

...

PROTECTION AGAINST ARBITRARY SEARCH OR ENTRY

9. (1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) (i) That is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit; or

(ii) that is reasonably required for the purpose of promoting the rights of freedoms of other persons; or

(b) That authorises an officer or agent of the Government or of a local government authority, or of a body corporate established by law for public purposes, to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government authority, or body corporate, as the case may be; or

(c) That authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the entry upon any premises by order of a court,

except so far as, in respect of paragraph (b) or paragraph (c) of this subsection, that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

PROVISIONS TO SECURE PROTECTION OF LAW

10. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be given a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(a) Shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) Shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charge;

(c) Shall be given adequate time and facilities for the preparation of his defence;

(d) Shall be permitted to defend himself before the court in person or by a legal representative of his own choice;

(e) Shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(f) Shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for the offence, save upon the order of a superior court in the course of appeal or

review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the case shall be given a fair hearing within a reasonable time.

(9) All proceedings of every court for the determination of the existence or extent of any civil right or obligation shall be held in public.

(10) All proceedings of every adjudicating authority, other than a court—

(a) For the determination of the existence or extent of any civil right to trade or carry on a business or occupation; or

(b) For the determination of the existence or extent of any civil right or obligation which on 6th September 1968 it is within the original jurisdiction of the High Court to determine, shall be held in public.

(11) Notwithstanding the provisions of subsections (9) and (10) of this section a court or other adjudicating authority—

(a) May, unless it is otherwise provided by Act of Parliament, exclude from its proceedings persons other than the parties and their legal representatives to such extent as the court or other adjudicating authority may consider necessary or expedient—

(i) in circumstances where publicity may prejudice the interests of defence, public safety, public order, justice, or public morality or would prejudice the welfare of persons under the age of eighteen years or the protection of the private lives of the persons concerned in the proceedings; or

(ii) in interlocutory proceedings;

(b) Shall, if it so prescribed by a law that is reasonably required in the interests of defence, public safety, public order, justice, public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of the persons concerned in the proceedings, exclude from its proceedings persons, other than the parties and their legal representatives, to such extent as is so prescribed.

...

(13) In the case of any person who is held in lawful detention, the provisions of subsection (1), paragraphs (d) and (e) of subsection (2) and subsection (3) of this section shall not apply in relation to his trial for a criminal offence under the law regulating the discipline of persons held in such detention.

...

PROTECTION OF FREEDOM OF CONSCIENCE

11. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section freedom of conscience includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides.

(3) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) That is reasonably required in the interests of defence, public safety, public order, public morality or public health; or

(b) That is reasonably required for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of members of any other religion or belief.

(6) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

PROTECTION OF FREEDOM OF EXPRESSION

12. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to

the extent that the law in question makes provision—

- (a) (i) that is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
- (ii) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or

(b) that imposes restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

PROTECTION OF FREEDOM OF ASSEMBLY AND ASSOCIATION

13. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) (i) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (ii) that is reasonably required for the purpose of protecting the rights or freedoms of other persons; or

(b) that imposes restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

PROTECTION OF FREEDOM OF MOVEMENT

14. (1) No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Swaziland, the right to reside in any part of Swaziland, the right to enter Swaziland, the right to leave Swaziland and immunity from expulsion from Swaziland.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) For imposing restrictions on the movement or residence within Swaziland of any person or on any person's right to leave Swaziland that are reasonably required in the interest of defence, public safety or public order;

(b) For imposing restrictions on the movement or residence within Swaziland or on the right to leave Swaziland of persons generally or any class of persons that are reasonably required in the interests of defence, public safety, public order, public morality or public health, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(c) For imposing restrictions, by order of a court, on the movement or residence within Swaziland of any person or on any person's right to leave Swaziland either in consequence of his having been found guilty of a criminal offence under the law of Swaziland or for the purpose of ensuring that he appears before a court at a later date for trial of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Swaziland;

(d) For imposing restrictions on the freedom of movement of any person who is not a citizen of Swaziland;

(e) For imposing restrictions on the acquisition or use by any person of any property in Swaziland that are reasonably required in the interests of defence, public safety, public order, public morality or public health;

(f) For imposing restrictions on the movement or residence within Swaziland of any person who holds or is acting in any public office;

(g) For the removal of a person from Swaziland to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence under the law of Swaziland of which he has been convicted; or

(h) For the imposition of restrictions on the right of any person to leave Swaziland that are reasonably required in order to secure the fulfilment of any obligation imposed on that person by law.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in paragraph (a) of subsection (3) of this section so requests at any time during the period of that restriction not earlier than three months after the order imposing that restriction was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons entitled to practise in Swaziland as advocates or attorneys.

(5) On any review by a tribunal in pursuance of subsection (4) of this section of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

PROTECTION FROM DISCRIMINATION ON THE GROUNDS OF RACE, ETC.

15 (1) Subject to the provisions of subsections (4), (5), (6) and (9) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (7), (9) and (10) of this section, no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority.

(3) In this section the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place or origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(a) With respect to persons who are not citizens of Swaziland or companies which are not registered in Swaziland;

(b) For the application in the case of members of a particular race or tribe or customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

(c) Whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(6) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specially relating to race, tribe, place of origin, political opinions, colour or creed) to be required of any person who is appointed to any public office, any office in a disciplined force, any office in the service of a local government authority or

any office in a body corporate established by any law for public purposes.

(7) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) of this section.

(8) Subject to the provisions of subsection (9) of this section, no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating-houses, beer halls or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13 and 14 of this Constitution, being such a restriction as is authorised by section 9 (22), section 11 (5), section 12 (2), section 13 (2), section 13 (3) or paragraph (a) or (b) of section 14 (3), as the case may be.

(10) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under any law for the time being in force in Swaziland.

DEROGATIONS FROM FUNDAMENTAL RIGHTS AND FREEDOMS UNDER EMERGENCY POWERS

16. (1) Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of section 5 or section 15 of this Constitution to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Swaziland during that period.

(2) When a person is detained by virtue of a power exercised in the absolute discretion of any authority and conferred by any such law as is referred to in subsection (1) of this section (not being a person who is detained because he is a person who, not being a citizen of Swaziland, is a citizen of a country with which Swaziland is at war or has been engaged in hostilities against Swaziland in association with or on behalf of such a country or otherwise assisting or adhering to such a country) the following provisions shall apply, that is to say—

(a) He shall, as soon as reasonably practicable and in any case not more than five days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained;

(b) Not more than fourteen days after the commencement of his detention, a notification

shall be published in the *Gazette* stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;

(c) Not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons entitled to practise in Swaziland as advocates or attorneys;

(d) He shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal; and

(e) At the hearing of his case by the tribunal he shall be permitted to appear in person or by a legal representative of his own choice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

ENFORCEMENT OF PROTECTIVE PROVISIONS

17. (1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being, or is likely to be, contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person) then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

(a) To hear and determine any application made in pursuance of subsection (1) of this section;

(b) To determine any question which is referred to it in pursuance of subsection (3) of this section, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Chapter.

(3) If in any proceedings in any court subordinate to the High Court any question arises as to the contravention of any of the provisions of this Chapter, the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless, in his judgment, which shall be final, the raising of the question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of subsection (3) of this section, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the

subject of an appeal to the Court to Appeal, in accordance with the decision of the Court of Appeal.

(5) No appeal shall lie, without the leave of the Court of Appeal, from any determination by the High Court that an application made in pursuance of subsection (1) of this section is merely frivolous or vexatious.

DECLARATIONS OF EMERGENCY

18. (1) The King may, by proclamation which shall be published in the *Gazette*, declare that a state of emergency exists for the purposes of this Chapter.

(2) A declaration under subsection (1) of this section, if not sooner revoked, shall cease to have effect—

(a) In the case of a declaration made when Parliament is sitting or has been summoned to meet within seven days, at the expiration of a period of seven days beginning with the date of publication of the declaration;

(b) In any other case, at the expiration of a period of twenty-one days beginning with the date of publication of the declaration,

unless, before the expiration of that period, it is approved by a resolution passed at a joint sitting of the Senate and the House of Assembly.

Chapter III

CITIZENSHIP

PERSONS WHO BECOME CITIZENS ON 6TH SEPTEMBER 1968

20. Every person who, on 5th September 1968, is a citizen of the former protected state of Swaziland by virtue of any of the provisions of Chapter XI of the former Constitution shall, on 6th September 1968, be a citizen of Swaziland.

PERSONS BORN IN SWAZILAND AFTER 5TH SEPTEMBER 1968

21. Every person born in Swaziland on or after 6th September 1968 shall, if his father is a citizen of Swaziland, become a citizen of Swaziland at the time of his birth.

PERSONS BORN OUTSIDE SWAZILAND AFTER 5TH SEPTEMBER 1968

22. Every person born outside Swaziland on or after 6th September 1968 shall, if his father is a citizen of Swaziland and is domiciled in Swaziland, become a citizen of Swaziland at the time of his birth.

PERSONS ENTITLED TO BE REGISTERED AS CITIZENS

23. (1) Subject to the provisions of this section, any of the following persons shall be entitled,

upon making application in such manner as may be prescribed by Act of Parliament, to be registered as a citizen of Swaziland—

(a) Any woman who is married to a person who is a citizen of Swaziland;

(b) Any woman whose marriage has been terminated by death or dissolution if the person to whom she was married was a citizen of the former protected state of Swaziland or a citizen of Swaziland or would but for his death have been a citizen of the former protected state of Swaziland by virtue of section 127 (a) or (b) of the former Constitution;

(c) Any person one of whose parents is a citizen of Swaziland or was, at the date of the death of such parent, a citizen of Swaziland or a citizen of the former protected state of Swaziland;

(d) Any person who is certified, by writing under the hand of the Nggwenyama or the Secretary to the Swazi National Council, to have "khonta'd", that is to say, to have been accepted as a Swazi in accordance with Swazi law and custom;

(e) Any person born in Swaziland on or after 6th September 1968 who was stateless at the time of his birth and is stateless at the time of the application and who is not entitled to acquire as of right the citizenship of his father or his mother.

(2) A person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not himself make an application under subsection (1) of this section, but an application may be made on his behalf by his parent or guardian.

(3) A person registered as a citizen of Swaziland under this section shall be a citizen by registration from the date on which he is so registered.

CITIZENSHIP BY NATURALISATION

24. (1) Subject to the provisions of this section, the Minister responsible for citizenship may, upon application made by any person who has attained the age of twenty-one years, grant a certificate of naturalisation to that person if satisfied—

(a) That he has been ordinarily and lawfully resident in Swaziland:—

(i) throughout the period of twelve months immediately preceding the date of the application; and

(ii) during the seven years immediately preceding the said period of twelve months, for periods amounting in the aggregate to not less than four years or, in the case of a Commonwealth citizen, for periods amounting in the aggregate to not less than three years; and

(b) That he is of good character; and

(c) That he has an adequate knowledge of at least one of the following languages—

(i) English;

(ii) siSwati; and

(d) That he intends, if the certificate is granted, to continue to reside in Swaziland.

(2) Provision may be made by Act of Parliament empowering the Minister responsible for citizenship to grant a certificate of naturalisation to any person who has not completed the periods of residence specified in subsection (1) (a) of this section, but is otherwise qualified under that subsection, if the Minister thinks fit in the circumstances of any particular case.

(3) A certificate of naturalisation shall not be granted to any person under this section until he has taken the oath of allegiance set out in Schedule 2 to this Constitution or such other oath as may be prescribed.

(4) A person to whom a certificate of naturalisation is granted shall be a citizen by naturalisation from the date on which the certificate is so granted.

COMMONWEALTH CITIZENS

25. (1) Every person who under this Constitution or any other law is a citizen of Swaziland or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

...

PROVISION BY ACT OF PARLIAMENT

26. (1) Subject to the provisions of this Chapter, provision may be made by Act of Parliament relating to the acquisition of citizenship of Swaziland by registration or naturalisation.

(2) Provision may be made by Act of Parliament for depriving of his citizenship of Swaziland any person who is such a citizen by registration or naturalisation.

(3) Provision may be made by Act of Parliament for the renunciation by any person of his citizenship of Swaziland.

...

Chapter V

PARLIAMENT

Part I—Composition of Parliament

ESTABLISHMENT OF PARLIAMENT

37. There shall be a Parliament which shall consist of a Senate and a House of Assembly.

COMPOSITION OF SENATE

28. (1) Subject to the provisions of this section, the Senate shall consist of twelve members (in this Constitution referred to as "Senators") who shall be elected or appointed in accordance with this section.

(3) If any person who is not a Senator is elected to be President or Deputy President of

the Senate he shall, by virtue of holding the office of President or Deputy President, as the case may be, be a member of the Senate in addition to the twelve members aforesaid.

(3) Six Senators shall be elected by the members of the House of Assembly entitled to vote in the manner prescribed by section 39 of this Constitution.

(4) The remaining six Senators shall be appointed by the King, acting in his discretion, in accordance with subsection (5) of this section.

...

(6) Notwithstanding any other provision of this section, the power of the King to appoint six Senators shall not be so exercised as to deny a majority in the Senate to the party or coalition of parties which is in the majority in the House of Assembly and, accordingly, that power shall be exercised after the election of the Senators referred to in subsection (3) of this section.

METHOD OF ELECTION OF SENATORS

39. The Senators elected by the members of the House of Assembly shall be elected, in such manner as may be prescribed by or under any law, in accordance with the system of proportional representation by means of the single transferable vote.

COMPOSITION OF HOUSE OF ASSEMBLY

40. (1) Subject to the provisions of this section, the House of Assembly shall consist of twenty-four elected members, six nominated members and the Attorney-General.

(2) If any person who is not a member of the House is elected to be Speaker or Deputy Speaker thereof he shall, by virtue of holding the office of Speaker or Deputy Speaker, as the case may be, be a member of the House of Assembly in addition to the members specified in subsection (1) of this section.

ELECTED MEMBERS OF HOUSE OF ASSEMBLY

41. Swaziland shall ... be divided into eight constituencies and each constituency shall elect three members to the House of Assembly in such manner as, subject to the provisions of this Constitution, may be prescribed by or under any law.

NOMINATED MEMBERS OF HOUSE OF ASSEMBLY

42. The nominated members of the House of Assembly shall be appointed by the King, acting in his discretion, after consultation with such bodies as he may consider appropriate and after taking account of any interests not already adequately represented in the House:

Provided that the power of appointment shall not be so exercised as to deprive the party or coalition of parties which has a majority among the elected members of the House of that majority.

QUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT

43. Subject to the provisions of section 44 of this Constitution, a person shall be qualified to be elected or appointed as a Senator or to be elected as an elected member or appointed as a nominated member of the House of Assembly if, and shall not be qualified to be so elected or appointed unless, he—

- (a) Is ordinarily resident in Swaziland;
- (b) Is a person qualified for registration as a voter; and
- (c) Has been so registered in any constituency.

DISQUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT

44. (1) No person shall be qualified to be elected or appointed as a Senator or to be elected as an elected member or appointed as a nominated member of the House of Assembly who—

- (a) Is, by virtue of his own act, under acknowledgment of allegiance, obedience or adherence to a foreign power or state;
- (b) Is a member of the armed forces of Swaziland or is holding or acting in any public office, or is holding or acting in any other office established by or under any law that may be prescribed;
- (c) Is a party to, or is a partner in a firm, or a director or manager of a company which is a party to, any subsisting Government contract, and has not made the appropriate disclosure of the nature of the contract and his interest, or the interest of the firm or company, therein;

Provided that the provisions of this paragraph shall not apply in the case of a Senator or a nominated member of the House of Assembly if he is appointed as such without his consent being obtained prior to the appointment;

- (d) Is an unrehabilitated insolvent or an undischarged bankrupt, having been adjudged or otherwise declared an insolvent or a bankrupt under any law for the time being in force in any country;
- (e) Is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Swaziland;
- (f) Is for an offence which is a criminal offence under the law of Swaziland, under sentence of death imposed on him by a court in any country, or is, for such an offence, under a sentence of imprisonment (by whatever name called) for a term of or exceeding six months, including a suspended sentence, imposed on him by such a court or substituted by the competent authority for some other sentence imposed on him by such a court;

(g) Has at any time been, for an offence which is a criminal offence under the law of Swaziland, under a sentence of imprisonment for a term of or exceeding six months (other than a suspended sentence which has not been enforced) imposed on him by a court in any country or substituted by competent authority for some other sentence imposed on him by such a court:

Provided that if two years or more have elapsed since the termination of the sentence of imprisonment, the person shall not be disqualified for membership of Parliament by reason only of such sentence;

(h) Is disqualified for membership of the Senate or House of Assembly under any law for the time being in force relating to offences connected with elections; or

(i) In the case of an elected member of the House of Assembly, holds or is acting in, any office, the functions of which involve any responsibility for, or in connection with, the conduct of any election or the compilation or revision of any electoral register.

...

QUALIFICATIONS OF VOTERS

51. (1) Subject to the provisions of section 52 of this Constitution, a person shall be qualified to be registered as a voter for the purpose of elections of elected members of the House of Assembly if, and shall not be so qualified unless, he has attained the age of twenty-one years and is a citizen of Swaziland.

(2) A person shall be entitled to be registered in one constituency only.

DISQUALIFICATIONS OF VOTERS

52. No person shall be qualified to be registered as a voter, or to vote, if—

(a) He is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in force in Swaziland;

(b) He is, for an offence which is a criminal offence under the law of Swaziland, under sentence of death imposed on him by a court in any country, or is, for such an offence, under a sentence of imprisonment (by whatever name called) for a term of or exceeding six months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or

(c) He is disqualified for registration as a voter under any law for the time being in force in Swaziland relating to offences connected with elections.

RIGHT TO VOTE AT ELECTIONS

53. (1) Any person who is registered as a voter shall be entitled to vote at any election of a member to the House of Assembly and, in the case of any general election, be entitled to cast one vote for each of any three candidates for election:

Provided that (except in so far as may otherwise be prescribed) no such person shall be entitled so to vote if on the date prescribed for polling he is for any reason unable to attend in person at the place and time prescribed for polling.

(2) No person shall vote at any election for a constituency who is not registered as a voter in that constituency.

...

Chapter XII

ALTERATION OF THE CONSTITUTION

MODE OF ALTERING THIS CONSTITUTION

134. (1) This Constitution shall not be altered except in the following manner—

(a) The alteration shall be initiated by the introduction of a bill, expressly providing that the Constitution shall be so altered, in a joint sitting of the Senate and the House of Assembly summoned for the purpose in accordance with the provisions of Schedule 1 to this Constitution.

(b) After the bill has been introduced in a joint sitting it shall be published in the *Gazette* and no further proceedings shall be taken on the bill in Parliament until the prescribed period has elapsed;

(c) If, after the prescribed period has elapsed, the bill is passed at a joint sitting of the Senate and the House of Assembly it shall, subject to paragraphs (e) and (f) of this subsection, be submitted to the King for assent;

(d) For the purpose of paragraph (c) of this subsection, if a bill contains provision for altering any of the specially entrenched provisions or entrenched provisions of this Constitution, the bill shall not be passed at a joint sitting of the Senate and the House of Assembly unless it is supported on its final reading by the votes of not less than three-quarters of all the members of both those chambers;

(e) If the bill as passed at the joint sitting contains provision for altering any of the specially entrenched provisions of this Constitution, that provision shall be submitted to a referendum, held in such manner as may be prescribed by Act of Parliament, at which every person who at the time when the referendum is held would be entitled to vote at an election of elected members of the House of Assembly but no other person is entitled to vote; and unless that provision is approved on the referendum by not less than two-thirds of all the votes validly cast on that referendum the bill shall not be submitted to the King for assent;

(f) When a bill to alter this Constitution is submitted to the King for assent it shall be accompanied by a certificate under the hand of the President of the Senate and the Speaker of the House of Assembly that the provisions of paragraphs (a), (b) and (d) of this subsection have been complied with and when a referendum has been held by a certificate of the officer in charge of the referendum stating the result of the referendum.

...

THE EXTRADITION ACT, 1968

Act No. 13 of 1968, assented to on 6 August 1968 and entered into force on 9 August 1968²

APPLICATION

3. (1) Where an agreement has been made between Her Majesty's Commissioner and a State for the surrender on a reciprocal basis of persons accused or convicted of the commission within the jurisdiction of Swaziland or such State of any offence specified in such agreement or any amendment thereof, the Minister may, by notice published in the *Gazette*, direct that this Act shall apply in the case of that State during the continuance of such agreement or any amendment thereof.

PERSONS LIABLE TO BE EXTRADITED

4. A person accused or convicted of an offence included in an extradition treaty and committed within the jurisdiction of a State which is a party to such agreement is, subject to the provisions of this Act, liable to be surrendered to such State in accordance with the terms of such agreement, whether or not the offence was committed before or after the date of the commencement of this Act upon which the agreement comes into operation and whether or not a court in Swaziland has jurisdiction to try such person for such offence.

GENERAL RESTRICTIONS ON SURRENDER OF A PERSON

5. A person shall not be extradited under this Act to any State, or be committed to, or kept in, custody for the purpose of such extradition, if it appears to the court of committal or to the High Court on an application for *habeas corpus* or on appeal or review against the decision of the court of committal that—

(a) The offence of which the person is accused or was convicted is an offence of a political character; or

(b) The request for his extradition (though purporting to be made on account of an offence specified in the extradition agreement) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or

(c) That the person might, if extradited, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions; or

(d) Provision is not made by the law of the State or by the agreement that no person surrendered to such State shall be detained or tried in the State for any offence committed prior to his surrender other than the offence in respect of which extradition was sought until he has been returned to Swaziland or until the expiration of at least forty-five days after he has had an opportunity of so returning.

REQUESTS FOR EXTRADITION FROM SWAZILAND

6. (1) Subject to the terms of any extradition agreement, any request for the surrender of any person to any State shall be made to the Minister by a person recognized by him as a diplomatic or consular representative of that State or by any Minister of that State communicating with the Minister through diplomatic channels existing between Swaziland and such State.

(2) Any such request received in terms of an extradition agreement by any person other than the Minister shall be handed to the Minister.

WARRANTS OF ARREST ISSUED IN SWAZILAND

7. (1) Any magistrate may, irrespective of the whereabouts or suspected whereabouts of the person to be arrested, issue a warrant for the arrest of any person—

(a) Upon receipt of a notification from the Minister to the effect that a request for the surrender of such person to a State or for his provisional arrest in connexion with an intended request for such surrender has been received by the Minister; or

(b) Upon such information of his being a person liable to be surrendered to a State as would, in the opinion of the magistrate, justify the issue of a warrant for the arrest of such person, had it been alleged that he committed an offence in Swaziland.

(2) Any warrant issued under this section shall be in the form and shall be executed in the manner as near as may be so prescribed in respect of arrest in general by or under the law of Swaziland relating to criminal procedure.

(3) Where a warrant for arrest has been issued in terms of subsection (1), any magistrate may issue a warrant empowering a police officer to search for and seize property—

(a) Which may be required as evidence at the trial of the person to be surrendered for the offence; or

(b) Which has been acquired as a result of offence.

² Supplement to the Swaziland Government Gazette, No. 310, of 9 August 1968, Part B.

WARRANTS FOR FURTHER DETENTION OF PERSONS
ARRESTED WITHOUT WARRANT

8. (1) Any magistrate may issue a warrant for the further detention of any person arrested without warrant under any law of Swaziland providing for the arrest without warrant of persons, liable to be apprehended under any law relating to extradition.

(2) Such a warrant for the further detention of any person may be issued upon such information of his being a person liable to be surrendered to a State as would, in the opinion of the magistrate, justify the issue of a warrant for the arrest of such person had it been alleged that he committed an offence in Swaziland.

PROCEEDINGS FOR COMMITTAL

9. (1) A person detained under a warrant of arrest or a warrant for his further detention shall, without undue delay, be brought before a court or committal, whereupon it shall hold an inquiry with a view to the surrender of such person to the State concerned.

(2) Subject to the provisions of this Act, the court of committal shall proceed in the manner in which a preparatory examination is held in the case of a person charged with having committed an offence in Swaziland and shall, for the purpose of holding such inquiry, have the same powers, including the power of committing any person for further examination and admitting any person detained to bail, as it has at a preparatory examination so held.

(3) Any deposition, statement on oath or affirmation taken, whether or not taken in the presence of the accused person, or any record of any conviction or any warrant issued in a State, or any copy or sworn translation thereof, may be received in evidence at any such inquiry if authenticated in the manner foreign documents may be authenticated to enable them to be produced in any court in Swaziland or in the manner provided for in the extradition agreement concerned.

(4) The testimony of any witness at an inquiry may be obtained in the same manner as in criminal cases before Subordinate Courts.

(5) At an inquiry relating to a person alleged to have committed or to have been convicted of an offence in a State, the provisions of section *ten* shall apply.

POWERS AND DUTIES OF COURT OF COMMITTAL

10. (1) If, upon consideration of the evidence adduced at the inquiry, the court of committal finds that the person brought before it is liable to be surrendered to the State concerned and, in the case where such person is accused of an offence, that there would be sufficient reason for putting him on trial for the offence had it been committed in Swaziland, it shall issue an order committing such person to prison to await the Minister's decision with regard to his surrender, at the same time informing such person that he may within fifteen days appeal against such

order to the High Court or apply to the High Court for *habeas corpus*.

(2) If the court of committal finds that the evidence does not warrant the issue of an order of committal or that the required evidence is not forthcoming within a reasonable time, it shall discharge the person brought before it.

(3) The court of committal issuing the order of committal shall forthwith forward to the Minister a copy of the record of the proceedings together with such report as it may deem necessary.

MINISTER MAY ORDER SURRENDER TO FOREIGN STATE

11. The Minister may order any person committed to prison under section *ten* to be surrendered to any person authorized by the State to receive him and may order the handing over of any property seized in terms of subsection (3) of section *seven*.

APPEAL

12. (1) A person against whom an order has been issued in terms of section *ten* may, within fifteen days after the issue thereof, appeal against such order to the High Court.

(2) On appeal, the High Court may make such order in the matter as it may deem fit.

LIMITATION OF EXECUTION OF ORDER
FOR THE SURRENDER OF A PERSON

13. No order for the surrender of any person shall be executed—

(a) Before the period allowed for an appeal under section *twelve* has expired, unless he has in writing waived his right of appeal;

(b) Before such an appeal or an application for *habeas corpus* has been disposed of;

(c) If, upon such appeal or application, his discharge from custody is ordered;

(d) In the case of a person charged or convicted of an offence in Swaziland, until the charge has been disposed of and any sentence which may have been imposed in respect of such offence has been executed;

Provided that where the extradition agreement so provides, the surrender may be effected in accordance with conditions determined by agreement between the Minister and the State concerned;

(e) If, after the expiration of two months—

(i) after the issue of an order of committal under section *ten*, where no appeal has been or is to be heard under section *twelve*; or

(ii) after an appeal under section *twelve* has been dismissed;

the High Court has, upon application made for *habeas corpus* after reasonable notice to the Minister, ordered his discharge from custody on the ground that there is not sufficient cause for his detention;

(f) If, after the expiration of *forty-five* days from the date on which the Minister informed the State of the place and date of the proposed surrender, the person has not been taken over by the State.

MINISTER'S RIGHT TO ORDER CANCELLATION OF WARRANTS OF ARREST OR DISCHARGE OF DETAINED PERSONS

14. The Minister may at any time order the cancellation of any warrant for the arrest of a person which is issued under this Act, or the discharge from custody of any person detained under this Act, if he is satisfied that the offence in respect of which the surrender of the person is or may be sought, is an offence of a political character or that the real purpose for the request for such surrender is to prosecute or punish the person on account of his race, religion, nationality or political opinions, or that the person might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

REMOVAL OF PERSONS SURRENDERED

15. (1) A person ordered to be surrendered under this Act may be removed from Swaziland in the custody of the person authorized to receive him and if he escapes while being so removed may be arrested without warrant by any person.

(2) A person who—

(a) While being so removed, escapes or attempts to escape; or

(b) Rescues or attempts to rescue from custody any person being so removed

is guilty of an offence and liable, on conviction, to imprisonment for a period not exceeding five years.

CUSTODY

16. A person arrested or remanded or committed under the provisions of this Act shall be detained in a prison established under the Prisons Proclamation, 1964 (No. 40 of 1964), as if he were an unconvicted person in terms of the said Proclamation or any regulations made thereunder.

...

DETENTION OF SURRENDERED PERSON FOR OFFENCES OTHER THAN THOSE IN RESPECT OF WHICH HE WAS EXTRADITED

19. No person surrendered to Swaziland by any State in terms of any extradition agreement shall, until he has been returned or had an opportunity of returning to such State, be detained or tried in Swaziland for any offence committed prior to his surrender other than the offence in respect of which extradition was sought; but any such person may, at the request of another State and with a view to his surrender to such State, be detained in Swaziland for an offence which was so committed and to which that agreement relates, provided such detention is not contrary to the laws of or the extradition agreement with the State which surrendered him to Swaziland and provided further that not less than forty-five days have expired after he has had an opportunity of returning to such State.

RETURN OF PERSON ACQUITTED OR NOT CHARGED WITHIN A SPECIFIED TIME

20. The Minister may, at the request of a person surrendered to Swaziland, return such person to the State in or on his way to which he was arrested if—

(a) In the case of a person accused of an offence, criminal proceedings are not instituted within six months of his arrival in Swaziland; or

(b) He is acquitted of the offence for which his surrender was sought.

ENTRY INTO AND PASSAGE THROUGH SWAZILAND OF PERSON IN CUSTODY

21. (1) A person entering into and passing through Swaziland in custody by virtue of any warrant or order lawfully issued in any State shall, during his passage through Swaziland, be deemed to be in lawful custody if the Minister has, at the request of the State in which the warrant or order was issued, authorized such passage in custody.

(2) A certificate by the Minister that any such warrant or order was lawfully issued shall be deemed conclusive proof of that fact.

...

THE PARLIAMENT (PETITIONS) ACT, 1968

Act No. 16 of 1968, assented to on 20 August 1968 and entered into force on 23 August 1968³

...

PART II—SENATE

AVOIDANCE OF ELECTION, OR APPOINTMENT,
OF CANDIDATE ON PETITION

3. (1) The election or appointment of a candidate as a Senator shall not be questioned save on a petition presented to the High Court requesting that the election or appointment be declared void.

(2) The election or appointment of a candidate as a Senator shall be declared void on any of the following grounds, as appropriate, which are proved to the satisfaction of the Court, namely—

(a) That, by reason of corrupt practices or other circumstances, the majority of the Members entitled to vote were or may have been prevented from voting for the candidate they preferred; or

(b) That, in connexion with the election or appointment, an offence was committed by the candidate; or

(c) Subject to section *sixteen*, that there was a non-compliance with either the Constitution or the Senate Regulations; or

(d) That the candidate was, at the time of the election or appointment, a person not qualified, or was a person disqualified, for election or appointment as a Senator.

WHO MAY PRESENT PETITION

4. A petition under this Part may be presented to the Court—

(a) Where the question relates to the valid election of a Senator, by an elected Member, or

(b) Where the question relates to the valid appointment of a Senator, by a Senator, or

(c) In either case, by the Attorney-General.

TIME FOR PRESENTATION OF PETITION

5. (1) A petition under this Part shall be presented within twenty-one days from the date of publication in the *Gazette* of—

(a) This Act, or

(b) The notice published in accordance with regulation 19 of the Senate Regulations.

...

PART III—HOUSE OF ASSEMBLY

AVOIDANCE OF ELECTION ON APPOINTMENT
OF CANDIDATE ON PETITION

7. (1) The election or appointment of a candidate as a Member shall not be questioned save on a petition presented to the High Court requesting that the election or appointment be declared void.

(2) The election or appointment of a candidate as a Member shall be declared void on any of the following grounds, as appropriate, which are proved to the satisfaction of the Court, namely—

(a) That, by reason of corrupt practices or other circumstances, the majority of voters were or may have been prevented from electing the candidate they preferred; or

(b) Subject to paragraph (2) of regulation 79 of the Assembly Regulations and to sections *ten* and *thirteen*, that an offence in connexion with the election was committed by the candidate or his agent; or

(c) Subject to section *sixteen*, that there was a non-compliance with the Assembly Regulations; or

(d) That the candidate was, at the time of his election or appointment, a person not qualified, or was a person disqualified, for election or appointment as a Member.

WHO MAY PRESENT PETITION

8. A petition under this Part may be presented to the Court—

(a) Where the question relates to the valid election of an elected Member, by a person entitled to vote in the election to which the petition relates; or

(b) Where the question relates to the valid appointment of a nominated Member, by an elected or a nominated Member; or

(c) In either case, by the Attorney-General.

TIME FOR PRESENTATION OF PETITION

9. (1) A petition relating to the election of an elected Member shall be presented within forty-two days from the date of publication of the result of the election under the provisions of regulation 62 of the Assembly Regulations.

...

11. (1) ...

(2) The vote of a registered voter shall not, except in the case specified in paragraph (e) of subsection (1), be struck off at a scrutiny by reason only of the voter not having been, or

³ *Ibid.*, No. 312, of 23 August 1968, Part B.

not being, qualified to have his name entered on the register of voters.

(3) On a scrutiny, a tendered vote proved to be a valid vote not added to the poll shall, on the application of a party to the petition, be added to the poll.

PART IV—SENATE AND HOUSE OF ASSEMBLY

REPORT OF COURT AS TO CORRUPT PRACTICE OR OTHER OFFENCE IN CONNEXION WITH ELECTION

12. (1) At the conclusion of the trial of a petition relating to the election of a Senator or an elected Member, the Court shall also report in writing to the Minister—

(a) Whether a corrupt practice or any other offence in connexion with the election has or has not been proved, to the satisfaction of the Court, to have been committed by or with the knowledge and consent of a candidate at the election or by his agent and the nature of the corrupt practice or offence, if any; and

(b) The names and descriptions of all persons, if any, who were proved at the trial to have committed a corrupt practice or any other offence in connexion with the election.

(2) Before a person, not being a party to a petition nor a candidate on behalf of whom the seat is claimed by a petition, is reported under this section by the Court, the Court shall give that person an opportunity of being heard and of giving and calling evidence to show why he should not be so reported.

CERTIFICATE OF COURT AS TO VALIDITY OF ELECTION OR APPOINTMENT

19. (1) At the conclusion of the trial of a petition under Part II or III, the Court shall determine whether—

(a) The Senator or Member, whose nomination or election or appointment is complained of, or any and which person, was duly nominated or elected or appointed; or

(b) The election or appointment was void;

and shall certify its determination to the Speaker of the Senate or House of Assembly, as the case may be.

PART VI—VACANT SEAT

PETITION RELATING TO VACANT SEAT

22. (1) A question arising as to whether the seat of a Senator or a Member has become vacant, other than a question arising from the election or appointment of the Senator or Member, shall be referred to and determined by the Court on petition presented—

(a) By a Senator, or an elected or a nominated Member, as the case may be, or

(b) By the Attorney-General, or

(c) In the case of the seat of an elected Member, by a person registered in some constituency as a voter in elections of elected Members.

PART VII—GENERAL

RESPONDENT NOT OPPOSING PETITION

23. (1) A respondent who gives notice that he does not intend to oppose the petition shall not, pending the result of the trial of the petition:

(a) Be allowed to appear or to act as a party against the petition in any proceedings on the petition; and

(b) Shall not sit or vote in Parliament.

SPECIAL CASE

24. (1) If, on the application in the prescribed manner of a party to a petition under this Act, it appears to the Court that the case raised by the petition can be conveniently stated in a special case, the Court may direct it to be stated accordingly and the special case shall be heard before the Court.

(2) The Court shall certify to the Speaker concerned its decision with reference to the special case.

THE PROSCRIBED PUBLICATIONS ACT, 1968

Act No. 17 of 1968, assented to on 20 August 1968 and entered into force on 23 August 1968 ⁴

...

POWER TO NOTIFY PROSCRIBED PUBLICATIONS

3. (1) The Minister may, by notice published in the *Gazette*, declare—

- (a) Any publication or object; or
- (b) (i) a series of publication or objects; or
(ii) any publication or object dealing with any specified subject; or
(iii) any publication or object printed, published, manufactured, made or produced by a person (whose name shall be specified in the notice) and whether or not yet in existence

to be a proscribed publication, if the publication or object is prejudicial or potentially prejudicial to the interests of defence, public safety, public order, public morality or public health.

(2) A proscription made under this section shall take effect from the date of the notice or such other date as the Minister may specify therein.

PROHIBITION OF IMPORTATION, ETC., OF PROSCRIBED PUBLICATIONS

4. (1) A person who, unless permitted to do so by licence issued under the hand of an officer deputed by the Minister—

- (a) Imports or attempts to import; or
- (b) Distributes, displays, exhibits, exchanges, gives, lends or offers or keeps for sale; or
- (c) Prints, publishes, manufactures, makes or produces; or
- (d) Has in his custody or control (unless he satisfies the Court that such custody or control was not exercised by him for any of the aforesaid purposes)

a proscribed publication, is guilty of an offence and is liable, on conviction, to a fine not exceeding four hundred rands or imprisonment for a period not exceeding twelve months, or both.

⁴ *Ibid.*

(2) A court which convicts a person of an offence under this Act may order the destruction of any publication or object in respect of which the person is convicted.

SAVINGS

5. (1) The provisions of this Act do not apply to—

(a) The publication of any pleading, transcript of evidence or other document for use in connexion with any judicial proceedings or their communication to persons concerned in the proceedings; or

(b) The publication of—

- (i) a notice or report in pursuance of the directions of a court of law; or
- (ii) any matter in any separate volume or part of any bona fide series of law reports which does not form a part of any other publication and consists solely of reports of proceedings in courts of law; or
- (iii) any matter in a publication of a technical, scientific or professional nature bona fide intended for the advancement of or for use in any particular profession or branch of art, literature or science; or
- (iv) any matter in any publication of a bona fide religious character;

and in any prosecution for an offence under this Act the onus of proving the bona fides referred to in sub-paragraphs (ii), (iii) and (iv) shall rest upon the accused.

(2) The Minister may, on such conditions as he may deem fit, exempt any person or institution from the provisions of section *four* and may at any time withdraw or amend such exemption.

PROSECUTION ONLY ON AUTHORITY OF ATTORNEY-GENERAL

6. No prosecution in respect of an offence under this Act shall be instituted except with the written permission of the Attorney-General.

...

THE CRIMINAL PROCEDURE AND EVIDENCE (AMENDMENT) ACT, 1968

Act No. 20 of 1968, assented to on 20 August 1968 and entered into force on 23 August 1968 ⁵

...

INTERPRETATION

2. In this Act—

“the principal law” means the Criminal Procedure and Evidence Proclamation (*Cap. 35*).

AMENDMENT OF SECTION 224

3. Section *two hundred and twenty-four* of the principal law is replaced by the following new section—

“*Admissibility of facts discovered by means of inadmissible confessions.*

“224 (1) Evidence may be admitted of any fact otherwise admissible in evidence notwithstanding that such fact has been discovered and come to the knowledge of the witness giving evidence respecting it, only in consequence of information given by the accused person in a confession or in evidence which by law is not admissible against him, and notwithstanding that the fact has been discovered and come to the knowledge of the witness against the wish or will of the accused.

“(2) It shall be lawful to admit evidence that any fact or thing was discovered in consequence of the pointing out of anything by the accused person or in consequence of information given by him notwithstanding that such pointing out of information forms part of a confession or statement which by law is not admissible against him.”

⁵ *Ibid.*

THE EMERGENCY POWERS ACT, 1968

Act No. 24 of 1968, assented to on 16 September 1968 and entered into force on 6 September 1968 ⁶

...

EMERGENCY REGULATIONS

3. (1) For so long as a declaration of emergency is in force, the Prime Minister may make such regulations as are reasonably justifiable for securing the public safety, the defence of Swaziland, the maintenance of public order and the suppression of mutiny, rebellion and riot and for maintaining supplies and services essential to the life of the community and for making adequate provision for terminating the emergency or for dealing with any circumstances which, in his opinion, have arisen or are likely to arise as a result of the emergency.

(2) Without prejudice to the generality of the foregoing, the regulations may provide for—

(a) The detention of persons;

(b) The deportation and exclusion from Swaziland of persons who are not citizens of Swaziland;

(c) The restriction of the movement or residence of persons within Swaziland, including the imposition of curfews;

(d) The amending of a law, the suspending of the operation of a law and for supplying a law with or without modification;

(e) The taking of possession or control, on behalf of the Government, of any property or undertaking;

(f) The acquisition of property, other than land, on behalf of the Government;

(g) The entering and search of any premises;

⁶ *Supplement to the Swaziland Government Gazette*, No. 318, of 27 September 1968, Part B.

(h) The charging of fees in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of a regulation; and

(i) The payment of compensation and remuneration to a person affected by a regulation.

(3) Regulations made under this section may provide for the apprehension, trial and punishment of persons committing offences against the regulations, but the maximum punishment which may be imposed for such an offence is a fine of two thousand rand or imprisonment for a period of five years, or both.

(4) Nothing contained in this section shall be construed as authorizing the making of any regulation whereby any law relating to the qualifications, nomination, election or tenure of office of members of the Senate or the House of Assembly, or to the holding of sessions of Parliament or to the powers, privileges or immunities of Parliament or the members or committees thereof, is altered or suspended.

(5) Regulations may be made so as to apply to a specified area of Swaziland and different regulations may be applied to different areas and to different classes of persons.

JURISDICTION OF ORDINARY COURTS

4. No person charged with an offence under this Act shall be tried before a court or tribunal other than the High Court or a Subordinate Court constituted under paragraph (a) of section four of the Subordinate Courts Proclamation (*Cap. 20*).

PROOF OF DOCUMENTS

5. A document purporting to be an instrument made or issued by the Prime Minister or other authority or person in pursuance of this Act and to be signed by or on behalf of the Prime Minister or such other authority or person shall be received in evidence and shall, unless the contrary is proved, be deemed to be an instrument made or issued by the Prime Minister or that authority or person.

PRESENTATION OF REGULATIONS TO PARLIAMENT

6. (1) All regulations made under this Act shall be laid before both Houses of Parliament.

(2) If a House is sitting when a regulation is made, it shall be laid before that House not later than seven days after it has been made.

(3) If a House is not sitting when a regulation is made, it shall be laid before that House on the day of the commencement of its next sitting.

DURATION OF REGULATION

7. A regulation shall continue to have the force of law for so long as the declaration of emergency has effect in terms of the Constitution, unless a resolution is passed by both Houses of Parliament at a joint sitting that it shall cease to have effect forthwith or at some future stated date, where upon the regulation shall cease to have effect to the extent stated in the resolution.

THE OFFICIAL SECRETS ACT, 1968

Act No. 30 of 1968, assented to on 29 October 1968 and entered into force on 6 September 1968⁷

PENALTY FOR SPYING

3. A person who, for any purpose prejudicial to the safety or interests of Swaziland—

(a) Approaches, inspects, passes over or is in the neighbourhood of or enters any prohibited place; or

(b) Makes any sketch, plan, model or note which is likely to be directly or indirectly useful to an enemy;

(c) Obtains, collects, records or publishes or communicates to any person any secret official code or password, or any sketch, plan, model, article or note or other document or informa-

tion which is likely to be directly or indirectly useful to an enemy

is guilty of an offence and liable, on conviction, to imprisonment for a period not exceeding fifteen years.

COMMUNICATION OF CERTAIN INFORMATION PROHIBITED

4. (1) A person who has in his possession or under his control any secret official code or password, or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or anything in a prohibited place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under the Government, or which

⁷ *Ibid.*, No. 324, of 8 November 1968, Part B.

he has obtained or to which he has had access owing to his position as a person who holds or has held such an office, or as a person who holds or has held a contract made on behalf of the Government, or a contract the performance of which in whole or in part is carried out in a prohibited place, or as a person who is or has been employed under a person who holds or has held such an office or contract, and who—

(a) Communicates the code, password, sketch, plan, model, article, note, document or information to any person, other than a person to whom he is authorized to communicate it or a person to whom it is, in the interests of Swaziland, his duty to communicate it; or

(b) Uses the information in any manner or for any purpose prejudicial to the safety or interests of Swaziland; or

(c) Retains the sketch, plan, model, article, note or document in his possession or under his control when he has no right to retain it or when it is contrary to his duty to retain it, or fails to comply with any directions issued by lawful authority with regard to the return or disposal thereof; or

(d) Fails to take proper care of or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, code, password or information

is guilty of an offence and liable, on conviction, to a fine not exceeding one thousand rand or imprisonment for a period not exceeding five years, or both.

(2) (a) A person who has in his possession or under his control any sketch, plan, model, article, note, document or information which relates to munitions of war or any military or police matter and who publishes it or directly or indirectly communicates it, or its contents or any part thereof, to any person in any manner or for any purpose prejudicial to the safety or interests of Swaziland, is guilty of an offence and liable, on conviction, to a fine not exceeding one thousand five hundred rand or imprisonment for a period not exceeding seven years, or both;

(b) For the purposes of paragraph (a), "police matter" means any matter relating to the preservation of the internal security of Swaziland or the maintenance of law and order by the Swaziland Police.

(3) A person who receives any secret official code or password, or any sketch, plan, model, article, note, document or information, or any copy thereof, knowing or having reasonable grounds to believe, at the time when he receives it, that the code, password, sketch, plan, model, article, note, document or information is communicated to him in contravention of the provisions of this Act is, unless he proves that the communication thereof to him was contrary to

his desire, guilty of an offence and liable, on conviction, to the penalties prescribed in subsection (1).

...
 PROOF OF PURPOSE PREJUDICIAL TO SAFETY
 OR INTERESTS OF SWAZILAND.

9. (1) If, in any prosecution under this Act upon a charge of committing an act for a purpose prejudicial to the safety or interests of Swaziland, it appears, from the circumstances of the case or the conduct of the accused, that his purpose was a purpose prejudicial to the safety or interests of Swaziland, it shall be presumed, unless the contrary is proved, that the purpose for which that act has been committed is a purpose prejudicial to the safety or interests of Swaziland.

(2) If, in any prosecution under this Act upon a charge of making, obtaining, collecting, recording, publishing or communicating anything for a purpose prejudicial to the safety or interests of Swaziland, it is proved that it was made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, it shall, unless the contrary is proved, be presumed that the purpose for which it was made, obtained, collected, recorded, published or communicated, is a purpose prejudicial to the safety or interests of Swaziland.

SPECIAL POWER OF COMMISSIONER OF POLICE

10. Where the Commissioner of Police is satisfied that there is reasonable ground for suspecting that an offence under section *three* or *four* has been committed and for believing that any person is able to furnish information as to the offence, he may authorize a superintendent of police, or any police officer of the rank of inspector or above, to require the person believed to be able to furnish information to give any information in his power relating to the offence or suspected offence and if so required to make a tender of his reasonable expenses to attend at such reasonable time and place as may be specified by the superintendent or other officer; and if a person required to give information or to attend as aforesaid, fails to comply with such a requirement he is guilty of an offence and liable, on conviction, to a fine not exceeding one hundred rand or imprisonment for a period not exceeding six months, or both.

SEARCH WARRANTS

11. (1) If a magistrate of a Subordinate Court is satisfied under oath that there is reasonable ground for suspecting that an offence under this Act has been, or is about to be, committed, he

may grant a search warrant authorizing any policeman named therein to enter at any time any premises or place named in the warrant, if necessary by the use of reasonable force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything of a like nature which is evidence of an offence under this Act having been or being about to be committed, which he may find on the premises or place or on any such person, and with regard to or in connexion with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to the Commissioner of Police that the case is one of great emergency and that in the interests of Swaziland immediate action is necessary, he may, by written order under his hand, give any policeman the like authority as may be given by the warrant of the magistrate under this section.

RESTRICTION ON PROSECUTION

12. A prosecution for any offence under this Act shall not be instituted except by or with the consent of the Attorney-General:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

EXTRA-TERRITORIAL APPLICATION

13. This Act applies also in respect of any act constituting an offence under the Act committed outside Swaziland by any citizen of Swaziland or any person domiciled in Swaziland or employed by the Government.

...

SWEDEN

NOTE ¹

1. A further increase in the national basic pensions became effective on 1 July 1968. The annual pension—apart from rent allowances—is, as from July 1968, Sw. Kr. 5,220 for a pensioner alone or a total of Sw. Kr. 8,112 for two pensioned spouses together.

2. The family policy reform, which was adopted by the 1968 *Riksdag*, came into force on 1 January 1969. This reform is expected to give about 400,000 families increased financial support and is drawn up in such a way that it will also contribute towards the raising of the housing-standard of families with children. By means of this reform about 100,000 mothers or fathers in sole custody of children will receive, as from January 1969, increased maintenance advances by about Sw. Kr. 300 a year in respect of each child.

Accommodation at the nursery schools is in the process of being considerably increased and an additional 6,000 children could be admitted in 1968.

3. On 1 July 1968 a new institute for the care of handicapped persons was established. This institute will act as a central organ for the administration of aids to handicapped persons and will have important functions in the field of research and development work for the provision of suitable technical devices for the handicapped. The possibilities for handicapped persons to obtain such aids free of charge has increased.

The National Board of Health and Welfare has started a programme of handicap preventive health control of children at the age of four.

4. The reform work carried out in the 1960s as regards the question of working hours has resulted in a shorter working week and longer vacation. On 1 January 1969, the last stage of a programme to reduce the working week was accomplished when the number of working hours per week was fixed at 42½. The Government

proposes to lay a Bill before the *Riksdag* before the end of this year for a further gradual reduction of the working hours to 40 per week.

5. A specially appointed committee has submitted a draft law on working hours, etc., for employees engaged in domestic work.

6. The Social Assistance Act has been amended whereby the responsibility resting upon the local authorities for the personal care of individuals has been specified. The local social welfare committees are now required by law to find out the needs of individuals for care and to ensure that these are met satisfactorily.

7. In 1968, a new scheme of special financial support was introduced in order to aid unemployed persons, especially those in the age group 60-66 years. The background of the reform is the present structural changes in the industrial sector, which create difficulties when it comes to providing elderly unemployed persons with new jobs. If these difficulties cannot be solved by retraining, migration or other means of employment promotion, unemployed persons in the above-mentioned age group are entitled to a monthly government allowance of maximum Sw. Kr. 800. This allowance is granted to persons who have been employed as well as to those in business on their own account, provided that they have been gainfully employed in one of the above-mentioned forms for 24 months during the preceding three-year period immediately prior to the unemployment. This reform also implies that elderly members of approved unemployment benefit societies can receive payment from these societies during a longer period than younger members.

8. By a law dated 13 December 1968, a uniform marrying age—18 years—for men and women was enforced. According to the previous law, the marrying age was 21 years for men and 18 years for women. The amendment of the law is based on the principle that there shall be fundamental equality between the sexes in the marriage legislation as in other fields.

¹ Note furnished by the Government of Sweden.

9. By amendments of the Alien's Act, which enter into force on 1 July 1969, the legal security in matters concerning residence permits has been strengthened. An alien may not be refused a residence permit on account of circumstances assignable to his person, except in cases clearly specified in the Act. Furthermore, an alien who has been refused a residence permit on such grounds will have the right to appeal to a superior authority.

10. In December 1968, a specially appointed committee submitted a draft legislation against racial discrimination. The committee proposes certain amendments to the Penal Code and the Freedom of the Press Act aiming at establishing a more effective protection against different types of racial discrimination. The proposal is especially intended to facilitate Sweden's accession to the United Nations Convention on the Elimination of All Forms of Racial Discrimination.

SWITZERLAND

FEDERAL AND CANTONAL LEGISLATION CONCERNING HUMAN RIGHTS WHICH ENTERED INTO FORCE BETWEEN 1 JANUARY AND 31 DECEMBER 1968¹

I. FEDERAL LAW

A. PROTECTION OF LIFE AND HEALTH

Federal Act, dated 5 October 1967, amending the Federal Alcohol Act of 21 June 1932.

Ordinance of the Federal Department of the Interior, dated 18 April 1968, concerning radioactivity in time-measuring instruments.

Ordinance of the Federal Council, dated 8 May 1968, concerning co-ordination in the implementation of the Sickness and Accident Insurance Act and the Labour Act in so far as it applies to the prevention of accidents and occupational diseases (see also under B, social welfare).

B. SOCIAL WELFARE

Federal Act, dated 5 October 1967, amending the Disability Insurance Act (see in particular article 8).

Order of the Federal Council, dated 15 January 1968, amending provisions relating to the implementation of the Federal Disability Insurance Act (see in particular chapter C. Measures concerning the education of disabled minors). Ordinance No. 10 of the Federal Department of the Interior, dated 19 November 1968, concerning sickness insurance (inclusion of prescribed drugs in the list of patent medicines).

C. CRIMINAL LEGISLATION

Federal Act, dated 5 October 1967, amending the military penal code (see in particular chap-

ter VI, breaches of international public law in the event of armed conflict; article 109).

Order of the Federal Council, dated 14 February 1968, concerning the execution of penal decisions in the case of conscientious objectors.

D. RIGHT OF ASYLUM

Ordinance, dated 14 August 1968, concerning the detention of aliens.

II. CANTONAL LEGISLATION

VAUD:

A. PROTECTION OF LIFE AND HEALTH

Order, dated 7 May 1968, concerning the protection of waters against pollution by combustibles, fuels or other liquids in storage liable to cause water pollution.

B. PROTECTION OF WORKERS

Order, dated 19 March 1968, extending the scope of the collective labour agreement in respect of dental technicians in the Canton of Vaud.

Order, dated 19 January 1968, extending the scope of the collective labour agreement relating to marble-working enterprises in the Canton of Vaud.

Order, dated 16 August 1968, extending the scope of the collective labour agreement relating to the type-writer and office machine sector in the Canton of Vaud.

C. VOCATIONAL TRAINING

Act, dated 25 September 1968, amending the Vocational Guidance and Training Act of 14 December 1965.

¹ Collected by the Justice Division of the Federal Department of Justice and Police.

THAILAND

CONSTITUTION OF THE KINGDOM OF THAILAND

Enacted on 20 June 1968¹

Chapter I

GENERAL PROVISIONS

Section 1. Thailand is a Kingdom, one and indivisible.

Section 2. Thailand adopts a democratic form of government, having the King as Head.

Section 3. The sovereign power emanates from the Thai people. The King, who is Head of State, exercises such power only in conformity with the provisions of the Constitution.

...

Chapter II

THE KING

Section 4. The person of the King is in a sacred position and must not be violated.

Section 5. No person may prefer a charge or bring an action against the King in any manner whatever.

Section 6. The King is a Buddhist and the Upholder of religions.

Section 7. The King exercises the legislative power through the National Assembly.

Section 8. The King exercises the executive power through the Council of Ministers.

Section 9. The King exercises the judicial power through the Courts of Justice.

...

¹ Published in the *Government Gazette*, volume 85, special issue, of 20 June 2511 (A.D. 1968). Text of the Constitution in English furnished by the Government of Thailand.

Chapter III

RIGHTS AND LIBERTIES OF THE THAI PEOPLE

Section 24. All persons, irrespective of birth or religion, are equally under the protection of the Constitution.

Section 25. All persons are equal before the law. Titles acquired by birth, bestowal or any other manner do not create any privilege whatever.

Section 26. Every person enjoys full liberty to profess a religion, a religious sect or a religious creed, and to exercise a form of worship in accordance with his belief, provided that it is not contrary to his civic duties or to public order or good morals.

In exercising the liberty referred to in the first paragraph, every person is protected from any act of the State, which is derogatory to his rights or detrimental to his due benefits, on the ground of professing a religion, a religious sect or a religious creed, or of exercising a form of worship in accordance with his belief different from those of others.

Section 27. No person shall be inflicted with a criminal punishment unless he has committed an act which the law in force at the time of its commission provides it to be an offence and imposes a punishment therefor, and the punishment to be inflicted on such person shall not be heavier than that provided by the law in force at the time of its commission.

Section 28. In a criminal case the alleged offender or the accused shall be presumed innocent.

Before the passing of a final judgement convicting a person of having committed an offence, such person shall not be treated as a convict.

An application for bail by the alleged offender or the accused must be accepted for consideration

and excessive bail shall not be demanded. The refusal of a bail must be based upon the grounds in accordance with the principles specifically provided by law, and the reason for such refusal must be notified to the alleged offender or the accused.

A person being detained or undergoing a term of imprisonment is entitled, within reason, to receive visitors.

Section 29. Every person enjoys full liberty of the person.

No arrest, detention or search of person under any circumstances whatever may be made except by virtue of law, and the person so arrested or searched shall, without delay, be notified of the reason of his arrest or search together with sufficient particulars. The person so detained has the right to see and consult his counsel in privacy.

In the case of detention of a person, such person or the Public Prosecutor or any other person acting in the interest of the person so detained has the right to submit to the local Court having criminal jurisdiction a plaint alleging that the detention is unlawful. Where such plaint is submitted, the Court shall forthwith proceed with an *ex parte* investigation. If in the opinion of the Court the plaint presents a *prima facie* case, the Court has the power to order the person responsible for the detention to produce the person so detained promptly before the Court, and if the person responsible for the detention cannot show to the satisfaction of the Court that the detention is lawful, the Court shall order immediate release of the person so detained.

Section 30. Forced labour may be imposed only by virtue of the law specifically enacted for the purpose of averting imminent public calamity or by virtue of the law which provides for its imposition during the time when the country is in a state of armed conflict or war, or when a state of emergency or martial law is declared.

Section 31. Every person enjoys full liberty of the dwelling.

Every person is protected in his peaceful habitation in and possession of his dwelling. The entry into a person's dwelling without his consent or the search thereof may only be made by virtue of law.

Section 32. The right of a person in property is guaranteed. The extent and the limitation of such right are governed by law.

Succession is guaranteed. The right of a person in succession is governed by law.

Expropriation of immovable property may only be effected by virtue of the law specifically enacted for the purpose of public utility, direct defence of the country, exploitation of national resources, or for the interest of town and country planning, or for other interests of the State; and just compensation must be paid to the owner thereof as well as to the person having the right to compensation specified in the law on expropriation of immovable property, who suffers loss by such expropriation.

Section 33. Every person enjoys full liberties of speech, writing, printing and publication.

Restrictions on such liberties may only be imposed by virtue of the law specifically enacted for the purpose of safeguarding the liberties of other persons, avoiding a state of emergency, maintaining public order or good morals, or protecting young persons from moral degeneration.

No grant of money or other property shall be made by the State as subsidy to a private newspaper.

Section 34. Every person enjoys full liberty of education, provided that such education is not contrary to his civic duties under the law on education and the law on organization of educational establishments.

Section 35. Every person enjoys full liberty to assemble peacefully and without arms.

Restrictions on such liberty may only be imposed by virtue of law only in the case of public meetings, and for the purpose of ensuring conveniences for the public in the use of public places or of maintaining public order during the time when the country is in a state of armed conflict or war, or when a state of emergency or martial law is declared.

Section 36. Every person enjoys full liberty to form an association, provided that the object thereof is not contrary to law.

The formation and the management of an association are governed by law.

Section 37. Every person enjoys full liberty to form a political party for the purpose of carrying out political activities through democratic means in so far as they are not contrary to the form of government under this Constitution.

The formation and the management of a political party are governed by the law on political parties.

Section 38. Every person enjoys liberty of communication by post or by any other lawful means.

Censorship, detention, or disclosure of letter, telegram, telephonic message or any other communication between persons may only be made by virtue of law.

Every person has an equal right to employ all means of communication provided for public service.

Section 39. Every person enjoys full liberty in the choice of his residence within the Kingdom and of his occupation.

Restrictions on such liberty may only be imposed by virtue of the law specifically enacted for the safety of the country, national economy or public welfare, or for the purpose of maintaining family relationship.

No person of Thai nationality shall be deported from the Kingdom.

Section 40. Every person has the right, either singly or jointly, to present a petition under the conditions and in the manner provided by law.

Section 41. Family rights are guaranteed.

Section 42. The right of a person to sue a government unit, which is a juristic person, for

the liability for an act done by its official, as principal or employer, is guaranteed.

Section 43. Members of the armed forces and the police force, other permanent government and local government officials, enjoy such rights and liberties as accorded to the people under the Constitution unless they are limited or restricted by law, bye-law or regulation issued by virtue of law in so far as they concern political activities, efficiency or discipline.

Section 44. No person may exercise the rights and liberties under this Constitution adversely to the nation, religion, King and Constitution.

Chapter IV

DUTIES OF THE THAI PEOPLE

Section 45. Every person has the duty to defend the country.

Section 46. Every person has the duty to undergo the military service provided by law.

Section 47. Every person has the duty to uphold the democratic form of government having the King as Head under this Constitution.

Section 48. Every person has the duty to abide by the law.

Section 49. In the exercise of his right to vote in an election and right to vote in a referendum, a person has the duty to act in good faith and in consideration of the common interest.

Section 50. Every person has the duty to pay the taxes and duties imposed by law.

Section 51. Every person has the duty to assist the government administration provided by law.

Section 52. Every person has the duty to receive primary education under the conditions and in the manner provided by law.

Chapter V

DIRECTIVE PRINCIPLES OF STATE POLICIES

...
Section 55. The State shall promote friendly international relations and adopt the principle of reciprocity.

Section 56. The State shall co-operate with other nations in maintaining international justice and world peace.
...

Section 59. The State is to promote and advance education.

The organization of the educational system is an exclusive duty of the State. All educational establishments are to be under the control and supervision of the State.

As for higher education, the State is to enable educational establishments to manage their own affairs within the limits provided by law.

Section 60. Primary education in State educational establishments must be provided without charge.

The State is to render assistance in furnishing adequate educational materials.

Section 61. The State is to encourage research in arts and sciences.

Section 62. The State is to conserve the national culture, but compulsory measures must not be taken against the will of a person.

Section 63. The State is to maintain places and objects of historical, cultural and artistic value.

Section 64. The State is to encourage private economic initiative.

The State is to take measures to co-ordinate the enterprises of public utility nature with private economic activities so as to benefit the people as a whole.

The private enterprise of public utility nature or monopolistic enterprise may be permitted only by virtue of law.

Section 65. The State is to promote and encourage agricultural pursuits for the purpose of increasing produce both in quantity and quality.

Section 66. The State is to encourage private trade and production, both in agriculture and industry.

Section 67. The State is to promote and encourage social work for the welfare and happiness of the people.

Section 68. The State is to encourage people of working age to obtain employment appropriate for their station, and to ensure fair protection of labour.

Section 69. The State is to promote public health.

Section 70. The State is to promote local government and to support local government bodies to be able to perform their functions efficiently.

Chapter VI

LEGISLATIVE POWER

PART 1 — GENERAL PROVISIONS

Section 71. The National Assembly consists of the Senate and the House of Representatives.

Joint or separate sittings of the National Assembly are governed by this Constitution.
...

PART 2 — THE SENATE

Section 78. The Senate is composed of members appointed by the King from persons possessing technical qualifications or qualifications in

various fields which will benefit the administration of the State, being of Thai nationality by birth, and of not less than forty years of age.

The number of senators shall be three fourths of the total number of members of the House of Representatives. A fraction of the number so calculated, if any, shall be omitted.

Section 79. The membership of a senator is for a term of six years from the day of his appointment by the King.

For the initial term, one half of the senators shall, at the expiry of three years from the date of the initial appointment by the King, retire by drawing lots, and the termination of membership by drawing lots shall also be regarded as retirement by rotation.

The King has the prerogative to re-appoint the persons retiring by rotation senators.

Section 81. If there is a vacancy of membership in the Senate for any reason other than retirement by rotation, the King will appoint a person qualified under section 78 to fill the vacancy. The senator so appointed may hold office for the remaining term of office of the person he replaces.

PART 3 — THE HOUSE OF REPRESENTATIVES

Section 82. The House of Representatives is composed of members elected by the people, the number of which is on the basis provided in section 83.

The election of members of the House of Representatives shall be by direct suffrage and secret ballot, and the boundary of Changwat shall be considered the basis thereof.

The election, whether by the method of representation through single-member or multi-member constituency, shall be governed by the law on election of members of the House of Representatives.

Section 83. The number of the members of the House of Representatives to be elected shall be determined by the number of the population in each Changwat as evidenced in the census announced in the year preceding the election year at the ratio of one to one hundred and fifty thousand. A Changwat with the population less than one hundred and fifty thousand shall elect one member, while a Changwat with the population exceeding one hundred and fifty thousand shall elect an additional member for every one hundred and fifty thousand population; any fraction thereof, if amounting to seventy-five thousand or more, shall be counted as one hundred and fifty thousand.

Section 84. A person who is qualified under section 85 and is not disfranchised under section 86 has the right to vote in an election.

Section 85. A person who has the right to vote in an election must possess the following qualifications:

(1) Being of Thai nationality under the law, provided that a person of Thai nationality whose

father is an alien or a naturalized Thai must, in addition, possess the qualifications stipulated by the law on election of members of the House of Representatives;

(2) Being of not less than twenty years of age on the first day of January of the election year;

(3) Possessing other qualifications as may be stipulated by the law on election of members of the House of Representatives.

Section 86. A person under any of the following disabilities on the election day is disfranchised:

(1) Being of unsound mind or of mental infirmity;

(2) Being deaf and dumb and incapable of reading and writing;

(3) Being a Buddhist priest or novice, monk or clergy;

(4) Being detained by a warrant of the Court;

(5) Being revoked of his right to vote in an election by a judgment of the Court.

Section 87. A person having the right to vote in an election under section 84 and being qualified under section 88 who is not prohibited under section 89 has the right to stand as a candidate for membership of the House of Representatives. However, the provision of section 86 (4) shall not apply in the case where a person under detention has not yet been sentenced to a term of imprisonment by the judgment of a Court.

Section 88. A candidate in an election must possess the following qualifications:

(1) Being of Thai nationality under the law, provided that a person of Thai nationality whose father is an alien or a naturalized Thai must, in addition, possess the qualifications stipulated by the law on election of members of the House of Representatives;

(2) Being of not less than thirty years of age on the election day;

(3) Having education of the standard stipulated by the law on election of members of the House of Representatives;

(4) Possessing other qualifications as may be stipulated by the law on election of members of the House of Representatives.

Section 89. A person under any of the following disabilities is prohibited to stand as a candidate in an election:

(1) Being addicted to a harmful drug;

(2) Being totally blind;

(3) Being an undischarged bankrupt;

(4) Having been sentenced by a judgment of the Court to a term of imprisonment of two years or upwards and the period of five years from the day of his discharge to the election day has not yet elapsed except for an offence committed through negligence;

(5) Being a government or local government official receiving a salary and holding a permanent position, except a political official;

(6) Other disabilities as may be stipulated by the law on election of members of the House of Representatives.

Section 90. Subject to the provisions of this Constitution, the rules and procedure of election shall be governed by the law on election of members of the House of Representatives.

...

PART 4—PROVISIONS APPLICABLE TO BOTH HOUSES

Section 97. Senators and members of the House of Representatives are representatives of the Thai people. They are not bound by any imperative mandate and must perform their duties in accordance with the honest dictates of their conscience for the common interest of the Thai people.

...

Chapter VIII

JUDICIAL POWER

Section 157. The trial and adjudication of case is an exclusive power of the Courts, which must be in accordance with the law and in the name of the King.

Section 158. All Courts may be established only by Acts.

Section 159. No Court may be established to try and adjudicate any particular case, or a case of any particular accusation, in place of the ordinary Court existing under the law and having jurisdiction over such case.

Section 160. No law may be enacted to have the effect of changing or amending the law on organization of the Courts, or the law on judicial procedure, for the purpose of applying to any particular case.

Section 161. A judge is independent in the trial and adjudication of the case in accordance with the law.

...

Chapter X

AMENDMENT OF THE CONSTITUTION

Section 169. An amendment of the Constitution may be made only under the following rules and procedure:

(1) The motion for amendment must either be proposed by the Council of Ministers, or jointly by senators and members of the House of Representatives, or members of either House, of not less than one fifth of the total number of members of both Houses;

(2) The motion for amendment must be proposed in the form of a draft Amendment of the Constitution, and the National Assembly shall consider it in three readings;

(3) In the first reading, the voting for acceptance of the amendment in principle shall be

by roll call and must be carried by the votes of not less than two thirds of the total number of members of both Houses;

(4) In the second reading, the voting in the consideration of the draft Amendment of the Constitution section by section shall be carried by a simple majority of votes;

(5) At the conclusion of the second reading, there shall be an intervening period of fifteen days, after which the National Assembly shall proceed with its third reading;

(6) In the third and last reading, the voting shall be by roll call and the draft Amendment of the Constitution must be carried by the votes of not less than two thirds of the total number of members of both Houses;

(7) After the resolution has been passed in accordance with the above rules and procedure, the draft Amendment of the Constitution shall be submitted to the King and the provisions of section 74 and section 75 shall apply *mutatis mutandis*.

Section 170. If the King considers that the draft Amendment of the Constitution submitted to Him under section 169 affects a vital interest of the country or of the people, and deems expedient to have it decided by the people, He has the prerogative to refer it to the people throughout the country to vote in a referendum for the approval or disapproval thereof.

In case of a referendum there will be the proclamation of a Royal Command within ninety days from the day the draft Amendment of the Constitution has been submitted to Him, and the President of the National Assembly shall countersign the Royal Command.

After the proclamation of the Royal Command under the second paragraph, a Royal Decree shall be issued appointing the day for the referendum to be held within ninety days from the day of the proclamation of the Royal Command, and the day for the referendum must be the same throughout the Kingdom.

When the King exercises His prerogative under this section, the provision of section 169 (7) shall not apply.

Section 171. A person having the right to vote in an election of members of the House of Representatives has the right to vote in a referendum.

The rules and procedure of a referendum shall be governed by the law relating thereto.

Section 172. The referendum under section 170 shall be carried by a simple majority of votes. If the draft Amendment of the Constitution is approved in the referendum, the King will attach His signature thereto within thirty days from the day of the announcement of the result of the referendum; and the Amendment of the Constitution shall come into force upon its publication in the Government Gazette. If the draft Amendment of the Constitution is disapproved in the referendum, it shall lapse.

...

Chapter XI

FINAL PROVISIONS

...
Section 176. During a state of war, or of an emergency of such extent that may jeopardize the security of the Kingdom and when the normal exercise of the legislative power through the National Assembly may be impeded or insuitable for the situation, the National Assembly may, upon the recommendation of the Council of Ministers, resolve that the legislative power be

exercised by the King through the Council of Ministers by means of proclaiming a Royal Command which shall have the force of an Act. The National Assembly may at any time resolve to cancel the said resolution.

If the state of war or of an emergency referred to in the first paragraph occurs or exists during the dissolution of the House of Representatives, or when the National Assembly cannot be convened in time, the King may exercise the legislative power through the Council of Ministers by means of proclaiming a Royal Command which shall have the force of an Act.

...

TOGO

ORDINANCE No. 16 OF 5 JUNE 1968, TO ESTABLISH A PENSIONS SCHEME

SUMMARY

The text of the Ordinance was published in *Journal officiel*, No. 387, of 1 July 1968.

Section 1 of the Order establishes a pensions scheme, to be responsible for providing old-age, invalidity and death (survivors') benefits and to be managed by the Family Allowances and Industrial Equalisation Fund, which shall from now on be called the "National Security Fund".

Under section 2, the pensions scheme shall cover all workers covered by the provisions of the Labour Code, without any distinction as to race, nationality, sex or origin; employees whose remuneration is paid by the State or public bodies who are not covered by a special pension or retirement scheme under special laws or regulations; and trainees and apprentices and persons whose remuneration is paid by agricultural co-operatives.

As regards the resources of the pensions branch, section 4 provides that they shall be made of employers' and workers' contributions to this branch; supplementary payments imposed for delay in paying contributions and moratory interest; yield from investments; donations and legacies; and any other income accruing under any laws and regulations. Section 4 further provides that the revenues of the pensions branch shall be utilized only for the aims and objects laid down in the regulations respecting the said branch, including indispensable operational and administrative costs.

The text of the Ordinance in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series* 1968 - Togo 1.

DECREE No. 68-142 OF 22 JULY 1968, TO MAKE RECRUITMENT FOR EMPLOYMENT THROUGH THE MANPOWER SERVICE COMPULSORY

SUMMARY

The text of the Decree was published in *Journal officiel*, No. 390, of 16 August 1968.

Section 1 of the Decree reads as follows: "The Manpower Service and its local sections shall alone be empowered to receive offers of and applications for employment, within the scope of the directives which the Service receives from the Minister of Labour".

Sections 3, 4 and 5 provide respectively that it is unlawful for any physical or juridical person to act as an intermediary for the purpose of placement in the labour market; that the publication or broadcasting of offers of or applications for employment by press, radio and any other means

shall be authorized only on condition that a permit is previously obtained from the Manpower Service; and that it is unlawful to engage any employment seekers who are not registered with the Manpower Service.

Under section 10, an alien worker may be given employment only if he has already fulfilled the conditions prescribed in the legislation in force respecting immigration.

The text of the Decree in French and a translation thereof into English have been published by the International Labour Office as *Legislative Series* 1968 - Togo 2.

TRINIDAD AND TOBAGO

NOTE ¹

(a) LEGISLATION

By the Trinidad and Tobago Constitution (Amendment) Act No. 25 of 1968, the Constitution was amended:

(i) To permit dual citizenship in the case of persons who are citizens of Trinidad and Tobago by birth or descent and who are also citizens of a Caribbean Commonwealth Country;

(ii) To establish an independent Teaching Service Commission to be responsible for the appointment, promotion, transfer and discipline of school teachers.

(b) CASE LAW

The Privy Council has upheld the decision of the Court of Appeal in the matter of Collymore and Abraham v. The Attorney General of Trinidad and Tobago — In re: the Constitution of Trinidad and Tobago No. 3/66 — to the effect that the Industrial Stabilisation Act does not impinge upon the fundamental right of association guaranteed in the Constitution.

¹ Note furnished by the Government of Trinidad and Tobago.

TUNISIA

ACT No. 68-1 OF 8 MARCH 1968, AMENDING THE PENAL CODE ¹

Article 1. Article 231 of the Penal Code shall be amended as follows:

Article 231 (new). "Except for the cases specified in the regulations in force, any woman who by gestures or words solicits passers-by or engages in prostitution, even occasionally, shall be sentenced to imprisonment for six months to two years and to a fine of twenty to 200 dinars.

"Any person who has had sexual relations with such a woman shall be considered an accomplice and shall be liable to the same penalty."

Article 2. Article 236 of the Penal Code shall be amended as follows:

Article 236 (new). "A husband or wife who commits adultery shall be sentenced to five years' imprisonment and a fine of 500 dinars.

"Proceedings may be instituted only at the request of the other spouse, who shall retain the power to halt the proceedings or enforcement of the sentence.

"When adultery is committed in the marital home, article 53 of this Code shall not apply.

"An accomplice shall be liable to the same penalties as the offending wife or husband."

¹ *Journal officiel de la République tunisienne*, No. 11, 12 March 1968.

ACT No. 68-7 OF 8 MARCH 1968, CONCERNING THE STATUS OF ALIENS IN TUNISIA ²

Chapter I

GENERAL PROVISIONS

Article 1. For the purposes of this Act, all persons not of Tunisian nationality shall be deemed to be aliens, whether they are of foreign nationality or have no nationality.

Article 2. The provisions of this Act and the regulations for implementing it shall apply to aliens entering, residing in and leaving Tunisia, subject to any international agreements waiving such provisions.

Article 3. The provisions of this Act shall not apply to diplomatic officials or career consuls.

Article 4. Persons entering and departing from Tunisia may do so only at the frontier posts specified by order of the Secretary of State for the Interior.

Article 5. On entering Tunisia, all aliens must produce a valid national passport, or a travel document authorizing the bearer to return to the country which issued the document, bearing the visa of the Tunisian consular authority.

Article 6. An alien entering Tunisia in order to engage in gainful employment there must produce, in addition to the documents mentioned

² *Ibid.*

in article 5 of this Act, a work contract drawn up in accordance with the work regulations in force in Tunisia.

Article 7. A three-month dispensation from the entry and residence visa requirements shall be granted to nationals of States which have concluded agreements with Tunisia to abolish this formality, with the exception of persons against whom an order has been issued expelling them from Tunisian territory, or persons who have been refused a residence permit or who were forbidden to reside in Tunisia during a previous period of residence.

The following shall also be exempt from visa requirements:

(1) Aliens in a Tunisian port on board a ship calling at that port on the way to a foreign destination, provided that they do not leave the ship;

(2) Aliens in transit through Tunisian territory by air, provided that they do not go beyond the boundaries of the airport during stopovers.

Article 8. All aliens are forbidden to exercise a profession or to engage in gainful employment in Tunisia unless authorized to do so by the competent Secretariat of State.

Chapter II

RESIDENCE

SECTION I — TEMPORARY RESIDENCE

Article 9. All aliens who reside in Tunisia for more than three successive months or for a total of six non-consecutive months in any one year must obtain a visa and a temporary residence permit, which shall be issued in accordance with the provisions of this Act and of the regulations for implementing it.

Article 10. The period of validity of the temporary residence permit shall be the same as that of the documents on which its issuance is based. The period of validity may not be more than one year except with the special authorization of the Secretary of State for the Interior.

Article 11. The security authorities may withdraw a temporary residence permit from any alien:

(1) Who has committed acts prejudicial to the public order;

(2) If the reasons for which the residence permit was granted to him no longer obtain.

Article 12. Aliens who are temporarily resident in Tunisia must leave Tunisia when the period of validity of their residence permit expires, unless a renewal is obtained.

SECTION II — ORDINARY RESIDENCE

Article 13. Visas and ordinary residence permits may be issued to the following:

(1) Aliens born in Tunisia who have lived there continuously;

(2) Aliens who have been legally resident in Tunisia continuously for five years;

(3) Alien women married to Tunisians;

(4) Aliens with Tunisian children;

(5) Aliens who have rendered valuable services to Tunisia.

Article 14. The period of validity of the ordinary residence permit shall be two years. It shall be renewable.

Article 15. An alien who leaves Tunisia for more than six months and who does not obtain a re-entry visa shall forfeit his right of residence.

Article 16. The security authorities may withdraw an ordinary residence permit from any alien if the reasons for which the permit was issued to him no longer obtain.

Article 17. An alien whose ordinary residence permit is withdrawn must leave the territory of the Tunisian Republic.

Chapter III

EXPULSION

Article 18. The Secretary of State for the Interior may issue an expulsion order against any alien whose presence in Tunisian territory constitutes a threat to public order.

Article 19. In the case of an alien who has been expelled but who is unable to leave Tunisia, the Secretary of State for the Interior shall determine the place where he shall reside. In that event, the alien must present himself at regular intervals at the police station or National Guard post of his place of residence until such time as he is able to leave the country.

Article 20. The authorities responsible for enforcing expulsion orders shall be appointed by decision of the Secretary of State for the Interior.

Chapter IV

MISCELLANEOUS PROVISIONS

Article 21. Any person giving lodging to an alien on any basis whatsoever, even free of charge, must inform the police station or the National Guard post of his place of residence within a maximum of forty-eight hours, in the case of the general public, and in the case of hotel-keepers and owners of furnished rooms, within the time-limit laid down in article 7 of the Decree of 12 November 1919, concerning the keeping of lodging houses.

The provisions of the above paragraph shall not apply to Tunisians who give temporary accommodation to ascendants, descendants or collateral relatives of their wives who are of foreign nationality and who do not reside in Tunisia.

Article 22. Any person who rents premises to an alien for use as a dwelling must inform the police station or the National Guard post of the place where the premises are situated within a period of not more than one week.

Chapter V

PENAL PROVISIONS

Article 23. The following shall be liable to imprisonment for a term of one month to one year and to a fine of 6 to 120 dinars:

(1) Any alien who enters or leaves Tunisia without complying with the conditions laid down in articles 4 and 5 of this Act and with the regulations for implementing this Act;

(2) Any alien who fails to apply within the period of time presented by law, for a residence visa and a residence permit, or for their renewal when their period of validity expires;

(3) Any alien who continues to reside in Tunisia after his request for a visa and residence permit has been rejected, or after their renewal has been refused or their period of validity has expired, or after his residence permit has been withdrawn.

Article 24. Any alien who produces forged documents or who gives false information with intent to conceal his identity, occupation or nationality shall be liable to imprisonment for a term of six months to three years and to a fine of 20 to 240 dinars, without prejudice to the ap-

plication of the relevant penalties prescribed by the Penal Code.

Article 25. Any person who wittingly assists, directly or indirectly, or who attempts to facilitate, the irregular entry, departure, travel or residence of an alien in Tunisia shall be liable to imprisonment for a term of one month to one year and to a fine of 6 to 120 dinars.

Article 26. Any alien who has evaded the enforcement of an expulsion order issued against him or who, having been expelled from Tunisia, has re-entered the country without authorization, shall be liable to imprisonment for a term of six months to three years and shall be expelled from Tunisia on completion of his sentence.

The penalty prescribed in the above paragraph shall not, however, apply if it is shown that an alien who has been expelled is unable to leave Tunisia.

Article 27. Any alien who fails to go to the place of residence assigned to him by the Secretary of State for the Interior within the prescribed time-limit or who leaves that place without authorization, shall be liable to imprisonment for a term of six months to three years.

Article 28. Any person who wittingly fails to make the declaration required under articles 21 and 22 of this Act shall be liable to imprisonment for a term of one to fifteen days and to a fine of from one to six dinars, without prejudice to the application of the provisions of article 25.

Article 29. All previous provisions contrary to this Act are hereby repealed.

ACT No. 68-17 OF 2 JULY 1968 ESTABLISHING THE COURT OF STATE SECURITY ³

Article 1. A "Court of State Security" is hereby established, with the function of dealing with crimes and offences against the internal or external security of the State and all related crimes or offences, incitement, by whatever means, to such crimes or offences.

Article 4. Proceedings on behalf of the State shall be instituted by the *Procureur Général de la République* on the written order of the Secretary of State for Justice.

Article 8. Subject to the provisions of this Act, the rules of the Code of Criminal Procedure shall apply to prosecutions for and the preliminary judicial investigation of crimes and offences which are to be referred to the Court of State Security.

Article 9. The *ministère public* may carry out or cause to be carried out any searches or seizures, even at night, in any place.

Article 10. The examining judge of the Court of State Security may travel, with the clerk of the Court, to any part of the territory of the Republic for any purpose related to the preliminary investigation. He may carry out or cause to be carried out any searches or seizures.

Article 11. At the first hearing the examining judge shall invite the accused person to inform him within twenty-four hours of the name of his counsel. If the accused person fails to do so, counsel shall be appointed *ex officio* by the *bâtonnier*, or, failing that, by the president of the Court.

Article 12. For the purpose of the preliminary investigation the examining judge may take any measures required to ascertain the truth and maintain the confidential character of the investigation.

³ *Journal officiel de la République tunisienne*, No. 27, 2 July 1968.

He may hear unsworn evidence from a person who has already been charged in separate proceedings involving the same acts or related acts.

Article 13. The examining judge shall consider whether the charges against the accused person constitute a breach of the criminal law.

If, in his opinion, the acts do not constitute a crime or an offence, or if the identity of the person who has committed the acts has not been established and there is insufficient evidence against the accused person, the examining judge shall dismiss the case.

If, in his opinion, the charges against the accused person constitute crimes or offences which fall within the jurisdiction of the Court of State Security, the examining judge shall find to that effect, specifying the legal classification of the acts, and shall consequently submit the case to the *ministère public* of that Court for the purposes of committal for trial, having informed the accused person and his counsel within twenty-four hours.

Article 14. The rulings of the examining judge shall not be subject to appeal to any court, including the Court of Cassation.

TURKEY

NOTE ¹

I. LABOUR LEGISLATION

1. Of the statutes whose passage was called for by Labour Law 931 of 12 August 1967, the following have been approved by the Council of State in the period from 1 June 1968 to 30 June 1968, and have gone into effect:

Preparation, completion and clean-up work;

Work period;

Overtime;

Establishment and functioning of the Commission authorized to utilize fines deducted from workmen's wages;

Inspection and surveillance of places of employment where defence materials are manufactured, and of military plants;

Heavy and hazardous jobs;

Working conditions for pregnant and breast-feeding women, rooms for breast-feeding, child-care centres;

Conditions for employment of women on night shifts in industrial plants;

Boards of workers' health and work safety (job security);

Identity and employment cards for workers;

¹ Note based upon report on economic, social and cultural rights received from the Government of Turkey under Economic and Social Council resolution 1074C (XXXIX) and published in the Secretary-General's *Periodic Reports on Human Rights, 1966-1969* (E/CN.4/1011/Add. 3).

Employment and Placement Agency, whose function is to find jobs domestically and in foreign countries, offers suitable positions to applicants. If no suitable positions are available, inquiries are made about possible job openings. An applicant is entirely free to accept or reject a position offered or to select a position from among several available.

2. The regulations and ordinances issued pursuant to article 33 of Labour Law 931 on 5 April 1968 seek to secure minimum wages and to provide for a decent standard of living. A Commission created for this purpose has placed the Administrative Provinces in six categories on the basis of their level of economic development and fixed minimum wages ranging from 15.50 to 19.50 liras in each category, for workers employed in the country in all types of work.

II. SOCIAL LEGISLATION

1. Law 991, in effect since 1 August 1968, extends the coverage of Law 506 on Social Insurance to a larger number of workers employed at Defence Plants and at the work-places of State Railways, enabling them to benefit from a broader and better-regulated security system in all types of insurance.

2. Turkey has signed bilateral agreements with the Netherlands and Belgium to provide for the social security of Turkish labour employed abroad. These agreements went into effect on 1 February 1968 and 1 May 1968, respectively.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

NOTE ¹

The successes and expansion achieved in all branches of the national economy of the Ukrainian SSR in 1968 created the necessary preconditions for a further rise in the level of living of all strata of the population and in the practical exercise of the major human rights. This is borne out by the following data from the report of the Central Statistical Board of the Council of Ministers of the Ukrainian SSR.

Chapter V

IMPROVEMENT IN THE MATERIAL CONDITION AND CULTURAL LEVEL OF THE POPULATION

(Excerpts)

The net national income was 6 per cent greater in 1968 than in 1967. It rose by 20 per cent over the first three years of the five-year period.

The average number of manual and non-manual workers employed in the national economy over the year was 15,120,000, an increase of more than 570,000, or 4 per cent, over the previous year.

During the year that has just ended, a number of major measures were put into effect to further improve the material well-being of the people. The minimum wage scales of manual and non-manual workers in all branches of the economy were raised, as were also the wage rates of machine-tool operators in engineering and metal-working plants and shops, the length of annual leave was increased, and the scales of allowances for temporary incapacity were raised.

The average monthly cash wage for manual and non-manual workers in 1968 was 106.8 roubles, an increase of almost 7 per cent over the 1967 figure. Allowing for payments and benefits from

social consumption funds, the average monthly wage was 144.6 roubles, against 135.7 roubles in 1967. The remuneration of members of collective farms for work done in the public sector was greater than in the preceding year.

Payments and benefits received by the population out of social consumption funds totalled 9,900 million roubles in 1968, against 8,900 million roubles in 1967. The people of the Republic enjoyed the following benefits conferred out of these funds: pensions and allowances; social insurance and social security payments; free education and free medical care; students' grants; free passes, or reduced fares, to sanatoria and rest homes; paid holidays; the maintenance of children in kindergartens and nursery schools; and other kinds of social and cultural services.

A large volume of housing and social and cultural buildings was completed. State and co-operative enterprises and organizations, collective farms, and the general public in towns and country centres brought into use, another 393,000 new flats and houses, with all amenities, totalling 18,600,000 square metres of general (useful) living space. In the past year alone, 1,700,000 people moved into new dwellings, or improved their living conditions in existing ones.

Elementary schools with a total of 235,000 places, pre-school institutions with 86,000 places, and a considerable number of hospitals, out-patient clinics and other cultural and welfare buildings were built with the help of State and collective-farm funds.

Further successes were scored in educational, scientific and cultural progress.

In all, 14,300,000 persons received education of one kind or another; about 8,500,000 of them attended general educational schools; 792,000 studied at higher educational establishments; and 787,000 studied at secondary technical and specialized schools.

Eight hundred thousand pupils completed their eight-year schooling last year, and 550,000 their secondary education.

¹ Note furnished by the Government of the Ukrainian Soviet Socialist Republic.

More than one million children attended extended-day schools, an increase of more than 13 per cent over 1967.

The number of children attending permanent pre-school institutions exceeded 1,400,000 or 4 per cent more than in 1967. In addition, seasonal children's institutions served more than a million children.

During the summer, more than 3,600,000 children and adolescents spent holidays in pioneers' and school camps and children's sanatoria, or at excursion and tourist centres, stayed at country resorts in children's institutions, or went away for country vacations.

More than 272,000 specialists who had passed through higher educational establishments or secondary technical or specialized schools entered the national economy; of them, 97,000 had university or equivalent qualifications, and more than 175,000 had graduated from secondary technical or specialized schools. The number who passed out of establishments of higher education and secondary technical and specialized schools was 21,000 more than in the previous year—an increase of 8 per cent.

Three hundred and eighty thousand pupils and students enrolled at educational institutions in these two categories during the past year: 153,000 at institutions of higher education, and 236,000 at secondary technical and specialized schools.

Vocational and technical colleges and schools turned out 228,000 young skilled workers during the year. About 3,800,000 persons were taught new trades, or improved their skills and/or qualifications, through individual or group apprenticeship or in-service training, at enterprises or in institutions or organizations, as well as on collective farms.

The number of scientific workers employed in scientific institutions, establishments of higher education and other institutes and organizations was 114,000; of these, about 30,000 held the degree of doctor or candidate of science.

At the end of 1968, about 28,000 cinema installations were operating in the Republic. Attendances exceeded 900 million over the year.

Public medical services continued to improve. The number of hospital beds rose, as did also the number of places in sanatoria, rest homes and boarding establishments. The total number of doctors practising in all branches of medicine increased by almost 4,000. There were 693,000 births and 374,000 deaths in the Republic during 1968, producing a natural growth of population of 319,000. On 1 January 1969, the population of the Ukrainian SSR was 46,800,000.

(From the newspaper *Pravda Ukrainy*
of 29 January 1969.)

There were no essential changes in 1968 in Ukrainian legislation on fundamental human freedoms and rights. Only a few legislative measures relating to isolated issues were adopted. Some of these are cited below.

On 2 July 1968, at the third session of the Supreme Soviet of the Ukrainian SSR, the Acts on Village and Settlement Soviets of Working People's Deputies were enacted, in which, in particular, provision is made for citizens to participate widely in the settlement of questions of local and of general national interest alike. These Acts also provide for the convening of general meetings or assemblies of citizens at which the most important questions affecting the citizens' life can be discussed, and Republican legislation and decisions of the local Soviets explained to the working people.

(*Gazette of the Supreme Soviet of the Ukrainian SSR*, 1968, No. 28, pp. 177, 178.)

On 8 October 1968, joint resolution No. 525 of the Central Committee of the Ukrainian Communist Party and the Council of Ministers of the Ukrainian SSR—"Measures for the further improvement of public health and the development of medical sciences in the Ukrainian SSR"—was adopted. In this resolution, the special attention of the *oblispolkomy* [regional executive committees], ministries and government agencies of the Ukrainian SSR and that of the public health authorities is drawn to the need for improving the protection of health and the provision of medical care for children, women workers and mothers. The resolution also establishes the right of a nursing mother to claim not only pre-natal and maternity leave but also additional leave without retention of wages until her child reaches the age of one year.

(*Collection of Orders of the Ukrainian SSR*, 1968, No. 10, p. 127.)

Among the leading interpretations of the Plenum of the Supreme Court of the Ukrainian SSR, handed down in 1968, the following may be mentioned:

1. Proceeding from the premises that all breaches of public order, and especially displays of hooliganism, constitute a danger for individual members of society, both in their working and in their private life, the Supreme Court of the Ukrainian SSR, in a number of authoritative rulings, drew the attention of the courts to the fact that intensification of the campaign against hooliganism presupposes strict application of the law and a differentiated approach to the fixing of sentences.

2. The Supreme Court of the Ukrainian SSR, in a number of authoritative rulings, directed the courts to uphold unflinchingly the standards of labour rights.

Thus, in judgement No. 3 of 23 May 1968 the Supreme Court explained that "the civil legislation in force does not preclude the possibility of the conclusion of amicable agreements on labour matters, including matters affecting re-instatement in work.

"However, the courts are not obliged to endorse an amicable agreement where this violates the labour rights of manual or non-manual workers . . .".

3. The Plenum of the Supreme Court of the Ukrainian SSR, by its judgement No. 6 of 1 October 1968 (point 15) amplified its decision of 22 February 1964 in the following terms:

“Within the time limit specified in article 46 of the Code of Labour Laws of the Ukrainian SSR, a worker may withdraw his claim, or notify the administration of changes of intent on his part, in which case the administration has no right to annul the labour contract on the grounds of the personal wish of the worker.”

The same judgement also contains the following interpretation:

“In dealing with cases, the courts shall bear in mind the fact that the transfer of a worker to another job without his consent is not allowed except where such transfer is effected as a disciplinary sanction in connexion with production requirements or idleness, within the limits established by law.”

UNION OF SOVIET SOCIALIST REPUBLICS

NOTE¹

RESOLUTION OF THE SUPREME SOVIET OF THE USSR

STATE OF MEDICAL AID FOR THE POPULATION, AND MEASURES FOR IMPROVING PUBLIC HEALTH SERVICES IN THE USSR²

The building of socialist society in the USSR, the strengthening of its economic power, the constant rise in the material and cultural standard of living of the people, and scientific progress have together been responsible for great successes in protecting and improving the health of Soviet men, women and children. Socialist public health principles—free service, general access to skilled medical treatment and widespread preventive measures—are being consistently put into practice.

In the USSR, the average length of human life has increased significantly. The morbidity rate among the public has been reduced and many communicable diseases wiped out. The protection and consolidation of the people's health, like the carrying out of public health measures, rest on a solid material and technical basis and on the successes of medical science. During the years of Soviet rule, a widespread system of hospitals, out-patient clinics, maternity homes and other medical establishments, as well as spas, sanatoria and rest-homes, has been created. The Soviet Union is one of the first countries in the world in respect of the ratio of doctors to population.

The Government of the Soviet Union is devoting special attention to maternity and children's health services, to the organization of specialized children's medical institutions and to the creation of the right conditions for ensuring that the rising generation grows up healthy.

The protection and consolidation of the people's health is one of the most important aspects of the work of local Soviets of Working People's Deputies. The trades unions, the Red Cross and Red Crescent Societies, and other public bodies and organizations are making a big contribution to this work.

The Supreme Soviet of the USSR notes that, despite the great over-all success in developing public health services, not all existing possibilities of further improving the protection and consolidation of the people's health are being turned to account.

The needs of the rural and urban populations for medical services, including various kinds of specialized treatment, are still not being satisfied uniformly enough. And the requirements of the public and those of medical institutions for certain medicaments and medical goods are still not being fully met.

In a number of places, work on new public health establishments and plants for the medical industry is not being finished on time, the work itself is of poor quality, the funds set aside for capital construction are not being fully utilized, and many designs for hospital buildings and out-patient clinics do not come up to contemporary requirements.

¹ Note furnished by the Government of the Union of Soviet Socialist Republics.

² *Vedomosti Verkhovnogo Soveta SSSR*, No. 27, 26 July 1968, p. 228.

Insufficient attention is being paid to the improvement of working conditions in production, or to the abolition and prevention of pollution of the air and atmosphere, water supplies and the soil; and due supervision over the observance of public health and sanitary standards, rules and regulations is not forthcoming.

There are defects in the training and use of medical workers, and the system whereby they can improve their skills needs improving.

Scientific achievements are being translated only slowly into public health practice, and not enough research is being carried out into certain important medical problems.

The Supreme Soviet of the Union of Soviet Socialist Republics accordingly *resolves* as hereunder:

1. To consider the further intensification of concern for the protection and constant improvement of the people's health, and the extension of social, economic and medical measures conducive to the prevention and reduction of illness, as paramount State tasks.

2. To approve the work of the Council of Ministers of the USSR in the public health field.

To entrust the Council of Ministers of the USSR with the task of drawing up measures for intensifying the protection and consolidation of the people's health, taking into account the views expressed by the Commissions on Public Health and Social Security of the two Chambers [the Council of the Union and the Council of Nationalities] and by the members of the Supreme Soviet of the USSR during the debate at the fourth session of the seventh convocation on the state of medical aid for the population and measures for improving public health services in the USSR.

3. It is incumbent on the Ministry of Public Health, other ministries and government agencies of the USSR, of the Councils of Ministers, ministries and government agencies of the union and autonomous republics, on local Soviets of Working People's Deputies and their executive committees, and on the central and local organs of trades unions and other public bodies and organizations, to take steps for further improving the protection of the people's health and perfecting the work of public health bodies and institutions. In this respect, it shall be regarded as essential:

(a) To improve public health planning; to increase the effectiveness with which capital funds for the medical industry are utilized; to tighten up control over the progress and quality of work on, and the timely bringing into service of, the buildings in question; and to improve the supply to therapeutic and prophylactic establishments of the medical equipment and means of transport and communications they need;

(b) To take steps to ensure the further improvement of medical services to workers in industry, building and construction, and transport, and to other categories of the urban population; to pay special attention to the extension of medical services to the rural population, mothers, children and young people; to improve specialized medical treatment, out-patient and polyclinic services, and first aid and emergency services; and to raise cultural standards in medical establishments;

(c) To expand the production of highly effective medical supplies, instruments, apparatus and other articles; to satisfy more fully the public's requirements of medicaments and hygienic and sanitary goods; and to expand the network of pharmacies and dispensaries; and

(d) To take steps to improve treatment at sanatoria and spas and the organization of workers' holidays, and to ensure the more general practice of physical training and sport; to ensure the further expansion of the system of nursery schools and kindergartens, sanatoria, forest schools and pioneers' camps; and to tighten up control over the rational utilization of natural therapeutic resources and facilities.

4. To raise standards of training and the level of professional skills of doctors and medical auxiliaries; and to pay special attention to the rational distribution of medical personnel, with a view to providing therapeutic and prophylactic establishments in country districts with doctors to the utmost possible extent.

5. To recognize the indispensability of expanding research into major problems of the prevention and treatment of disease and improvement of the people's health; and to ensure that scientific advances and techniques are introduced into public health practice.

6. Ministries and government agencies, and the heads of industrial enterprises and economic organizations, shall take effective steps to prevent pollution of the air and atmosphere by industrial and urban wastes and by exhaust gases from motor vehicles; to strengthen the protection of water supplies from pollution by industrial effluents and that of the soil from contamination by industrial wastes and noxious chemicals; to combat noise; and to ensure unconditional observance of public health and sanitary standards, rules and regulations.

7. The Commissions on Public Health and Social Security, jointly with the Commissions on Legislative Proposals, of the Council of the Union and the Council of Nationalities shall complete their work on the draft Code of Acts of the USSR and the union republics on public health, taking into consideration the Supreme Soviet's debate on the state of medical aid for the population and measures for improving public health services in the USSR.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR

PROCEDURE FOR EXAMINING CITIZENS' PROPOSALS,
CLAIMS AND COMPLAINTS³

(Extract)

In the conditions created by the building of communism and the comprehensive development and perfection of socialist democracy in our country, the proper and timely examination of proposals, claims and complaints presented by citizens is assuming greater and greater significance.

Citizens' proposals on political, economic and cultural matters and on the improvement of legislation constitute one of the ways in which working people can play their part in administering the State, in improving the functioning of the government machine and tightening up control over its activity, in combating red tape and bureaucracy and in consolidating the rule of Soviet law. The steadily increasing number of proposals on a variety of questions affecting the life of society and the State is a sign of the continuous growth of political activity among the Soviet people.

The examination of citizens' claims relating to social, cultural, living, housing and other conditions, submitted by citizens in the exercise of their rights, accounts for a substantial part of the work of State and public bodies.

In the present stage of development of Soviet society, complaints are as a rule a form of reaction to the infringement of a citizen's rights, or to encroachment upon the interests in respect of which he enjoys the law's protection—and a means of removing and preventing such wrongs. They also show that there are still serious shortcomings in the work of many State and public bodies. Consistent improvement of this work, coupled with the rise in the people's material and cultural standard of living, will bring about a reduction in the number of complaints.

Cases occur where complaints and claims are not examined promptly, or are replied to formalistically. Nor is the implementation of decisions taken on citizens' proposals, claims and complaints properly followed up. Heads of State bodies, enterprises, institutions and organizations not infrequently evade dealing with proposals, claims or complaints, or decline to see applicants in person. Officials guilty of red tape and bureaucratic practices often go unpunished. Some State and public bodies fail to generalize citizens' proposals, claims and complaints adequately; the conditions and factors giving rise to complaints are not properly studied, and no steps are taken to put matters right promptly; and scant trouble is taken to explain Soviet laws to the general public. In some cases, citizens themselves create red tape,

by applying direct to higher authority and by-passing the lower echelons, since the former, in their function of watchdogs of the law and of the interests of citizen and State alike, are obliged to institute appropriate enquiries locally, thus holding up the examination of claims and complaints.

The Presidium of the Supreme Soviet of the USSR accordingly *resolves* as hereunder:

1. All State and public bodies shall provide the necessary conditions for the exercise of the right accorded and guaranteed to Soviet Union citizens of presenting proposals, claims and complaints in writing or orally.

State bodies, enterprises, institutions, collective farms and other co-operative and public organizations, and their heads and other official servants, are bound to accept and, within the limits of their powers, take decisions on citizens' proposals, claims and complaints.

2. The State authorities shall deal with citizens' proposals, claims and complaints falling within their jurisdiction, as defined in the Constitution of the Soviet Union, the Constitutions of the union and autonomous republics and the legislation of the USSR and the union and autonomous republics.

USSR bodies shall deal with citizens' proposals, claims and complaints relating to the administration of the USSR.

In matters for which the USSR and union republics are jointly responsible, USSR bodies shall deal with proposals, claims and complaints where the issue relates to the competence of a Union body, and similarly in the procedure for examining appeals against decisions on claims and complaints taken by the central authorities of a union republic where such decisions are at variance with USSR legislation.

All other issues relating to citizens' proposals, claims and complaints shall be dealt with by the competent authorities of the union republics.

3. To ensure that citizens' proposals, claims and complaints are examined promptly:

(a) Citizens shall submit their proposals and claims to those State bodies, enterprises, institutions and organizations, or to those officials, whose direct responsibility it is to settle the issues raised; and

(b) Complaints shall be lodged with those bodies or officials to which or to whom the State body, enterprise, institution or organization, or the official, whose actions are the subject of the complaint, is directly answerable.

Complaints against decisions of general meetings of members of collective farms or other co-operative organizations, which are not answerable to a superior authority, and those against decisions of autonomous public bodies acting under the

³ *Vedomosti Verkhovnogo Soveta SSSR*, No. 17, 12 April 1968, p. 144.

direction of a local Soviet of Working People's Deputies, shall be lodged with the executive committee of the appropriate local Soviet.

In certain cases provided for by law complaints may be lodged with the district (urban) people's court.

4. State bodies, enterprises, institutions and organizations, and their official servants, which or who are not responsible for deciding the issues raised in proposals, claims or complaints shall transmit such proposals, claims or complaints within five days of receipt to the proper quarter, advising the applicants accordingly, or, at a personal interview, explain to the person concerned where or to whom his proposal, claim or complaint must be addressed.

5. It is forbidden to transmit citizens' complaints for decision to an official whose actions are the subject of the complaint.

6. Heads, and other officials, of State bodies, enterprises, institutions, organizations, collective farms and other co-operative and public organizations are obliged to grant personal interviews to citizens.

Citizens shall be received on fixed days and at fixed hours, duly brought to their notice, at times convenient to the public, even, where necessary, during the evening.

Heads of State bodies, enterprises, institutions, organizations, collective farms and other co-operative and public organizations are personally responsible for organizing the reception and examination of citizens' proposals, claims and complaints at their respective establishments.

7. In dealing with proposals, claims or complaints officials shall:

(a) Go carefully into their substance, calling where necessary for any relevant documents, send workers to verify the facts on the spot, and take other steps conducive to the objective settlement of the issue;

(b) Take fully reasoned decisions on proposals, claims or complaints and ensure their prompt and proper implementation;

(c) Advise the citizen of the decision reached on his proposal, claim or complaint, and, where such has been rejected, give the reasons therefor; and

(d) Identify and promptly remove the factors causing infringement of citizens' rights or encroachment upon the interests in respect of which they enjoy the law's protection.

8. A citizen who does not agree with the decision taken on his claim or complaint has the right of appeal to the higher authority to which the State body, enterprise, institution or organization having taken the decision is immediately responsible.

9. All bodies shall deal with claims and complaints within one month. Those cases which call for no subsequent investigation or verification shall be dealt with forthwith, or in any event within 15 days of the date on which they reach the body competent to deal with the substantive issue raised.

The legislation of the union republic may provide for shorter terms for the examination of claims and complaints by republican and local bodies, or by enterprises, institutions and organizations.

Where special verification procedure, the procurement of additional documentation or other measures are essential to proper consideration of a claim or complaint, the term prescribed for its settlement may, exceptionally, be prolonged by the head or deputy head of the appropriate authority for a period not exceeding one month, the applicant or complainant being informed accordingly.

Citizens' proposals shall be dealt with within one month of receipt except where they call for further study.

10. Claims and complaints lodged by servicemen or by members of their families shall be dealt with:

(a) By USSR and republican authorities within 15 days of receipt by the body competent to deal with the substantive issue; and

(b) By local government authorities, and by enterprises, institutions and organizations—forthwith, but in no case later than seven days from the date on which the claim or complaint reaches the competent authority.

Where special verification procedure, the procurement of additional documentation or other measures are essential to proper consideration of a claim or complaint, the term prescribed for its settlement may, exceptionally, be prolonged by the head or deputy head of the appropriate authority for a period not exceeding 15 days, the applicant or complainant being informed accordingly.

Proposals, claims and complaints presented by servicemen and relating to their service shall be examined and settled in accordance with the internal security regulations and the disciplinary code of the Armed Forces of the USSR.

11. Citizens' proposals, claims and complaints arising out of the editing of newspapers and periodicals, and statements and other matter published in the press about their consideration, shall be dealt with by the procedures and within the time limits provided for in the present Decree.

12. The executive committees of Soviets of Working People's Deputies shall enlist the services of deputies and active members of the Soviets concerned for examining citizens' proposals, claims and complaints.

State bodies, enterprises, institutions and organizations shall enlist the services of representatives of the community, members of the popular control, senior workers, office workers and members of collective farms to examine and verify proposals, claims and complaints and to carry out any other measures connected therewith.

Where necessary, citizens' proposals, and the results of the consideration of and decisions on claims and complaints, of public interest must be debated at general meetings of the collectives of enterprises, institutions and organizations and at the applicant's place of residence.

13. All State authorities shall regularly review the state of affairs obtaining in the examination of citizens' proposals, claims and complaints in the enterprises, institutions and organizations for which they are responsible, and take steps to remove the factors and remedy the conditions giving rise to infringements of the rights and interests guaranteed to citizens by the law and responsible for the submission of repeated claims or complaints.

14. The executive committees of Soviets of Working People's Deputies shall regularly review the state of affairs obtaining in the examination of citizens' proposals, claims and complaints in their own departments and directorates and in the enterprises, institutions and organizations situated on their territory, hear the report on the results of the review at their meetings, and where necessary refer it to a session of the Soviet itself for discussion.

The chairman of the executive committees of Soviets of Working People's Deputies and the heads of their departments and directorates, and those of the enterprises, institutions and organizations for which they are responsible, shall report at regular intervals on their work on citizens' proposals, claims and complaints to sessions of the Soviet, to meetings of the executive committee, and to public meetings.

15. Breaches of the established procedure for examining citizens' proposals, claims and complaints, like red tape and the adoption of a bureaucratic approach to such proposals, claims and complaints, shall engage the disciplinary responsibility of the guilty officials, in accordance with the legislation in force.

Those actions of officials that cause serious harm to State or public interests, or to the rights and interests of citizens safeguarded by law, and victimization of citizens by officials in respect of the former's submission of complaints or claims, shall engage the offender's criminal responsibility under the relevant articles of the criminal codes of the union republics relating to offences committed by officials in the discharge of their functions.

The submission by a citizen of a claim or complaint with slanderous intent engages his responsibility as provided for in the legislation in force.

16. The staff of the procurator's office and that of the popular control shall systematically supervise and verify that Soviet laws are duly complied with in the examination of citizens' proposals, claims and complaints, check the state of affairs in this regard at all ministries and government agencies, and in the enterprises, institutions and organizations under the latter's control, as well as on collective farms and other co-operative and public organizations, calling to strict account those guilty of breaking the relevant laws, of red tape, formalism or bureaucratic behaviour or of failure to implement decisions taken on citizens' proposals, claims or complaints.

17. The application of the present Decree does not extend to citizens' complaints, claims and proposals dealt with under the criminal and civil judicial procedures established by the legislation of the USSR and the union republics, under the regulations governing the procedure for settling labour disputes, under those governing discoveries, inventions and rationalization proposals, or under other relevant laws.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR

BASIC RIGHTS AND DUTIES OF VILLAGE AND SETTLEMENT SOVIETS OF WORKING PEOPLE'S DEPUTIES ⁴

With the object of further increasing the part played by village and settlement Soviets of Working People's Deputies in solving the problems of economic, social and cultural construction and in perfecting the democratic principles of their activity,

the Presidium of the Supreme Soviet of the USSR *resolves* as hereunder:

Article 1. Village and settlement Soviets of Working People's Deputies, as the instruments of State authorities in the territories they encompass, shall deal, within the limits of the rights accorded by law, with all matters of local significance, on

the basis of general State interests and those of the working people of the village or settlement.

Article 2. Village and settlement Soviets of Working People's Deputies shall direct economic, social and cultural construction in their respective territories, in accordance with the Constitution of the USSR and the Constitutions of the union and autonomous republics.

In the exercise of their powers, village and settlement Soviets of Working People's Deputies shall manage the enterprises, institutions and organizations under their jurisdiction; they shall likewise supervise the work of the following organizations situated on their territory: collective farms and state farms; enterprises of local industry, public utilities, trade, public catering, housing and municipal services; public health, educational, cultural, and communications institutions; and other organizations affiliated to higher authorities and providing direct services to the public; shall

⁴ *Vedomosti Verkhovnogo Soveta SSSR*, No. 16, 8 April 1968, p. 131.

organize supervision over their observance of the law; shall hear the reports of the heads of such enterprises, institutions and organizations; and shall co-ordinate their activities in the social, cultural and public utilities sector.

Executive decisions and regulations of village and settlement Soviets of Working People's Deputies, adopted within the limits of the rights conferred on them, shall be binding on all collective and state farms, enterprises, institutions and other organizations situated on their territory, as well as on officials and citizens.

Article 3. The activities of village and settlement Soviets of Working People's Deputies shall be based on collective leadership, the public nature of their proceedings, the periodical accountability of the deputies to the electorate and that of the executive committees to the Soviets and the people, and on the widespread enlistment of the services of the working people in the Soviet's activities.

Village and settlement Soviets of Working People's Deputies shall function in close contact with the voluntary associations on collective and state farms and in enterprises, institutions and organizations situated on their territory, and shall direct the work of public amateur societies.

Article 4. Village and settlement Soviets of Working People's Deputies shall:

(a) Approve plans for economic, social and cultural construction within their competence, and the production and financial plans of their subordinate enterprises, institutions and organizations; take part in the review of the long-term and yearly plans of collective and state farms, and of local industrial enterprises; submit proposals relating to the draft production and financial plans of collective and state farms, enterprises, institutions and other organizations affiliated to higher authorities, in so far as they concern the construction of dwellings, social and cultural services, public utilities and trading and distributive services, the provision of facilities and amenities to villages and settlements, the building of local roads, and the utilization of local raw materials and manpower;

(b) Approve the village or settlement budget, the working cash in hand under the budget and the quarterly distribution of income and expenditure; distribute budget funds under the various heads of expenditure; transfer funds as necessary from one head or subhead to another head or subhead of the budget (appropriations for wages excepted); approve the report on the fulfilment of the village or settlement budget; channel extra funds received during the fulfilment of the village or settlement budget, together with any excess of income over expenditure at the year-end resulting from over-fulfilment of the income target and/or from savings in expenditure, into the financing of economic, social and cultural measures, including capital expenditure, within their competence (withdrawal of such funds from a village or settlement Soviet is not permitted);

(c) Organize the receipt of tax, insurance and other payments from the population, and make arrangements for the collection of such payments in their territory; check that payments to the vil-

lage or settlement budget, due from collective and state farms, enterprises and organizations situated on their territory, like collective-farm contributions to the Central Union Social Insurance Fund for Collective Farmers, are made promptly; and organize self-taxation of the rural population;

(d) Grant relief from local taxes and levies in accordance with Article 2 of the Decree of the Presidium of the Supreme Soviet of the USSR on local taxes and levies, and also, by prior agreement with the district or urban financial authorities, from agricultural taxes in accordance with Article 18 of the Soviet Union Law on agricultural taxes; take decisions, by the established procedure, on the granting by agencies of the State Bank of the USSR of cash loans for the building of private dwellings within the limits fixed for village and settlement Soviets;

(e) Submit to the executive committee of the next higher Soviet observations and proposals relating to the charters of agricultural artsels situated on their territory; ensure observance of the provisions of such charters; render assistance to collective and state farms in the expansion of agricultural production, in the fulfilment of their production and financial plans, in the discharge of their obligations towards the State, in the efficient utilization of arable land, materials and manpower, in the organization and development of subsidiary enterprises, in raising the productivity of labour and in strengthening labour discipline, and in improving the material and cultural standard of living of collective farmers and those of workers and employees on state farms; and supervise the preservation and correct utilization on collective and state farms of agricultural equipment and installations, including mineral fertilizers and chemical weedkillers, and the carrying out of measures for protecting crops and plantations;

(f) Take decisions about the allocation of plots from the lands of a rural centre of population or settlement, within the limits and in accordance with the procedure established by law; ensure the observance by all land users of the laws on land use, including the proper use of the household land stock of collective and state farms, and of observance of the standards applying to household plots; and settle disputes between citizens over land;

(g) Direct the work of their subordinate local industrial enterprises and ensure that they fulfil their production and financial plans; and render assistance to individual enterprises situated on their territory in expanding production, making efficient use of materials and manpower, increasing the productivity of labour and raising the material and cultural standard of living of their workers and employees;

(h) Review and submit to the executive committee of the next higher Soviet proposals for the planning and development of centres of population; ensure observance of development plans; stop building where it involves a breach of town-planning regulations; check the progress of the construction of dwellings, social and cultural institutions and municipal enterprises in their territory; and settle, in agreement with collective and state farms, enterprises and other organizations

situated on their territory, matters affecting the joint utilization of funds set aside for building and repairing dwellings and public buildings and, where necessary, questions of the centralization of such funds;

(i) Supervise the fulfilment by collective and state farms, enterprises and other organizations of plans for the construction and repair of roads for motor traffic; supervise the work of transport organizations serving the general public; issue regulations to collective and state farms, enterprises, institutions and other organizations governing the availability of vehicles in the event of natural calamities or fires, for moving the sick and taking medical personnel to visit the seriously ill, and in other emergencies; and supervise the work of communications departments and offices serving the general public;

(j) Administer the housing service and public facilities and amenities for the population centres within their jurisdiction; allocate the housing stock for which they are responsible; approve joint decisions of the administration and of factory, plant and local trade-union committees on the allocation of living space in dwellings belonging to state, co-operative and public organizations, except in cases where the law provides otherwise; take steps to provide fuel, light and equipment for educational, cultural and public health institutions financed out of the village or settlement budget and for the repair of their premises, and to create the necessary housing and other amenities for their staff; enlist the services of collective and state farms, enterprises and other organizations, regardless of their administrative affiliation, in carrying out the said measures as well as in the provision of public utilities and amenities; and pool, with the consent of collective and state farms, enterprises and other organizations, the funds they set aside individually for such utilities, facilities and amenities;

(k) Keep a watch on state, co-operative and collective-farm trade and household services; approve plans for the siting and specialization of trade, public-catering and household-service enterprises; and ensure observance of the Charter of Consumers' Co-operatives;

(l) Ensure universal compulsory education; supervise the work of schools and boarding schools, and children's pre-school and out-of-school institutions situated on their territory; and decide, in accordance with the legislation in force, questions of exempting children from payment for meals at extended-day schools (or groups) financed out of the village or settlement budget, and questions relating to the distribution of the compulsory education fund among schools;

(m) Direct the work of their subordinate cultural institutions; supervise and co-ordinate the activity of other cultural organizations situated on their territory, regardless of their administrative affiliation; check the correctness of deductions and disbursements from the cultural funds of collective farms and consumers' co-operatives; and, in agreement with those organizations, take any necessary steps to centralize the use of such funds;

(n) Direct the organization of the work of medical institutions financed out of the village or

settlement budget; and supervise the organization of the work of medical institutions affiliated to higher authorities but situated on their territory;

(o) Collaborate with the trade-union organizations in supervising the observance of the labour laws, the rules for the protection of labour and the safety regulations at collective and state farms and at the enterprises situated on their territory; ensure observance of the pension laws and supervise the work of collective-farm councils in the field of social insurance for collective farmers; grant, within the limits of the appropriations provided for the purpose in the village or settlement budget, financial assistance to persons not entitled to a state pension; and submit proposals to the executive committee of the next higher Soviet for the grant of financial assistance to mothers of large families and to unmarried mothers, and for the payment of lump-sum grants to the victims of natural calamities;

(p) Suspend the implementation of decisions of meetings of collective farmers or of members of consumers' co-operatives, the management boards of collective farms or rural retail co-operatives, or that of orders or directives issued by the heads of enterprises, institutions or organizations affiliated to higher authorities, on matters of land use, public utilities, facilities and amenities, the development of population centres, or the protection of nature and cultural monuments, where such decisions, orders or directives conflict with the laws, informing the appropriate higher authority accordingly;

(q) Initiate petitions to the executive committee of the next higher Soviet for conferment of the honorary title of *Mat'-geroinya* ["Heroine Mother"], and proposals for the award of the order of *Materinskaya slava* ["Glory of Motherhood"] and of the medals *Medal' materinstva, Za otvagu na pozhare* and *Za spasenie utopayushchikh* ["The Motherhood Medal"], "For bravery at a fire", and "For rescue from drowning";

(r) Carry out in accordance with the established procedure the registration and de-registration of citizens; register civil status papers in accordance with the laws of the union republic concerned; appoint guardians and tutors; register the partitioning of family property in collective farm (or peasant) households; and perform notarial functions in accordance with the Statute on the State Notariat of the union republic concerned;

(s) Ensure strict compliance by all citizens with the law of Universal Military Service; maintain, according to the established procedure, the vital information on persons liable for military service and conscripts; and take steps to organize civil defence.

Article 5. Village and settlement Soviets of Working People's Deputies appoint and remove, in agreement with the appropriate superior State authority, heads of the schools and children's pre-school and out-of-school institutions, of the public health and cultural establishments and of the municipal and public utility enterprises for which they are responsible.

Article 6. Village and settlement Soviets of Working People's Deputies and their executive

committees may impose administrative sanctions on officials and citizens for breaches of public order, for infringements of the rules and regulations on the maintenance of cleanliness in population centres and the protection of nature and cultural monuments, or of those regulating the provision of amenities, facilities and public utilities to and the development of population centres, or the trade in alcoholic beverages; for the destruction of crops by livestock on collective and state farms; and for other offences in the cases and in accordance with the procedures laid down in the legislation of the union republic concerned.

A village or settlement Soviet shall, where necessary, with the consent of the executive committee of the next higher Soviet, set up an administrative tribunal under its own executive committee, to deal with violations of the law punishable administratively.

Article 7. Village and settlement Soviets of Working People's Deputies may, in addition to the rights and duties specified in Articles 4, 5 and 6 of the present Decree, exercise such other rights and duties as may be provided for in the legislation of the USSR and in that of the union and autonomous republics.

Article 8. With the object of further stimulating the work of village and settlement Soviets of Working People's Deputies, it is deemed necessary to extend the range of business dealt with at their sessions, and to lay down that the following matters may be decided only at such sessions:

(a) Ratification of deputies' mandates; acceptance of a deputy's personal resignation; decisions on deputies' interpellations and demands for information; election of the Soviet's executive committee and standing commissions and changes in their membership; reports on the work of the executive committee and standing commissions; and the setting up of an administrative tribunal under the executive committee;

(b) Approval of the plans for economic, social and cultural construction within a Soviet's competence; approval of the village or settlement budget, and of the report on its fulfilment; the allocation of any excess funds resulting from over-fulfilment of the village or settlement budget; the pooling and administration of funds set aside by collective and state farms, enterprises and organizations for the construction of buildings, and cultural and public buildings, utilities, facilities and amenities; and the consideration of observations and proposals on the charters of agricultural arts;

(c) The appointment and removal of heads of schools and children's pre-school and out-of-school institutions, public health and cultural establishments, and municipal and public-service enterprises; and

(d) The approval of recommendations to the executive committee of the next higher Soviet

concerning the creation, merging, elimination or re-naming of a village or settlement Soviet or the fixing or modification of the boundaries of its territory.

The legislation of the union and autonomous republics may specify other business that shall be decided only at sessions of village or settlement Soviets.

Article 9. A member of a village or settlement Soviet of Working People's Deputies shall, during a session, or during a meeting of the executive committee if he has been elected thereto, be exempt from fulfilling his production or service obligations without loss of wages or of his average earnings at his usual place of work.

A member of a village or settlement Soviet may not be dismissed from his work at an enterprise, institution or organization, or expelled from a collective farm at the instance of the administration; nor may he be brought before the criminal courts or arrested on the territory of the Soviet of which he is a member without its consent, or, in the intervals between sessions, without that of its executive committee.

Article 10. The executive committee of a village or settlement Soviet shall convene general meetings or assemblies of citizens resident in the Soviet's territory, as a whole, or by population centres, streets or wards, as well as meetings of representatives of the residents of the village or settlement, to discuss the most important questions affecting the lives of the citizens and to explain to the working people the laws, and the major decisions of local Soviets.

At such general meetings or assemblies of citizens of a population centre, rural community committees may be elected which shall be answerable for their activities to the general meeting or assembly which elected them or to the local village or settlement Soviet and its executive committee. Such rural community committees may, in accordance with the legislation of the union or autonomous republic concerned, be entrusted with the implementation in the territory of the population centre of individual directives of the executive committee of the local Soviet.

Article 11. The Presidium of the Supreme Soviets of the union republics are entrusted with the task of bringing each republic's legislation on village and settlement Soviets of Working People's Deputies into line with the present Decree.

Article 12. Until such time as the legislation in force in the USSR and the union republics has been brought into line with the present Decree, acts regulating the activities of village and settlement Soviets of Working People's Deputies shall continue to be applied, provided that they do not conflict with the provisions of the present Decree.

RESOLUTIONS OF THE COUNCIL OF THE UNION

CREATION OF A STANDING COMMISSION ON YOUTH AFFAIRS
OF THE COUNCIL OF THE UNION ⁵

The Council of the Union *resolves*:

1. To set up a Standing Commission on Youth Affairs.
2. To adopt the proposal of the Council of Nationalities on the expediency of drafting and submitting to the Supreme Soviet of the USSR for its consideration an appropriate addition to the Statute on Standing Commissions of the Council of the Union and Council of Nationalities of the Supreme Soviet of the USSR.

⁵ *Vedomosti Verkhovnogo Soveta SSSR*, No. 51, 10 December 1968.

RESOLUTIONS ADOPTED BY THE COUNCIL OF NATIONALITIES
AND THE COUNCIL OF THE UNION

RESOLUTIONS OF THE COUNCIL OF NATIONALITIES

CREATION OF A STANDING COMMISSION ON YOUTH AFFAIRS
OF THE COUNCIL OF NATIONALITIES ⁶

The Council of Nationalities:

1. *Resolves* to set up a Standing Commission on Youth Affairs.
2. Deems it expedient in this connexion to draft and submit to the Supreme Soviet of the USSR for its consideration an appropriate addition to the Statute on Standing Commissions of the Council of the Union and Council of Nationalities of the Supreme Soviet of the USSR.

Transmits to the Council of the Union its proposal concerning the expediency of drafting the supplementary text referred to above.

⁶ *Vedomosti Verkhovnogo Soveta SSSR*, No. 51, 10 December 1968.

DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR

ADMINISTRATIVE RESPONSIBILITY FOR BREACHES OF THE SAFETY REGULATIONS, STANDARDS AND DIRECTIVES APPLICABLE TO BRANCHES OF INDUSTRY AND PREMISES UNDER THE CONTROL OF AGENCIES OF GOSORTEKHNADZOR [STATE TECHNICAL MINING INSPECTORATE] ⁷

(Extract)

The Presidium of the Supreme Soviet of the USSR *resolves* as hereunder:

To lay down that officials guilty of repeated breaches of the safety regulations, standards and directives applicable to branches of industry and premises under the control of agencies of the

⁷ *Vedomosti Verkhovnogo Soveta SSSR*, No. 7, 8 February 1968.

State Technical Mining Inspectorate (STMI), not engaging the offender's criminal responsibility, shall be liable to a fine not exceeding 50 roubles.

To confer on agencies of STMI the right to impose such fines without recourse to the administrative tribunals of executive committees of district and urban Soviets of Working People's Deputies.

Fines may be imposed under the foregoing procedure by the following officers of STMI agencies: by heads of district (area) inspectorates, up to 10 roubles; by heads of STMI regional offices and their deputies, up to 30 roubles; and by chairmen (heads) of the STMIs of the union republics and their deputies, together with the President of the STMI of the USSR and his deputy, up to 50 roubles.

RULING OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR

APPLICATION OF ARTICLE 9 OF THE DECREE OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE USSR OF 26 JULY 1966: "AGGRAVATION OF RESPONSIBILITY FOR HOOLIGANISM"⁸

In response to enquiries about the application of article 9 of the Decree of the Presidium of the Supreme Soviet of the USSR of 26 July 1966—"Aggravation of responsibility for hooliganism"—the Presidium of the Supreme Soviet of the USSR, acting in pursuance of article 49 c of the Constitution of the USSR, rules as follows: persons already convicted of hooliganism and subsequently committing repeated minor acts of hooliganism, and persons convicted of repeated minor acts of hooliganism and subsequently committing the acts of hooliganism foreseen in the first part of article 9 of the Decree of the Presidium of the Supreme Soviet of the USSR of 26 July 1966—"Aggravation of responsibility for hooliganism"—shall answer for their offences as provided for in the first part of article 9 of the Decree cited.

⁸ *Vedomosti Verkhovnogo Soveta SSSR*, No. 21, 22 May 1968.

LAW OF THE UNION OF SOVIET SOCIALIST REPUBLICS

RATIFICATION OF THE CODES OF ACTS OF THE UNION OF SOVIET SOCIALIST REPUBLICS AND OF THE UNION REPUBLICS ON MARRIAGE AND THE FAMILY⁹

The Supreme Soviet of the Union of Soviet Socialist Republics resolves as hereunder:

Article 1. To ratify the Codes of Acts of the Union of Soviet Socialist Republics and union republics on marriage and the family and to bring it into force with effect from 1 October 1968.

Article 2. To determine that the rule of judicial procedure, established in Article 16 of the Codes of Acts of the USSR and union republics on marriage and the family, for acknowledgement of paternity of a child by a person to

whom the mother has not been married, applies to children born after the Codes came into force.

Article 3. With respect to children born before the Codes came into force to persons not joined in wedlock, paternity may be established by a joint declaration by the mother of the child and the person admitting paternity. In the event of the death of a person who was maintaining a child and has admitted that he was its father, the fact of his acknowledgement of paternity can be established by due legal process. On the basis of a joint declaration by the parents or on that of a court judgment establishing the fact of admission of paternity, registration shall be duly effected at a registrar's office and details of the father shall be entered on the child's birth certificate.

The paternity of persons of full legal age may be established only with their consent.

⁹ *Vedomosti Verkhovnogo Soveta SSSR*, No. 27, 27 June 1968, p. 241.

Article 4. With the establishment of paternity by the procedure provided for in Article 3 of the present Law, children acquire the same rights and duties with respect to their parents and kinsfolk as children born to persons joined in wedlock.

Article 5. On the basis of a declaration made by the mother of a child born before the Codes came into force, details of the father shall be entered in the register of births and on the child's birth certificate according to the procedure established in the third part of Article 17 of the Codes of Acts of the USSR and union republics on marriage and the family.

Article 6. To protect the right of an unmarried mother to receive the State allowance as determined by law for the maintenance and education

of her child, as well as her right to place the child in an infants' home for maintenance and upbringing at the sole charge of the State, where the child's father cannot be established by due legal process.

Article 7. To instruct the Presidium of the Supreme Soviet of the USSR to initiate the procedure for bringing into force the Codes of Acts of the USSR and union republics on marriage and the family and to bring the legislation of the USSR into conformity therewith.

Article 8. To instruct the Supreme Soviets of the union republics to bring the latter's legislation into conformity with the Codes of Acts of the USSR and union republics on marriage and the family.

RESOLUTION OF THE COUNCIL OF MINISTERS OF THE USSR

PROCEDURE FOR PAYING GRANTS TO STUDENTS AT HIGHER-EDUCATIONAL ESTABLISHMENTS WHILE ON PRACTICAL TRAINING IN PRODUCTION ¹⁰

The Council of Ministers of the USSR *resolves* as hereunder:

1. To adopt the proposal of the Ministry of Higher and Secondary Technical Education, as agreed with the State Planning Office of the USSR (*Gosplan*), the State Committee of the Council of Ministers of the USSR on Labour and Wage Problems and the Ministry of Finance of the USSR, that the payment of grants to state-aided students at higher-educational establishments shall be continued while the students are doing their practical training in production, regardless of any wages they may earn there.

Expenditure arising out of the implementation of this measure shall be met out of the appropriations provided for the payment of grants to students at higher-educational establishments.

2. To consider item 9 of the resolution of the Council of Ministers of the USSR of 4 August 1959 as no longer in force.

¹⁰ *SP Soveta Ministrov SSSR*, No. 15, 8 August 1968, p. 106.

RESOLUTION OF THE COUNCIL OF MINISTERS OF THE USSR.

PROCEDURE FOR GRANTING DISABLED VETERANS FROM THE GREAT PATRIOTIC WAR AND OTHER DISABLED EX-SERVICEMEN LOANS FOR MAJOR HOUSE REPAIRS ¹¹

The Council of Ministers of the USSR *resolves*:

To determine that loans made to disabled veterans from the Great Patriotic War and to other disabled ex-servicemen, as specified in the resolution of the Council of Ministers of the USSR of 20 May 1965, for making major repairs to dwellings they own shall be free of interest and other charges.

To discontinue the collection from the aforementioned persons of interest and other charges on loans granted to them for such purposes before the promulgation of the present resolution.

¹¹ *SP Soveta Ministrov SSSR*, No. 87, 8 February 1968.

RESOLUTION OF THE COUNCIL OF MINISTERS OF THE USSR OF 8 FEBRUARY 1968

GRANT OF ADDITIONAL TRAVEL PRIVILEGES FOR THE BLIND¹²

(Extract)

The Council of Ministers of the USSR *resolves*:

To grant, in supplementation of its resolution of 9 March 1954, blind persons the right to travel free on suburban railway trains, on city and suburban waterway services (including ferries) and on suburban and intradistrict bus routes.

Blind persons may exercise their right to travel free on the means of transport specified above by producing a membership card of an association of the blind.

¹² *SP Soveta Ministrov SSSR*, No. 86, 8 February 1968.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE¹

ARTICLES 2 AND 7 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

The Race Relations Act 1968

This Act extends the scope of the discrimination provisions of the Race Relations Act 1965. It makes it unlawful to discriminate on the ground of race, colour or ethnic or national origins in housing, employment or the provision to the public of goods, services or facilities. In general, it is now also unlawful to publish or display discriminatory advertisements.

An enlarged Race Relations Board has been given the task of enforcing the provisions of the Act. Enforcement is carried out primarily by a process of conciliation, and a person found to have discriminated unlawfully may be required by the Board to give a written assurance against any repetition of the act or acts complained of. Where conciliation does not succeed, the Board may take civil proceedings in a county court to seek: (a) a declaration that the act complained of was unlawful; (b) an injunction restraining the defendant from engaging in similar acts; or (c) damages for the original complainant for expenses and for loss of opportunity occasioned by the discrimination.

Under the provisions of the Act a Community Relations Commission—replacing the former National Committee for Commonwealth Immigrants—has been formed with the duty of (a) encouraging and promoting local efforts to establish harmonious community relations, (b) advising the Government on community relations matters and (c) providing an educational service—e.g. the publication of papers and booklets, and the organization and promotion of conferences.

¹ Note furnished by the Government of the United Kingdom of Great Britain and Northern Ireland.

ARTICLES 2 AND 25(2) OF THE UNIVERSAL DECLARATION

The Legitimation (Scotland) Act 1968

This Act amends and codifies the law of Scotland relating to the legitimation of illegitimate persons by the subsequent marriage of their parents. Its main provision is that all illegitimate persons whose parents subsequently marry each other will be legitimated by the marriage regardless of whether or not the parents were free to marry when the child was conceived or born.

The Law Reform (Miscellaneous Provisions) (Scotland) Act 1968

This Act provides, *inter alia*, that all illegitimate children in Scotland should enjoy the same rights of succession as legitimate children in the intestate estate of both their parents and should have a right to a certain share of the movable estate left by either parent whether or not the parent leaves a will.

ARTICLE 19 OF THE UNIVERSAL DECLARATION

The Theatres Act 1968

The Act abolishes the function of the Lord Chamberlain with respect to the censorship of plays. It makes the performance of a play which is obscene or likely to incite racial hatred or provoke a breach of the peace a criminal offence. In the case of proceedings for obscenity, it is a defence to prove that the giving of the performance was justified as being in the public good on the grounds that it was in the interests of drama, opera, ballet or any other art, or of literature or learning.

ARTICLES 22 AND 25 (1) OF THE UNIVERSAL
DECLARATION*Social security*

The most important development in the year was the amalgamation of the Ministries of Health and Social Security to form the Department of Health and Social Security.

The rates of family allowances were increased twice, first from 9 April 1968 to 15s. a week for the second child in the family and 17s. a week for each other child, and again from 8 October 1968 to 18s. a week for the second and 20s. for each other child. Also in October, increases were made in the rates of supplementary benefits.

To help meet the rising cost of the substantial increases made in national insurance benefits towards the end of 1967, national insurance contributions were increased from 6 May 1968. For employed men, the combined flat-rate contribution went up by 1s. and by a further 6d. towards the cost of the National Health Services. Of the total increase, the employed man pays 1s. a week and his employer 6d. From 2 September 1968, Selective Employment Tax was increased, as also were contributions to the Redundancy Fund, which provides payments to employees who become redundant. For administrative convenience, these two charges are collected through the national insurance stamp.

A new reciprocal social security agreement with the Irish Republic came into force on 4 November 1968. Its main purpose was to establish reciprocal arrangements between the new scheme of occupational injuries insurance in that country and the British scheme of industrial injuries insurance.

ARTICLE 23 (1) OF THE UNIVERSAL DECLARATION

Favourable conditions of work

The Offices, Shops and Railway Premises (Hoists and Lifts) Regulations 1968 were made by the Secretary of State for Employment and Productivity on 27 May 1968. These Regulations give hoists and lifts in offices, shops and railway premises the same safeguards as are provided under earlier legislation for hoists and lifts in factories.

The Regulations impose requirements as to the construction, maintenance and examination of hoists and lifts. They require liftways to be enclosed and the provision of gates fitted with devices for securing that the gates cannot be opened unless a lift is at the landing and that a lift cannot be moved away from the landing until the gates are closed. They also require that every lift shall be marked with its maximum safe working load. The Regulations exempt from certain requirements certain lifts and hoists subject to specified conditions and limitations.

ARTICLE 25 (1) OF THE UNIVERSAL DECLARATION

Housing

New housebuilding continued at the rate of over 400,000 dwellings a year. In the public

sector priority was given to the elimination of shortages and the relief of overcrowding and multi-occupation, and to slum clearance and the housing of old people. In the areas where the concentration of these conditions was worst, authorities continued to have long-term programmes which were kept under review in the light of what had been accomplished and what had still to be done. This concentration on the areas of greatest need meant that authorities elsewhere could not always be allowed to build as many houses as they would have liked. Such areas have had to be limited to meeting urgent needs such as slum clearance and the housing of old people.

The Leasehold Reform Act 1967 (Part I of which largely came into force in January 1968) enables tenants of houses held on long leases to acquire the freehold at fair compensation or to extend their lease by 50 years.

In April 1968, the Government's option mortgage and guarantee schemes came into operation. These schemes were designed to bring home ownership within the reach of more families by enabling people with lower and untaxed incomes to qualify for broadly the same income tax rebates on their mortgages as those currently granted to an income tax payer at the standard rate; the option was between tax relief and a mortgage subsidy.

The Prices and Incomes Act 1968 makes it unlawful for a local authority to increase rents unless the increases are in accordance with proposals approved by the Minister.

Among the facilities and services covered by the provisions of the Race Relations Act 1968 (see paragraphs relating to Articles 2 and 7) are loans for house purchase or improvement made by local authorities, improvement and standard grants, and any other mandatory or discretionary payment under the Housing Acts.

ARTICLE 25 (2) OF THE UNIVERSAL DECLARATION

The Adoption Act 1968

This Act was passed to enable effect to be given to a Convention on the Adoption of Children concluded at The Hague on 15 November 1965. It deals mainly with jurisdiction to authorize adoptions, the law applicable to adoptions and the recognition of adoptions and adoption proceedings in other countries.

ARTICLE 29 (2) OF THE UNIVERSAL DECLARATION

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 the attached Order.

UNITED REPUBLIC OF TANZANIA

THE URBAN LEASEHOLDS (ACQUISITION AND REGRANT) ACT, 1968

Act No. 22 of 1968, assented to on 16 May 1968 and entered into force on 17 May 1968¹

PART II

ACQUISITION AND REGRANT

3. (1) Where a tenant is in or entitled to possession of urban land and such land has been developed by construction thereon of a building or buildings and the Minister is of the opinion that, by reason of such development having been carried out by—

(a) The tenant;

(b) A deceased tenant formerly in or entitled to possession of the urban land, who is in the prescribed relationship to the present tenant; or

(c) Both the present tenant and such deceased tenant, by his or their own effort or at his or their own expense, it is fitting that a right to such urban land should be granted to the present tenant, the Minister may, subject to the provisions of this Act, acquire such urban land and any necessary additional area for the purpose of making a grant thereof to the tenant under section 10.

4. (1) Where the Minister intends to acquire any urban land under this Act, he shall serve notice of his intention—

(a) Upon the owner thereof and upon every other person having a registered right or interest in the land; and

(b) Upon the tenant in respect of whom he proposes to acquire the land.

(2) Every notice served in accordance with paragraph (a) of subsection (1) shall be in the prescribed form and shall—

(a) Call upon the owner and such other persons aforesaid (other than persons who hold rights or

interests to which section 12 applies), unless previously notified of the Minister's withdrawal from the acquisition, to assign, convey or surrender to the President all title, right and interest in the land to be acquired within such period, not being less than six weeks from the service of notice upon the owner, as the Minister may specify therein;

(b) Be accompanied by a sketch map of the land to be acquired which map shall show any line of demarcation between the land to be acquired and any other land of the owner contiguous therewith.

5. (1) The Minister may withdraw from the acquisition of any urban land at any time before the title of the owner thereof is transferred to the President or, as the case may be, extinguished.

6. Where the period specified in accordance with subsection (2) of section 4 has expired and all title, right and interest in the land to be acquired has not been assigned, conveyed or surrendered to the President, the Minister may apply, *ex parte*, to the Registrar for the grant and registration of a certificate of title to such land, and, notwithstanding anything to the contrary contained in the Land Registration Ordinance, or any other written law or in any order made or issued by a court, the Registrar shall, if satisfied by affidavit or otherwise that—

(a) The application is made in such circumstances aforesaid in respect of an acquisition in pursuance of the powers conferred by section 3; and

(b) No proceedings in respect of the acquisition of the land are pending in the High Court or the Court of Appeal,

and unless it appears that the Minister has withdrawn from the acquisition, grant to the President a certificate of title to such land and register the same in the appropriate register.

¹ *Gazette of the United Republic of Tanzania*, No. 20, vol. XLIX, of 17 May 1968, Acts Supplement, No. 2, of 17 May 1968.

7. Where—

(a) An instrument of assignment, conveyance or surrender of any title, right or interest in respect of any land acquired under this Act is executed in favour of the President and such instrument is duly registered in the appropriate registry in accordance with the provisions of the Land Registration Ordinance or the Registration of Documents Ordinance, as the case may be;

(b) A certificate of title is registered under section 6,

such instrument or certificate of title shall, subject to the provisions of section 12, confer upon the President the right, title or interest referred to in the instrument and, in the case of a certificate of title, the absolute right and title to the land comprised therein free from all adverse or competing titles, rights or interests, trusts, claims, and demands whatsoever and such adverse or competing titles, rights, interests, trusts, claims and demands shall, to the extent that they touch or concern the land, be extinguished.

8. (1) Where any urban land is acquired and the title therein is vested in the President in accordance with the foregoing provisions of this Act, the tenant in respect of whom the land is acquired shall, immediately upon such acquisition being complete and until a grant of such land is made in accordance with section 10, be deemed to hold a temporary right of occupancy over such land on such terms and conditions as the Minister may determine.

...

9. (1) Where any land is acquired under this Act, any person (other than the tenant in respect of whom it is acquired or any person having any right or interest to which section 12 applies) who enjoyed any title, right or interest in the land prior to its acquisition may, within six weeks of the publication of the notice in the *Gazette* provided for by subsection (4) of section 4, or such longer period as the Minister may allow, apply in writing to the Minister for the payment of compensation for the assignment, conveyance or surrender, or, as the case may be, the extinguishment of such title, right or interest.

...

10. (1) Subject to the provisions of this section, where any land is acquired under this Act, the Minister shall grant a right of occupancy over the land to the tenant in respect of whom it was acquired.

(2) Where contiguous parcels of land are acquired under this Act in respect of two or more tenants, the Minister may divide the whole as he thinks fit into the like number of portions and, subject to the provisions of this section, shall grant a right of occupancy over one of such portions to each of such tenants.

(3) Subject to the provisions of the Land Ordinance, the terms and conditions of rights of occupancy granted under this section shall be at the discretion of the Minister, and in making a grant under this section the Minister shall not be bound by anything contained in the notice served on the tenant in accordance with subsection (1) of section 4, unless the tenant has notified the

Minister in writing of his acceptance of the terms and conditions set out in such notice.

(4) Where the tenant in respect of whom the land was acquired refuses or neglects to accept a grant of the same within a period of three months after an offer thereof to him, or the acquisition of the land, whichever is the later, the Minister may make a grant of the land as he thinks fit; and the validity of the acquisition of any urban land shall not be impugned solely by reason of the Minister having made a grant of land in the circumstances set out in this subsection to a person other than the tenant in respect of whom the land was acquired.

(5) Immediately upon a grant of land being made under this section the temporary right of occupancy shall be deemed to have been revoked.

11. Where a tenant holds urban land on a temporary right of occupancy created by the operation of section 8 or where a grant of a right of occupancy is made under section 10, the Minister shall have power to grant or reserve any easement of necessity over or in respect of the land or any other land of the former owner.

12. (1) Notwithstanding the provisions of section 7, where a tenant of any urban land acquired under this Act held such land, immediately before such acquisition, subject to any mortgage, charge or other incumbrance, or to a sub-lease, and such mortgage, charge, incumbrance or sub-lease was created or granted by the tenant or by a deceased tenant who is in the prescribed relationship to the tenant, such mortgage, charge, incumbrance or sub-lease shall not be extinguished by reason of the acquisition but shall subsist against the land comprised in the temporary right of occupancy and, when a grant is made under section 10, against the land comprised in the right of occupancy granted under that section.

...

PART III

MISCELLANEOUS

...

14. (1) Where any person authorized for the purpose has reason to believe that any person other than the owner has developed any urban land by construction thereon of a building or buildings and is of the opinion that an investigation ought to be made of the nature of his possession and the extent of his development, or of his expenditure of money or effort upon such urban land, such person may enter upon such urban land and make such investigations, and may survey the urban land and determine any boundary or line of demarcation between the land in any tenant's occupation (including any necessary boundary area) and any other land of the owner contiguous therewith.

(2) A person who enters upon any urban land in pursuance of the powers conferred by this section, shall, on demand, produce his written authorization to the owner or other person having a present right to possession.

15. Where any urban land is acquired under the provisions of this Act, any person authorized for the purpose may enter and take possession of such land for the purpose of giving effect to such acquisition or to any grant of such land in accordance with this Act, and if any other person hinders or obstructs any person so authorized, the Minister may apply *ex parte* to the court of the resident magistrate within whose jurisdiction such land is situate for an order of ejectment and such court may, upon proof of the acquisition of the land, issue an order of ejectment addressed to any officer of the court or to any police officer under which such officer or police officer may forthwith eject any person withholding possession.

16. (1) A person is authorized for the purpose of section 14 or section 15 if he is authorized in that behalf in writing under the hand of the Commissioner for Lands.

(2) Every person who—

(a) Wilfully hinders or obstructs any person duly authorized for the purpose of section 14 or section 15 from entering upon any land for the purposes for which he is so authorized; or

(b) Hinders, obstructs or molests any such person in the exercise of the powers conferred upon him by the relevant section; or

(c) Hinders, obstructs or molests any person serving a notice or affixing a copy thereof to any part of urban land for the purposes of this Act, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding one thousand shillings or to both such fine and imprisonment.

...

THE NEWSPAPER ORDINANCE (AMENDMENT) ACT, 1968

Act No. 23 of 1968, assented to on 16 May 1968 and entered into force on 17 May 1968²

...

2. The Newspaper Ordinance is hereby amended by adding, immediately below section 21, the following new section:—

“21A.—(1) Where the President is of the opinion that it is in the public interest or in the interest of peace and good order to do so, he may, by order in the *Gazette*, direct that the newspaper named in the order shall cease publication as from the date (hereinafter referred to as the effective date) specified in the order.

“(2) Every order made under subsection (1) shall specify—

(a) The title or name of the newspaper in respect of which it is made; and

(b) The names of the proprietor, printer and publisher of such newspaper:

Provided that no order made under subsection (1) shall be invalid by reasons of non-description or misdescription of the proprietor, printer or publisher or any of them.

“(3) Where an order under subsection (1) is made in respect of any newspaper—

(a) Any person who, on or after the effective date, prints or publishes or causes to be printed or published the newspaper named in the order shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment;

(b) Any person who, on or after the effective date, sells, offers to sell, exposes for sale, distributes or exhibits, or causes to be exhibited, in any public place any copy or part of a copy of the newspaper named in the order, whether or not such copy or part was printed or published prior to the effective date, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand shillings or to imprisonment not exceeding two years or to both such fine and imprisonment.

“(4) Where any person is convicted of an offence under this section the court by which such person is convicted may, notwithstanding the provisions of section 7 of the Criminal Procedure Code, impose the maximum fine prescribed by this section for such offence.

“(5) For the purposes of this section “public place” shall have the meaning ascribed thereto in the Penal Code.”

² *Ibid.*

THE RURAL FARMLANDS (ACQUISITION AND REGRANT) (AMENDMENT) ACT, 1968

Act No. 26 of 1968, assented to on 16 May 1968 and entered into force on 17 May 1968³

2. Section 11 of the Rural Farmlands (Acquisition and Regrant) Act, 1966 is repealed and replaced by the following new section:—

“11. Where any rural farmland is acquired under the provisions of this Act, any person authorized for the purpose may enter upon and take possession of such land for the purpose of giving effect to such acquisition or to any grant of such land in accordance with this Act, and if any other person hinders or obstructs any person so authorized, the Minister may apply *ex parte* at any time to the court of the resident magistrate within whose jurisdiction such land is situate for an order of ejection and such court may thereupon, and upon proof of the acquisition of the land, issue an order of ejection addressed to any officer of the court or to any police officer and such officer or police officer shall forthwith eject any person withholding possession.”

³ *Gazette of the United Republic of Tanzania*, No. 20, vol. XLIX, of 17 May 1968, Acts Supplement, No. 2, of 17 May 1968.

THE PRISONS AMENDMENT ACT, 1968

Act No. 29 of 1968, assented to on 16 May 1968 and entered into force on 17 May 1968⁴

...

2. Section 49 of the Prisons Act, 1967⁵ is hereby amended—

(a) In subsection (3) thereof by deleting the words “may lose remission as a result of punishment for a prison offence, and”; and

(b) By deleting subsection (4) and substituting therefor the following new subsections:

“(4) A prisoner may lose remission as a punishment for a prison offence and any prisoner who is serving a sentence for a scheduled offence under the Minimum Sentences Act, 1963, and who escapes or attempts to escape from prison, shall lose the whole of the remission to which he would otherwise be entitled under this section in respect of that sentence.

“(5) The Commissioner shall have the power to restore in whole or part any remission forfeited as a punishment for a prison offence but not otherwise.”

⁴ *Ibid.*

⁵ For extracts from the Prisons Act, 1967, see *Yearbook on Human Rights for 1967*, pp. 351-353.

UNITED STATES OF AMERICA

HUMAN RIGHTS IN 1968

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

The Constitution of the United States and the Constitutions of the various states assure the people of the United States basic guarantees of human rights and fundamental freedoms. Official action at all levels of government must conform with constitutional requirements. Both Federal and State Courts have vigilantly protected individual rights by preventing, invalidating or redressing action which violates constitutional guarantees. The following survey for 1968 is necessarily selective and is confined to official acts of importance on the federal level. State and local governments, however, co-operate with the Federal Government in legislative programmes designed to provide equal opportunity for all.

EXECUTIVE ACTIONS

In response to the United Nations General Assembly's request that Members proclaim Human Rights Year and undertake a wide variety of activities in 1968 to commemorate the Universal Declaration of Human Rights, President Johnson designated 1968 as Human Rights Year in the United States. The President called upon "all Americans and . . . all Government agencies—federal, state, and local—to use this occasion to deepen our commitment to the defense of human rights . . .". The President's Commission for the Observance of Human Rights Year, established by Executive Order No. 11394, of 30 January 1968, was given the task of promoting "the effective observance in the United States of 1968 as the Twentieth Anniversary of the United Nations Declaration of Human Rights". The President appointed Ambassador at Large W. Averell Harri-

man as Chairman of the Commission, and Mrs. Anna Roosevelt Halsted as Vice Chairman. The Commission was composed of heads of government agencies and distinguished citizens from public life. The Commission's work included the promotion of human rights concepts in all areas of public and private endeavour. The Commission was able to mobilize many non-governmental organizations throughout the nation to commemorate Human Rights Year and to strengthen the dedication of the American people to human rights.

The Federal Government accelerated its civil rights efforts in 1968 and made important advances against racial discrimination in employment, education and housing. The Justice Department, for example, initiated two and one-half times as many cases as it had previously under the equal employment section of the 1964 Civil Rights Act. It brought a record number of school desegregation actions and obtained significant court decisions to speed desegregation in schools. Enforcement of federal civil rights laws was conducted on a nationwide basis and school desegregation litigation was aimed, for the first time at the north and west.

The Department of Justice stepped up its efforts against racial discrimination in employment, filing twenty-five suits against private employers under the equal employment section of the 1964 Civil Rights Act. An employment suit generally seeks to remove all racial barriers in the recruitment, hiring, job assignment and promotion of employees.

A record total of one hundred and twenty-five school desegregation actions were undertaken by the Department of Justice, up from sixty-eight the previous year. While pressing to eliminate dual systems in the South, the Department of Justice also took important first steps in meeting an

¹ Information furnished by the Government of the United States of America.

urgent national need: enforcement against *de facto* segregation in urban centres throughout the country.

In 1968, the Supreme Court rendered a number of significant decisions concerning school segregation. The Court found "freedom of choice" desegregation plans which, in effect, perpetuate dual school systems unacceptable. It proclaimed, in no uncertain terms, that local school boards had an affirmative duty to take all necessary steps to convert to unitary systems in which racial discrimination was exorcised. (*Green et al. v. County School Board*, 391 U.S. 430; *Monroe et al. v. Board of Commissioners*, 391 U.S. 450.) Moving under the decisions, the Department of Justice filed actions to require one hundred and fifty-five school districts to replace "freedom of choice" plans with more effective methods.

Various actions were initiated by the Department of Justice under the Voting Rights Act of 1965. Federal election observers were sent to twenty-four counties for the November elections. The Department filed or participated in a number of suits seeking to eliminate alleged racial discrimination in election processes. Since passage of the Voting Rights Act, Negro voter registration in five deep South states—Alabama, Georgia, Louisiana, Mississippi and South Carolina—has increased from 730,000 to nearly 1,500,000.

In a decision sought by the Department of Justice, the Supreme Court held that an 1866 law bars discrimination in the sale or rental of property. (*Jones v. Alfred Mayer Co.*, 392 U.S. 409.) Labelling such discrimination an "incident of slavery", the Supreme Court held that Congress, under the Thirteenth Amendment, had the authority to propagate effective legislation in securing, for all citizens, this "fundamental right which (is) the essence of civil freedom . . .". The effect of the *Jones v. Alfred Mayer Co.* decision is that citizens who experience such discrimination have immediate recourse in the courts.

SIGNIFICANT LEGISLATION

The Federal Congress enacted the Civil Rights Act of 1968. The purpose of the legislation was to strengthen the capability of the Federal Government to meet the problem of violent interference, for racial or other discriminatory reasons, with a person's free exercise of civil rights. The Act instituted criminal penalties for interference with the exercise of federally protected rights. The 1968 Civil Rights Act also contained fair housing provisions and unequivocally declared that "it is the policy of the United States to provide within constitutional limitations for fair housing throughout the United States". The law specifically prohibits discrimination in the sale or rental of housing. Only single-family houses sold or rented by the owner, without recourse to public agencies, or rooms or units in a dwelling occupied by the owner are exempted from coverage. The law also bars discrimination in the financing of housing transactions and the provision of brokerage services. Finally, the legislation proscribes any attempt to intimidate anyone from selling a home on a non-discriminatory basis.

The Secretary of Housing and Urban Development is charged with the law's enforcement. However, any person who claims to have been injured by a discriminatory housing practice, or believes that one is about to occur, may file a complaint with the Secretary. The Secretary shall first seek voluntary compliance with the law's provisions. If the Secretary fails to secure compliance, the law provides for resort to the courts which are empowered to grant injunctive relief and/or actual and punitive damages. The Attorney-General, upon reasonable belief that a person or group is engaged in a pattern or practice of resistance to the full enjoyment of the rights granted by the fair housing law, may also bring an action in an appropriate United States district court.

In the Housing and Urban Development Act of 1968, the Congress rededicated the nation to the goal of "a decent home and a suitable living environment for every American family" first envisaged in the Housing Act of 1949. The legislation was designed to add substantially to the production of housing for low and moderate income families. It stresses the objective of providing within the housing programmes maximum employment opportunities for disadvantaged workers. Specific provisions of the Act include a new programme of interest subsidies of low and moderate income families to purchase new or existing homes, a special high risk insurance fund to encourage the approval of home loan applications from buyers who cannot meet full standards, and a new programme of interest subsidies on behalf of low and moderate income occupants of rental and co-operative housing. In addition, the Housing Act of 1968 requires that a majority of the housing units provided in the future in urban renewal projects redeveloped for residential purposes must be for low and moderate income families. Finally, the bill authorized an additional \$1 billion for fiscal 1970 for the model cities programme.

The Jury Selection and Service Act of 1968 provided for comprehensive changes in jury selection procedures in the Federal Courts to ensure against discrimination on grounds of race, religion, national origin, sex or economic status.

The Federal Congress appropriated \$23 million for the three year fiscal period 1969-1971 under the Handicapped Children's Early Education Assistance Act to develop and carry out specialized early education programmes for handicapped children. The programmes are intended to encourage the participation of parents in the effort to facilitate the intellectual, social and physical development of handicapped children.

In 1968, the Congress extended certain programmes providing assistance to students at institutions of higher education. The legislation included the extension of student loan insurance programmes and a federal guaranty of student loans insured under non-Federal programmes.

The Health Manpower Act of 1968 extended construction of public health facilities and authorized institutional and special project grants for training of health professions personnel totalling \$395 million over fiscal years 1970-1971. Funds were also allocated by the Congress under the

Act for student aid, particularly for nurse training, to strengthen the nation's efforts in the public health area.

The Congress, in 1968, enacted the Military Justice Act to make procedures in courts-martial consistent with procedures in United States district courts, to increase the availability of legally qualified counsel to represent the accused in courts-martial, and to increase the independence of military judges and members and other officials of courts-martial from unlawful influence by convening authorities and other commanding officers. The Act also strengthens the post conviction safeguards and remedies available to the accused.

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, by an impartial jury ...".

In 1968, the Supreme Court pointed out that public employees are entitled, like all other persons, to the benefit of the Fifth Amendment privilege against self-incrimination. They may not be subjected to proceedings which present them with a choice between surrendering their constitutional rights or their jobs. In two similar cases, *Gardner v. Broderick*, 392 U.S. 273 and *Unifor-med Sanitation Men Ass'n. v. Commissioner of Sanitation*, 392 U.S. 280, the Court held that public employees are subject to dismissal if they refuse to account for the performance of their public trust only after proper proceedings which do not involve an attempt to coerce them to relinquish their constitutional rights.

In two other cases concerning the Fifth Amendment privilege against self-incrimination, the Supreme Court, in 1968, struck down a federal statute which required gamblers to register and to pay an occupational tax on the gross amount of all wagers accepted. The Court held that a petitioner's assertion of his Fifth Amendment privilege barred his prosecution for violating the federal wagering tax statutes. (*Marchetti v. United States*, 390 U.S. 39; *Grosso v. United States*, 390 U.S. 62.)

As written, the Sixth Amendment applied only to the Federal Government, requiring it to provide for trial by the traditional jury of twelve persons. In 1968, the Supreme Court extended the Sixth Amendment right to trial by jury to the states. It held that since trial by jury in criminal cases was "fundamental to the American scheme of justice", the Fourteenth Amendment ensures a right of jury trial in all criminal cases which, were they tried in a federal court, would come within the Sixth Amendment guarantee. (*Duncan v. Louisiana*, 391 U.S. 145.)

Equal Protection of the Law and the Right to Vote (articles 7 and 21)

The Fourteenth Amendment of the United States Constitution provides, *inter alia*, that "(n)o State shall ... deny to any person within its jurisdiction the equal protection of the laws".

During 1968, the Supreme Court extended the "one-person, one-vote" principle, enunciated in 1963 with respect to state elections,² to the election of local government officials. In *Avery v. Midland County*, 390 U.S. 474, the Court held that local units with general governmental powers over an entire geographic area may not, consistently with the Equal Protection Clause of the Fourteenth Amendment, be apportioned among single-member districts of substantially unequal population. Although the State legislature may itself be properly apportioned, the Fourteenth Amendment requires that citizens not be denied equal representation in political subdivisions which also possess broad policy making functions.

Equal Protection of the Law and Illegitimacy (articles 7 and 25)

In 1968, the Supreme Court utilized the Equal Protection Clause of the Fourteenth Amendment to strike down vestiges of statutory discrimination against illegitimate children. The issue arose when the Louisiana Court of Appeals construed the State's wrongful death statute to deny a right of recovery by illegitimate children (*Levy v. Louisiana*, 391 U.S. 68) and to bar recovery for damages to the parent of an illegitimate child.

(*Glon v. American Guarantee Co.*, 391 U.S. 73.) The Supreme Court held that the statute thus interpreted, contravened the Equal Protection Clause on the grounds that legitimacy or illegitimacy of birth has no relation to the nature of the wrong inflicted (*Levy*), and that there is no rational basis for allowing the parent of a legitimate child to recover while denying recovery to the parent of an illegitimate child. (*Glon*).

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 right against unreasonable searches and seizures, made applicable to the states by the Fourteenth Amendment, "protects people, not places." The citizen is equally protected whether at home or on the streets. The Supreme Court in 1968 considered the scope of Fourth Amendment protections in the case of *Terry v. Ohio*, 392 U.S. 1. Petitioner, Terry, questioned the constitutionality of the "stop and frisk" procedure. The Court indicated that whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person within the meaning of the Fourth Amendment. A careful exploration of a person's clothing in an attempt to find weapons is a "search" under that Amendment. The *Terry* Court, in narrowing the bounds of a permissible search, held that an officer may make an intrusion

² *Gray v. Sanders*, 372 U.S. 368.

short of arrest before being possessed of information justifying arrest only where he has reasonable apprehension of danger.

Also in 1968, the Supreme Court held that a search cannot be justified as lawful on the basis of consent when that "consent" has been given only after the official conducting the search has asserted that he possesses a warrant. Under such circumstances, a citizen cannot be said to have consented to a search within the meaning of Fourth Amendment requirements. (*Bumper v. North Carolina*, 391 U.S. 543.)

Freedom of Expression (article 19)

The First Amendment of the United States Constitution provides, *inter alia*, that "Congress shall make no law . . . abridging the freedom of speech . . .".

Motion pictures are protected by the First Amendment and cannot be regulated except by precise and definite standards. In 1968, the Su-

preme Court declared a Dallas, Texas, ordinance which attempted to prohibit the screening of certain purportedly objectionable motion pictures unconstitutionally vague. The Court found the ordinance violative of the First and Fourteenth Amendments since it lacked narrowly drawn, reasonable and definite standards for officials to follow. (*Interstate Circuit, Inc. v. City of Dallas*, 390 U.S. 676.)

In *Pickering v. Board of Education*, 391 U.S. 563, appellant complained that he had been dismissed from his position as a teacher for criticizing the local Board of Education. The Supreme Court held that where no special confidential relationship exists, a public employee does not forfeit the protection of the First Amendment because of his employment. In *Pickering*, the Court found that a teacher is not in a special confidential position and cannot be dismissed solely because of public criticism of the Board of Education.

URUGUAY

NATIONAL HOUSING PLAN

Act No. 13728 of 13 December 1968 ¹

Chapter I

GENERAL PRINCIPLES

Article 1. Every family, whatever its financial resources, shall have access to satisfactory housing which meets the minimum standard for dwellings, as laid down in this Act. It is the function of the State to create the necessary conditions for the effective enjoyment of this right.

Article 2. It is the function of the State to encourage the construction of housing and to ensure that the resources allocated for this purpose are sufficient to satisfy the needs, that they do not exceed the capacity of the economy and that they are utilized rationally in order to attain the aims laid down in this Act.

Article 3. The establishment of a planned housing policy, integrated into the economic and social development plans and directed towards meeting housing requirements throughout the country, in which priority is given to low-income groups and the creation of privileged social classes or geographical areas is avoided, is hereby declared to be in the general interest. All bodies, and in particular public bodies which finance, promote, construct, regulate or in any way assist in the construction of housing, shall adapt their activities to the pro-

visions of this Act and shall co-operate in ensuring the success of the policy established under it and that of the periodic plans referred to in the following article.

Article 4. The Executive Power, shall after consultation with the Planning and Budget Office and on the basis of the proposals of the National Housing Board, draw up and submit to Parliament, together with the budget, in the first year of each Administration, a five-year housing plan, which shall be integrated into the economic and social development plans and shall include a review of the situation, an estimate of requirements for the period by geographical area and income category, investments, loan and subsidy requirements for each programme, new housing targets of public bodies, the appropriation and distribution of resources, and such further measures as may be considered necessary.

Article 5. Without prejudice to the foregoing, the Executive Power shall each year submit to Parliament, together with the statement of accounts, an annual housing plan which shall include final details of the plan for the relevant annual period.

Article 6. If Parliament makes no comments on the plans or if its comments are accepted by the Executive Power, the plans shall be considered to be adopted, but only those of their provisions which are expressly adopted with the force of law shall have such force.

¹ *Diario Oficial*, No. 17982, of 27 December 1968.

VENEZUELA

NOTE ¹

The Government of Venezuela notes that the preamble of the National Constitution in force embodies the principles of the Universal Declaration of Human Rights and that this legal instrument affirms the aims of freedom, peace and the stability of the [Nation's] institutions, the protection of labour, human dignity and social security, maintaining social and legal equality, without any discrimination on account of race, sex, creed or social condition, and the universal guarantee of the individual and social rights of the human person. Thus, article 43 of the Constitution lays down that every person shall have the right to the free development of his personality, subject to no limitations other than those deriving from the rights of others and from the public and social order. Article 58 of the same document establishes that the right to life is inviolable, that the death penalty shall not be established by any law whatsoever and that no authority shall carry it out. Article 59 lays down that every person has the right to be protected against injury to his honour, reputation or private life. Article 60 guarantees the right to personal liberty and safety and sets forth in detail in ten numbered subsections the individual rights so guaranteed which include the right to be defended in court and the prohibition on holding any person incommunicado, subjecting him to torture or other treatment which causes physical suffering, sentencing him to perpetual or infamous punishment or bringing him to trial for the same acts for which he has previously been tried. Article 49 of the Constitution describes the protection given to the inhabitant of the Republic in the enjoyment and exercise of the rights and guarantees established in the Constitution by means of brief and summary proceedings and it grants the competent judges the power to re-establish immediately the infringed juridical situation, i.e., by recourse to habeas corpus. Article 61 forbids discrimination based on race, sex, creed or social condition. Article 62 and subsequent articles establish the inviolability of the home and of correspondence in all its forms,

the right to travel freely, the right to profess one's religious faith and to express one's thoughts without previous censorship, and the right to meet with other persons publicly or privately for lawful ends. Article 74 and subsequent articles of the National Constitution establish the protection of motherhood regardless of the civil condition of the mother, full protection for every child, without discrimination of any kind, from his conception until he is full grown, under favourable material and moral conditions the right to the protection of health and to an education, which, in public institutions, shall be gratuitous in all phases and the right to work which is the subject of particularly progressive legislation, which grants the right to a fair wage and applies on the principle of equal pay for equal work.

Article 94 of the National Constitution states that a system of social security shall be developed progressively, designed to protect all inhabitants of the Republic against industrial accidents, sickness, disability, old age, death, unemployment and any other risks that can be covered by social security, and also against the charges derived from family life. Persons who lack the economic means and who are not in a position to obtain them shall have the right to social assistance if they are covered by the social security system.

Article 220 of our Constitution assigns the State Legal Department the function of ensuring that constitutional rights and guarantees are respected and, in particular, that of supervising the correct enforcement of the laws and the guarantee of human rights in jails and other prison establishments.

All of the human rights proclaimed and embodied in our Constitution have been scrupulously recognized and respected by our country's authorities; in this connexion, it should be noted that the National Congress has requested the Executive to take part in a joint effort to find ways and means of ensuring that all action by the authorities is in conformity with the legal order, particularly in all matters involving better protection of human rights. Moreover, with a view to putting the above principles into practice, some existing laws have

¹ Note furnished by the Government of Venezuela.

been amended and new ones promulgated. The Labour Act has undergone some changes with a view to guaranteeing and protecting the rights of workers. A new Social Security Act has been promulgated in which account has been taken of the experience gained and of successful experiments carried out in some other countries with a view to achieving their ends more effectively. The social security system, protected as it is by this Act, is being extended gradually throughout the country and public employees, a very numerous group, have been brought within the social security system.

The Workers' Bank Act was promulgated in July 1966; this Act sets up and defines and lays down the functions and powers of a mixed credit institution, in the form of a joint-stock company, the purpose of which is to encourage saving, to provide a means for satisfying vital necessities, to extend credit to workers, craftsmen and owners of small industries, to support, stimulate and help the strengthening of the co-operative movement and to promote the development of new sources of employment. The Bank is now fulfilling the aims and objectives for which it was set up.

Similarly, the following legislation of great social significance has been promulgated: The Family Protection Act; the Act concerning workers' representation in State institutes and economic and business development bodies, the General Act on Co-operative Associations, the Act on the Institute for Workers' Training and Recreation and the Act on the Institute for Workers' Education.

The operation of the State Legal Department in Venezuela is characterized by its independence vis-à-vis the powers of the State: the Chief State Counsel of the Republic is required to submit to the Legislature only an annual report on its work, over which the Legislature has neither functional nor disciplinary control; it is subject to the judicial power only in so far as the principle of responsibility enunciated in articles 3 and 121 of the Constitution applies, a typically Venezuelan feature which gives the Department greater freedom to ensure that constitutional rights and guarantees, and human rights in prison establishments are respected.

The State Legal Department is required to prevent arbitrary arrests or to bring them to an end, and is empowered to initiate habeas corpus

proceedings on behalf of the people. Officials of the State Legal Department have access to any place in which citizens may be detained, thus exercising constant supervision over such detention establishments, and prison officials who deny them entry or merely obstruct them in the exercise of their duties are liable to disciplinary or criminal sanctions, as the case may be.

In performing its official functions, the State Legal Department may, if necessary, request the assistance of the police and other authorities, who are obliged to provide such assistance.

All the bodies set up in accordance with the legal instruments in force are already functioning and are daily improving, in the light of experience, the means at their disposal for achieving their purpose of guaranteeing and developing the social rights laid down in our Fundamental Charter.

Pursuant to Article 61 of the National Constitution, which, as said above, forbids discrimination based on race, sex, creed or social condition, the Congress of the Republic, on the proposal of the National Executive and in conformity with the decisions taken by international bodies, approved a partial revision of the Immigration and Settlement Act, deleting one unconstitutional article which conflicted with the principles to which we have referred.

Similarly, in accordance with article 177 of the Penal Code in force, any public official who abuses his office or fails to observe the conditions and procedures prescribed by law in order to deprive a person of his liberty shall be punished. Generally speaking, all citizens who have been or are imprisoned were or are imprisoned as a consequence of having violated the laws of the Republic, and have been or are being tried by the competent courts according to the nature of their offences and in strict compliance with constitutional rules and such rules governing criminal proceedings may be applicable to the case.

All the foregoing information serves to emphasize that the Government of Venezuela has ensured and continues to ensure that all its citizens enjoy the full exercise of the rights and guarantees laid down in the National Constitution and guarantees the existence of the rule of law within the democratic order as the sole and indispensable means of ensuring the rights set forth in the Universal Declaration of Human Rights.

ZAMBIA

THE EVIDENCE (AMENDMENT) ACT, 1967

Act No. 3 of 1968, assented to on 7 February 1968 and entered into force on 16 February 1968¹

...

3. The principal Act is amended by the insertion after section *three* of the following:

3A. (1) In any criminal proceedings where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of the document, be admissible as evidence of that fact if—

(a) The document is, or forms part of, a record relating to any trade or business or profession and compiled, in the course of that trade or business or profession, from information supplied (whether directly or indirectly) by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply; and

(b) The person who supplied the information recorded in the statement in question is dead, or outside of Zambia, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since he supplied the information and to all the circumstances) to have any recollection of the matters dealt with in the information he supplied.

(2) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of this section, the court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be a certificate of a fully registered medical practitioner.

4. Section *four* of the principal Act is amended by the deletion of subsection (1) and the substitution therefor of the following:

(1) In estimating the weight, if any, to be attached to a statement admissible as evidence by virtue of this Act regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and in particular to the question whether or not the person who supplied the information contained or recorded in the statement did so contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not that person, or any person concerned with making or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts.

¹ *Supplement to the Republic of Zambia Government Gazette*, of 10 May 1968.

THE PROTECTED PLACES AND AREAS (AMENDMENT) ACT, 1967

Act No. 4 of 1968, assented to on 7 February 1968 and entered into force on 16 February 1968 ²

...

3. The principal Ordinance is amended by the insertion of the following new section:

2A. (1) There shall be appointed as public officers such number of security guards as are necessary for the purposes of this Ordinance.

(2) It shall be the duty of security guards to protect and guard protected places and protected areas and while on duty at a protected area, to exercise the powers and perform the duties conferred or imposed upon them and on an authorized officer under this Ordinance or any regulations made thereunder.

...

6. The principal Ordinance is amended by the insertion after section *nine* of the following new section:

9A. Any person who wilfully obstructs any authorized officer in the due execution of his duty or the proper exercise of his powers under this Act or any regulation made thereunder shall be guilty of an offence and is liable, on conviction, to imprisonment for a period not exceeding five years.

7. The principal Ordinance is amended by the deletion of section *ten* and the substitution therefor of the following new section:

10. (1) A police officer may arrest without warrant any person whom he suspects, upon reasonable grounds, of committing an offence contrary to any of the provisions of this Ordinance or any regulation made thereunder.

(2) Within and subject to the limitations imposed by subsection (3) a security guard may, without warrant, arrest—

(a) Any person whom he suspects, upon reasonable grounds, of committing an offence contrary to any of the provisions of this Ordinance or any regulation made thereunder;

(b) Any person whom he suspects, upon reasonable grounds, of having committed a cognizable offence;

(c) Any person who commits a breach of the peace in his presence;

(d) Any person who obstructs a security guard in the execution of his duty or any person who has escaped or attempts to escape from lawful custody;

(e) Any person in whose possession is found anything which may reasonably be suspected to be stolen property, or who may reasonably be suspected of having committed an offence with reference to such a thing;

(f) Any person whom he finds within, or in the vicinity of, a protected place or protected area during the night and whom he suspects, upon reasonable grounds, of having committed or being about to commit a felony;

(g) Any person having in his possession, without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking or explosive or petroleum.

(3) The power of arrest conferred on a security guard by subsection (2) of this section shall be exercisable—

(a) Only within, or in the vicinity of, the protected place or protected area at which he is on duty; or

(b) At any place other than within, or in the vicinity of, the protected place or protected area at which he is on duty, only after the immediate and continuing pursuit of a person liable to be arrested or detained under this Ordinance who is escaping from the protected area or the vicinity thereof;

but no elsewhere or otherwise.

(4) Every security guard making an arrest shall, without unnecessary delay, make over the person so arrested to a police officer, or, in the absence of a police officer, shall take such person to the nearest police station.

² *Ibid.*

THE ELECTORAL ACT, 1968

Act No. 24 of 1968, assented to on 7 May 1968 and entered into force on 10 May 1968³

PART II

REGISTRATION AND VOTING:
QUALIFICATIONS

3. Subject to the provisions of section *four*, every person shall be qualified for registration as a voter who—

- (a) Is a citizen of Zambia; and
- (b) Has attained the age of eighteen years.

4. (1) No person shall be qualified for registration as a voter, and no person shall be registered as a voter, who—

(a) Is under a declaration of allegiance to some country other than Zambia;

(b) Under any law in force in Zambia, is adjudged or otherwise declared to be of unsound mind, or is detained under the Criminal Procedure Code during the pleasure of the President;

(c) Is under sentence of death imposed on him by any court in Zambia, or a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court; or

(d) Is not in possession of a national registration card issued to him under the National Registration Ordinance.

(2) In this section, the reference to a sentence of imprisonment shall be construed as not including a sentence of imprisonment the execution of which is suspended or a sentence of imprisonment imposed in default of payment of a fine.

5. (1) Subject to the provisions of this section and of section *six*, every person who is registered in a register of voters shall be entitled to vote at an election under this Act.

(2) Every person shall, whenever he wishes to vote at an election under this Act, identify himself to an election officer in such manner as may be prescribed, and no person shall be entitled to vote more than once at any such election.

6. No person shall be entitled to vote at an election under this Act who—

(a) Has been convicted of any corrupt practice or illegal practice within a period of five years preceding that election;

(b) Has been reported guilty of any corrupt practice or illegal practice by the High Court upon the trial of an election petition under this Act

within a period of five years preceding that election; or

(c) Is in lawful custody at the date of that election.

PART III

NATIONAL ASSEMBLY ELECTIONS:
QUALIFICATIONS

7. Subject to the provisions of section *eight*, a person shall be qualified for election as a member of the National Assembly if, and shall not be qualified to be so elected unless—

(a) He is a citizen of Zambia; and

(b) He has attained the age of twenty-one years.

8. (1) No person shall be qualified for election as a member of the National Assembly who—

(a) Holds or is acting in any public office;

(b) Is a member of the Defence Force;

(c) Is a member of the Zambia Police Force;

(d) Is a member of any Commission established by or under the Constitution;

(e) Is an election officer;

(f) Is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Zambia;

(g) Is under a declaration of allegiance to some country other than Zambia;

(h) Is, under any law in force in Zambia, adjudged or otherwise declared to be of unsound mind;

(i) Is under sentence of death imposed on him by any court in Zambia or a sentence of imprisonment (by whatever name called) imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court.

(2) No person who holds the office of President shall be qualified for election as a member of the National Assembly.

(3) Any person who is convicted of any corrupt practice or illegal practice or who is reported guilty of any corrupt practice or illegal practice by the High Court upon the trial of an election petition under this Act shall not be qualified to be nominated for election as a member of the National Assembly for a period of five years from the date of such conviction or of such report, as the case may be.

(4) In this section, the reference to a sentence of imprisonment shall be construed as not including a sentence of imprisonment the execution of

³ Supplement to the Republic of Zambia Government Gazette, of 10 May 1968.

which is suspended or a sentence of imprisonment imposed in default of payment of a fine.

PART IV

PROVISIONS FOR ELECTION OF PRESIDENT

9. A person shall be qualified for election as President in an election to the office of President following a dissolution of Parliament if, and shall not be so qualified unless—

- (a) He is a citizen of Zambia; and
- (b) He has attained the age of thirty years; and
- (c) He is entitled to vote at an election under this Act.

PART VI

ELECTION PETITIONS

16. (1) No election of a candidate as a member shall be questioned except by an election petition presented under this Part.

17. An election petition may be presented to the High Court by one or more of the following persons—

- (a) A person who lawfully voted or had a right to vote at the election to which the election petition relates;
- (b) A person claiming to have a right to be nominated as a candidate or elected as a member at the election to which the election petition relates;
- (c) A person alleging himself to have been a candidate at the election to which the election petition relates;
- (d) The Attorney-General.

18. (1) Any of the following reliefs may be claimed in an election petition—

- (a) A declaration that the election was void;
- (b) A declaration that any candidate was duly elected.

25. (1) Subject to the provisions of this Act, every election petition presented under this Act shall be tried and determined by the High Court.

(2) An election petition shall be tried in open court.

33. No person who has voted at an election shall in any proceedings, whether brought under this Act or otherwise, be required to state for whom he has voted.

THE EXTRADITION ACT, 1968

Act No. 47 of 1968, assented to on 17 October 1968⁴

PART II

EXTRADITION TO AND FROM FOREIGN COUNTRIES

A. Application of this Part

3. (1) Where by any international agreement or convention to which the Republic is a party an arrangement (in this Act referred to as an "extradition agreement") is made with a foreign country for the surrender by each country to the other of persons wanted for prosecution or punishment or where the President is satisfied that reciprocal facilities to that effect will be afforded by a foreign country, the President may by statu-

tory order apply this Part in relation to that country.

4. (1) Subject to subsection (2), extradition under this Part shall be granted only in respect of an offence which is punishable under the laws of the requesting country and of the Republic by imprisonment for a maximum period of not less than one year or by a more severe penalty or for which, if there has been a conviction and sentence in the requesting country, imprisonment for a period of not less than four months or a more severe penalty has been imposed.

(2) If a request is made for extradition in respect of an offence to which subsection (1) applies and the request includes also any other offence which is punishable under the laws of the requesting country and of the Republic but does not comply with the conditions as to the period of imprisonment which may be, or has been,

⁴ *Ibid.*, of 25 October 1968.

imposed, then extradition may, subject to the provisions of this Part, be granted also in respect of the latter offence.

(3) In this section any reference to an offence punishable under the laws of the Republic shall be construed as including references to an act which, if it had been committed in the Republic, would constitute such an offence.

B. Extradition to foreign countries

5. Where a country in relation to which this Part applies duly requests the surrender of a person who is being proceeded against in that country for an offence or who is wanted by that country for the carrying out of a sentence, that person shall, subject to and in accordance with the provisions of this Part and of Part IV, be surrendered to that country.

6. A request for the extradition of any person under this Part shall be made in writing to the Attorney-General and shall be communicated by—

(a) A diplomatic agent of the requesting country, accredited to the Republic; or

(b) Any other means provided in the relevant extradition provisions.

...

9. (1) A Magistrate, if he so thinks proper, may, without an order of the Attorney-General under section *eight*, issue a provisional warrant for the arrest of any person on the sworn information of a police officer not below the rank of assistant superintendent that a request for the provisional arrest of that person has been made, on the ground of urgency, on behalf of a country in relation to which this Part applies and on being satisfied that the request complies with the requirements of this section.

...

10. (1) Where a person claimed is before a Magistrate pursuant to section *eight* or section *nine* and—

- (a) There is adduced before such Magistrate—
- (i) in the case of a person who is accused of an extraditable offence, such evidence as would, in the opinion of the Magistrate, according to the law, justify the committal for trial of the person if the act constituting that offence had taken place in the Republic; or
 - (ii) in the case of a person who is alleged to have been convicted of an extraditable offence, sufficient evidence to satisfy the Magistrate that the person had been convicted of that offence and is unlawfully at large;

and

(b) The Magistrate is satisfied, after hearing any evidence tendered by the person, that—

- (i) the extradition of that person has been duly requested; and
- (ii) this Part applies in relation to the requesting country; and
- (iii) extradition of the person claimed is not prohibited by this Part or Part IV or by the relevant extradition provisions; and
- (iv) the documents required to accompany a request for extradition under section *seven* have been produced;

the Magistrate shall make an order committing that person to a prison there to await the warrant of the Attorney-General for his surrender to the requesting country and shall forward a copy of such committal order to the Attorney-General.

(2) The Magistrate may, if of opinion that the information communicated under section *seven* is insufficient to enable a decision to be made, adjourn the hearing for such period as the Magistrate thinks proper to enable information to be produced and, pending consideration of the case, the Magistrate shall have the same powers of adjournment and remand as if the person claimed were brought before him on a preliminary inquiry.

(3) If after hearing the evidence adduced the Magistrate is not satisfied that extradition should be granted under this Act in the case of the person claimed, he shall order that the person claimed be discharged and shall forthwith notify the Attorney-General in writing of the making of such Order and of his reasons therefor.

11. A person committed under section *ten* shall not, except with his consent, given before a Magistrate, be surrendered to the requesting country until the expiration of fifteen days from the date of his committal or until the conclusion of any *habeas corpus* proceedings brought by him or on his behalf or the determination of any request made pursuant to an application under subsection (2) of section *thirty-one*, whichever is the later.

12. (1) Subject to sections *eleven* and *thirty-eight*, the Attorney-General may, if the person claimed is committed under section *ten* and is not discharged by the decision of the High Court in any *habeas corpus* proceedings, or consequent upon any request made pursuant to an application under subsection (2) of section *thirty-one*, issue a warrant directing that the person claimed be brought to some convenient point of departure from the Republic and there be delivered to such other person as, in the opinion of the Attorney-General, is duly authorized by the requesting country to receive him and convey him from the Republic to the requesting country; and he shall be surrendered accordingly.

PART III

EXTRADITION TO AND FROM DECLARED COMMONWEALTH COUNTRIES

...

B. Extradition to declared Commonwealth countries

18. (1) Every person claimed by a declared Commonwealth country is liable, subject to this Part and to Part IV and to any limitations, conditions, exceptions or qualifications to which the application of this Part in relation to that country is subject, to be arrested and surrendered to that country as provided by this Part and is so liable whether the offence to which the request for the surrender of the person claimed relates is alleged to have been committed, or was committed, before

or after the commencement of this Act or before or after the time when that country became a declared Commonwealth country.

...

21. (1) Where—

(a) A Magistrate is authorized by the Attorney-General by a notice under paragraph (a) of subsection (1) of section *twenty* to issue a warrant for the arrest of a person claimed; or

(b) An application is made to a Magistrate for the issue of a provisional warrant for the arrest of any person claimed who is, or is suspected of being in or on his way to the Republic, and such application is made on the sworn information of a police officer not below the rank of assistant superintendent that a request for the provisional arrest of that person has been made, on the ground of urgency, on behalf of a declared Commonwealth country, and that the said country intends to send a request for the surrender of the said person claimed;

and there is produced to the Magistrate such evidence as would, in his opinion, if the act constituting the extraditable offence had taken place within the Republic, justify, according to the law—

- (i) the arrest by a police officer of the person claimed without the issue of a warrant; or
- (ii) the issue of a warrant for the arrest of the person claimed;

the Magistrate shall, . . . as the case may be, issue a warrant for the arrest of the person claimed.

...

24 (1) When, in pursuance of this Part, a Magistrate commits a person claimed (in this section referred to as "the prisoner") to prison, or otherwise orders that he be held in custody, to await the warrant of the Attorney-General for his surrender to a declared Commonwealth country, the Magistrate shall inform the prisoner that he will not be surrendered until after the expiration of the period of fifteen days from the date of the committal or order and that, if he asserts that his detention is unlawful, he may apply to a court of competent jurisdiction for a writ of *habeas corpus*.

...

C. Extradition to Zambia from declared Commonwealth countries

...

26. Where a person accused or convicted of an extraditable crime is, or is suspected of being in, or on his way to, a declared Commonwealth country or within the jurisdiction of, or of a part of, such a country, the Attorney-General may make a request to that country for the surrender of the person.

27. Where a person accused or convicted of an extraditable crime is surrendered by a declared Commonwealth country, the person may be brought into the Republic and delivered to the proper authorities to be dealt with according to law.

PART IV

GENERAL PROVISIONS ON EXTRADITION

28. This Part shall apply to all requests for extradition made pursuant to Part II and to Part III and to proceedings relating thereto or arising therefrom.

29. (1) A police officer executing a warrant under section *eight*, section *nine*, section *twenty-one* or section *twenty-four* may seize and retain any property—

(a) Which appears to him to be reasonably required as evidence for the purpose of proving the offence alleged; or

(b) Which appears to him to have been acquired as a result of the alleged offence; and

(c) Which—

- (i) is found at the time of arrest in the possession of the person arrested under the warrant; or
- (ii) is discovered subsequently.

...

30. (1) Whenever the Attorney-General is of opinion, in relation to a person who is for the time being on remand or awaiting his surrender to a requesting country, that extradition is prohibited under any relevant provision of this Act, the Attorney-General may at any time refuse extradition.

(2) In any such case, or in case it appears to the Attorney-General that the request for extradition is not being proceeded with, the Attorney-General may order that the said person, if in custody, shall be released, or if admitted to bail that the recognizances under which he was so admitted to bail be discharged.

31. (1) If the Attorney-General—

(a) Believes, for any reason, that the offence for which extradition is sought is a political offence or an offence connected with a political offence; or

(b) Receives from a Magistrate a request pursuant to subsection (2);

he shall refer the request for extradition together with the accompanying documents and such other documents as he may deem to be relevant and also a statement of any other relevant information he may have in that regard to the President for a ruling on that issue.

(2) A person claimed under Part II or Part III may, at any time during the course of any extradition proceedings under this Act, apply to the Magistrate to submit to the Attorney-General a request for a determination of the question whether the offence for which such person's extradition is sought is or is not a political offence or an offence connected with a political offence, and the Magistrate shall within two days after the making of the said application submit such request in writing to the Attorney-General.

32. Extradition shall not be granted if there are substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing the person claimed on

account of his race, religion or nationality or that the position of the person claimed may be prejudiced for any of these reasons.

33. Extradition shall not be granted for offences under military law which are not offences under ordinary criminal law.

34. Extradition shall not be granted where a person claimed is a citizen of the Republic, unless the relevant extradition provisions otherwise provide.

35. Extradition shall not be granted where the offence for which it is requested is regarded under the law of the Republic as having been committed in the Republic.

36. Extradition shall not be granted where a prosecution is pending in the Republic against the person claimed for the offence for which extradition is requested.

...

38. Where the person claimed is held in custody or has been admitted to bail in the Republic in respect of an offence that is alleged to have been committed in the Republic, or where such person is undergoing a sentence of imprisonment for a conviction in the Republic, the surrender of such person may be postponed by the Attorney-General until the said person has been discharged from custody, or the recognizances upon which he was admitted to bail have been discharged, as the case may be, whether as the result of an acquittal or on the expiration of his sentence or otherwise.

39. (1) Extradition shall not be granted in respect of an offence if final judgement has been passed by a competent court or authority in the Republic or in a third country upon the person claimed or he has undergone the punishment provided by the law of, or of a part of the Republic or any third country in respect of that offence or of another offence constituted by the same act as that offence.

(2) Extradition may be refused by the Attorney-General for an offence which is also an offence under the law of the Republic if the Director of Public Prosecutions has decided either not to institute or to terminate proceedings against the person claimed in respect of the offence.

40. Extradition shall not be granted when the person claimed has, according to the law of either the requesting country or the Republic, become immune by reason of lapse of time from prosecution or punishment.

41. Extradition shall not be granted for an offence which is punishable by death under the law of the requesting country but is of a category for which the death penalty is not provided for by the law of the Republic or is not generally carried out, unless the requesting country gives such assurances as the Attorney-General considers sufficient that the death penalty will not be carried out.

42. (1) Extradition shall not be granted unless provision is made by the law of the requesting country or by the extradition agreement—

(a) That the person claimed shall not be proceeded against, sentenced or detained with a view

to the carrying out of a sentence or otherwise restricted in his personal freedom, for any offence committed prior to his surrender other than that for which his extradition is requested or any other offence of which he could be convicted upon proof of the facts upon which the request for his surrender is based, except in the following cases:

(i) with the consent of the Attorney-General; or
(ii) where that person, having had an opportunity to leave the territory of that country, has not done so within forty-five days of his final discharge in respect of the offence for which he was extradited or has returned to the territory of that country after leaving it;

and

(b) That where the description of the offence charged in the requesting country is altered in the course of proceedings, he shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence for which under this Act he would be liable to be surrendered to the requesting country.

...

43. (1) Extradition shall not be granted unless provision is made by the law of the requesting country or by the extradition agreement that that country shall not surrender to another country a person surrendered to the requesting country and sought by the other country for an offence committed before his surrender to the requesting country, except in the following cases:

(a) With the consent of the Attorney-General; or

(b) Where that person, having had an opportunity to leave the territory of that country, has not done so within forty-five days of his final discharge in respect of the offence for which he was extradited or has returned to the territory of that country after leaving it.

...

44. If extradition is requested concurrently by more than one country, either for the same offence or for different offences, the Attorney-General shall decide which, if any, of the requests is to be proceeded with, having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the citizenship or nationality, and the ordinary place of residence of the person claimed and the possibility of subsequent surrender to another country.

PART V

RECIPROCAL BACKING OF WARRANTS

45. (1) Where the President is satisfied that reciprocal provision has been or will be made by or under the law of any country for the backing of warrants issued in the Republic and their execution in that country and that it is appropriate to do so, he may, by statutory order declare that this Part shall apply in the case of that country (hereinafter called the "prescribed country") sub-

ject to such conditions, exceptions and qualifications as may be specified in the order and this Part shall apply accordingly.

...

46. (1) Where an external warrant has been issued in a prescribed country for the arrest of a person accused or convicted of an offence against the law of that country and he is, or is suspected of being, in or on his way to the Republic, a Magistrate may, if satisfied that the warrant is duly authenticated, make an endorsement on the warrant ... authorizing the execution of the warrant in the Republic.

...

47. Notwithstanding that an external warrant issued in a prescribed country, for the arrest of any person may not yet have been endorsed in pursuance of this Part, a Magistrate may issue a provisional warrant ... for the arrest of such person on such information and under such circumstances as would, in his opinion, justify the issue of a warrant if the offence of which that person is accused were an offence punishable by the law of the Republic and had been committed within his jurisdiction; and such provisional warrant may be executed according to its tenor.

48. Where an external warrant for the arrest of a person accused of an offence has been endorsed in pursuance of this Part the Magistrate shall have the same power of issuing a warrant to search for any property alleged to be stolen or otherwise unlawfully taken or obtained by such person, or otherwise to be the subject of such offence, as that Magistrate would have if the property had been stolen or otherwise unlawfully taken or obtained, or the offence had been committed, wholly within the jurisdiction of such Magistrate.

49. (1) A person who is arrested under an external warrant endorsed pursuant to section *forty-six*, or under a provisional warrant issued pursuant to section *forty-seven*, shall be informed, in a language that he understands, of the reasons for his arrest and detention and shall be brought as soon as practicable before a Magistrate.

...

PART VI

MISCELLANEOUS PROVISIONS RELATING TO SURRENDER AND RETURN

...

B. Miscellaneous

55. If a person, who is under arrest, escapes, by breach of prison or otherwise, out of the custody of a person acting under a warrant issued or endorsed in pursuance of this Act or out of the custody of a person to whose custody he had been committed in accordance with this Act, he may be retaken in the same manner as a person

accused of a crime against the law of the Republic may be retaken upon an escape.

56. The laws with respect to—

(a) The conditions of imprisonment of persons imprisoned to await trial for offences against the law of the Republic;

(b) The treatment of such persons during imprisonment; and

(c) The transfer of such persons from prison to prison;

apply, so far as they are capable of application, in relation to persons who have been committed to prison in the Republic pursuant to Part II, Part III or Part V.

57. Where a person accused or convicted of an extraditable crime is surrendered to the Republic under an extradition agreement, or under reciprocal extradition facilities by a foreign country or a declared Commonwealth country, pursuant to Part II or Part III, as the case may be, the person shall not, unless he has been returned, or has had an opportunity of returning, to that country—

(a) Be proceeded against, sentenced or detained in the Republic for any offence that is alleged to have been committed, or was committed, prior to his surrender other than—

- (i) the offence to which the request for his surrender relates or any other offence of which he could be convicted upon proof of the facts on which that request was based; or
- (ii) any other extraditable crime in respect of which that country consents to his being so detained or tried, as the case may be;

or

(b) Be detained in the Republic for the purpose of his being surrendered to another country for trial or punishment for any offence that is alleged to have been committed, or was committed, before his surrender to the Republic other than—

- (i) an offence of which he could be convicted upon proof of the facts on which the request referred to in the last preceding paragraph was based; or
- (ii) any offence in respect of which the country by which he was surrendered to the Republic consents to his being so detained.

58. (1) Transit through the Republic of a person being conveyed in custody from one country to another on his surrender pursuant to an agreement in the nature of an extradition agreement may be granted by the Attorney-General following a request to that effect made by the country to which he is being conveyed.

(2) Any person who is in custody during such transit shall be in lawful custody.

(3) Any person who, pursuant to this Act, has been delivered into the custody of another person for the purpose of being conveyed to the country to which his surrender has been ordered, shall, while in transit in such custody through any part of the Republic, be in lawful custody.

PART VII

OFFENCES COMMITTED ABROAD
BY ZAMBIAN CITIZENS

59. (1) Where any citizen of the Republic does any act outside the Republic which constitutes an offence for which he would be liable to extradition but for the fact that he is a citizen of the Republic he shall be guilty of the like offence and

be liable on conviction to the like punishment as if the act were done within Zambia.

(2) No prosecution for an offence under subsection (1) shall be commenced without the sanction of the Director of Public Prosecutions given after the Attorney-General has certified to him in writing that a request for extradition of the person claimed has been made pursuant to section *six* or to subsection (2) of section *eighteen*, as the case may be, and that such request has been refused by reason of the provisions of section *thirty-four*.

...

PART II

TRUST AND NON-SELF-GOVERNING
TERRITORIES

A. Trust Territories

AUSTRALIA

NOTE ¹

TRUST TERRITORY OF NAURU

The Island of Nauru became independent on 31 January 1968.² This was the date proclaimed as Nauru Independence Day pursuant to the *Nauru Independence Act 1967* passed by the Parliament of the Commonwealth of Australia. On and after that date, Australia ceased to be responsible for the government of Nauru. For a fuller description of the transition to independence see the *Yearbook* for 1967.

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

² For extracts from the Constitution of Nauru, see above, pp. 294-299.

TRUST TERRITORY OF NEW GUINEA

A. THE PRINCIPLE OF EQUAL TREATMENT

(*Universal Declaration of Human Rights*, articles 2, 6, 7)

An amendment of the Native Administration Regulations 1924 (Statutory Instrument No. 8 of 1968) removes many discriminatory provisions applicable to natives.

The Public Service (Papua and New Guinea) Ordinance (No. 2) 1967 (No. 33 of 1968) provides a single salary classification system for overseas and other officers.

B. RIGHT TO TAKE PART IN GOVERNMENT

(*Universal Declaration*, article 21)

The Commonwealth Government, having accepted all the recommendations of the Select

Committee of the Territory House of Assembly on Constitutional Development, passed the Papua and New Guinea Act 1968 (No. 25 of 1968). This provides for an Administrator's Executive Council, to replace the Administrator's Council.

The new Council will consist of seven elected members of the House of Assembly appointed as ministerial members, three official members and the Administrator. The Council will be the principal instrument of policy of the executive government of the Territory.

Ministerial members are also given administrative responsibilities in relation to specified functions of the Administration.

The Act provides also for the appointment of up to ten assistant ministerial members.

The functions of ministerial members and assistant ministerial members are indicated in the new section 25 of the principal Act.

C. SOCIAL SECURITY

(Universal Declaration, article 22)

The Public Officers (Employment Security) Ordinance 1967 (No. 2 of 1968) provides for an employment security scheme for permanent overseas officers of the Public Service and permanent overseas members of the Police Force upon the Territory becoming self-governing.

The Papua and New Guinea Act (No. 2) 1968 (No. 157 of 1968), passed by the Commonwealth Parliament, provides that if an amount payable to a person under an Ordinance of the Territory relating to employment security, contract officers, or superannuation is not duly paid, an amount equal to that amount is payable to that person by the Commonwealth.

The Superannuation (Pensions Increases) Ordinance 1967 (No. 12 of 1968) provides for increases in certain superannuation pensions.

D. CONDITIONS OF WORK

(Universal Declaration, article 23)

The Industrial Safety (Lifts) Order No. 1 of 1968, made under the Industrial Safety, Health and Welfare Ordinance 1961, provides a safety code for the operation of lifts, and the Safety Measures for Excavation Works, Shafts and Tunnels Order No. 2 of 1968, made under the same

Ordinance, provides a safety code for excavation works, shafts and tunnels.

E. HEALTH AND SOCIAL SERVICES

(Universal Declaration, article 25)

The Institute of Human Biology Ordinance 1967 (No. 1 of 1968) establishes The Papua and New Guinea Institute of Human Biology, the objects of which are to conduct and foster research into any branch of medical science or biology, into anthropological and sociological aspects of health and ill-health and into matters relating to public health generally of relevance to the Territory.

The Dangerous Drugs (Extension of Definition) Ordinance 1968 (No. 39 of 1968) allows a large number of substances, specified in the Ordinance, to be treated as dangerous drugs.

F. RIGHT TO EDUCATION

(Universal Declaration, article 26)

The Apprenticeship Ordinance 1967 (No. 3 of 1968) repeals a number of earlier Ordinances dealing with apprenticeship and provides a new, comprehensive code on the subject.

The Local Government (Education Grants) Ordinance 1968 (No. 52 of 1968) increases the power of Local Government Councils to spend money on education.

B. Non-Self-Governing Territories

A U S T R A L I A

NOTE ¹

TERRITORY OF PAPUA ²

[The Ordinances and Orders 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.

The Native Administration Regulations 1924 of the Territory of New Guinea (which are referred to above) apply only in that Territory. In 1968, extensive amendments of the Native Regulations 1939 of the Territory of Papua (which apply only in that Territory) were made by Statutory Instrument No. 7 of 1968. These amendments also remove many discriminatory provisions applicable to natives.

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.

THE NORTHERN TERRITORY

A. PROTECTION OF THE FAMILY

*(Universal Declaration of Human Rights,
article 16 (3))*

The adoption of Children Ordinance 1968 (No. 20 of 1968) amends the Principal Ordinance by providing for the protection of the succession rights of adopted children in the event of an intestacy. Previously, this protection applied only in cases where the deceased person had made a will.

B. RIGHT TO TAKE PART IN GOVERNMENT

(Universal Declaration, article 21)

The Northern Territory (Administration) Act (No. 2) 1968 (No. 47 of 1968) of the Commonwealth alters the composition of the Northern Territory Legislative Council; it provides for the replacement of three nominated members by three elected members, thus creating a Council having eleven elected members and six official members.

The Northern Territory Representation 1968 (No. 11 of 1968) of the Commonwealth removes limitations on the power to vote of the member of the Commonwealth House of Representatives who represents the Northern Territory: he now has all the powers, immunities and privileges of a member representing an Electoral Division of a State, and the representation of the Northern Territory is on the same terms as the representation of such an Electoral Division.

C. CONDITIONS OF WORK

(Universal Declaration, articles 23, 25)

The Workmen's Compensation Ordinance 1968 (No. 10 of 1968) and the Workmen's Compensation Ordinance (No. 2) 1968 (No. 19 of 1968) increase the scale of payments made to workmen injured by industrial accidents or disabled by industrial disease.

NEW ZEALAND

NIUE¹

Niue Amendment Act 1968

Section 5 enables any religious denomination, congregation, society, or any body of persons associated for any charitable purpose to become body corporates in Niue.

Niue Amendment Act (No. 2) 1968

This Act prescribes a new system of land tenure in Niue and empowers the Niue Island Assembly to enact an Ordinance making provision for the administration and tenure of land. The Act and Ordinance came into force on 1 November 1969.

The Act also provides that the Land Court exercise jurisdiction for the adoption of all children. Under the former laws, the High Court of Niue exercised jurisdiction in respect of adoptions by Europeans and Niuean spouses and the Land Court exercised jurisdiction in respect of adoptions by Niueans.

¹Information taken from report on economic, social and cultural rights received from the Government of New Zealand under Economic and Social Council resolution 1074C (XXXIX) and published in the Secretary-General's *Periodic Reports on Human Rights, 1966-1969* (E/CN.4/1011/Add.9).

Niue Education Regulations 1968

These Regulations amend and consolidate procedures relating to education in Niue and make provision for free, secular and compulsory education for all children between the ages of 6 and 14, for secondary and other education, and for the establishment of approved private schools.

Commissions of Inquiry Ordinance 1968

This Ordinance provides for the appointment of Commissions of Inquiry to inquire into and report upon any question concerning: the administration of the Government, the working of any existing law, the necessity or expediency of any existing law, the conduct of any officer in the service of the Crown, or any disaster or accident including any shipping casualty.

General Laws Ordinance 1968

This Ordinance provides, *inter alia*, for offences injurious to public morality which include adultery by or with married persons, and single persons living together as husband and wife to the annoyance of the public.

PART III

INTERNATIONAL AGREEMENTS

UNITED NATIONS

PROCLAMATION OF TEHERAN

Adopted by the International Conference on Human Rights in Teheran at its 27th plenary meeting on 13 May 1968¹

The International Conference on Human Rights,

Having met at Teheran from 22 April to 13 May 1968 to review the progress made in the twenty years since the adoption of the Universal Declaration of Human Rights and to formulate a programme for the future,

Having considered the problems relating to the activities of the United Nations for the promotion and encouragement of respect for human rights and fundamental freedoms,

Bearing in mind the resolutions adopted by the Conference,

Noting that the observance of the International Year for Human Rights takes place at a time when the world is undergoing a process of unprecedented change,

Having regard to the new opportunities made available by the rapid progress of science and technology,

Believing that, in an age when conflict and violence prevail in many parts of the world, the fact of human interdependence and the need for human solidarity are more evident than ever before,

Recognizing that peace is the universal aspiration of mankind and that peace and justice are indispensable to the full realization of human rights and fundamental freedoms,

Solemnly proclaims that:

1. It is imperative that the members of the international community fulfil their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all without distinctions of any kind such as race, colour, sex, language, religion, political or other opinions;

2. The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community;

3. The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the International Convention on the Elimination of All Forms of Racial Discrimination, as well as other conventions and declarations in the field of human rights adopted under the auspices of the United Nations, the specialized agencies and the regional intergovernmental organizations, have created new standards and obligations to which States should conform;

4. Since the adoption of the Universal Declaration of Human Rights the United Nations has made substantial progress in defining standards for the enjoyment and protection of human rights and fundamental freedoms. During this period many important international instruments were adopted but much remains to be done in regard to the implementation of those rights and freedoms;

5. The primary aim of the United Nations in the sphere of human rights is the achievement by each individual of the maximum freedom and dignity. For the realization of this objective, the laws of every country should grant each individual, irrespective of race, language, religion or political belief, freedom of expression, of information, of conscience and of religion, as well as the right to participate in the political, economic, cultural and social life of his country;

6. States should reaffirm their determination effectively to enforce the principles enshrined in the Charter of the United Nations and in other international instruments that concern human rights and fundamental freedoms;

¹ Text published in *Final Act of the International Conference on Human Rights* (A/CONF.32/41), United Nations publication, Sales No.: E.68.XIV.2.

7. Gross denials of human rights under the repugnant policy of *apartheid* is a matter of the gravest concern to the international community. This policy of *apartheid*, condemned as a crime against humanity, continues seriously to disturb international peace and security. It is therefore imperative for the international community to use every possible means to eradicate this evil. The struggle against *apartheid* is recognized as legitimate;

8. The peoples of the world must be made fully aware of the evils of racial discrimination and must join in combating them. The implementation of this principle of non-discrimination, embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, and other international instruments in the field of human rights, constitutes a most urgent task of mankind, at the international as well as at the national level. All ideologies based on racial superiority and intolerance must be condemned and resisted;

9. Eight years after the General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples the problems of colonialism continue to preoccupy the international community. It is a matter of urgency that all Member States should co-operate with the appropriate organs of the United Nations so that effective measures can be taken to ensure that the Declaration is fully implemented;

10. Massive denials of human rights, arising out of aggression or any armed conflict with their tragic consequences, and resulting in untold human misery, engender reactions which could engulf the world in ever growing hostilities. It is the obligation of the international community to co-operate in eradicating such scourges;

11. Gross denials of human rights arising from discrimination on grounds of race, religion, belief or expressions of opinion outrage the conscience of mankind and endanger the foundations of freedom, justice and peace in the world;

12. The widening gap between the economically developed and developing countries impedes the realization of human rights in the international community. The failure of the Development Decade to reach its modest objectives makes it all the more imperative for every nation, according to its capacities, to make the maximum possible effort to close this gap;

13. Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights, is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development;

14. The existence of over seven hundred million illiterates throughout the world is an enormous obstacle to all efforts at realizing the aims and purposes of the Charter of the United Nations and the provisions of the Universal Declaration of Human Rights. International action aimed at eradicating illiteracy from the face of the earth and promoting education at all levels requires urgent attention;

15. The discrimination of which women are still victims in various regions of the world must be eliminated. An inferior status for women is contrary to the Charter of the United Nations as well as the provisions of the Universal Declaration of Human Rights. The full implementation of the Declaration on the Elimination of All Forms of Discrimination Against Women is a necessity for the progress of mankind;

16. The protection of the family and of the child remains the concern of the international community. Parents have a basic human right to determine freely and responsibly the number and the spacing of their children;

17. The aspirations of the younger generation for a better world, in which human rights and fundamental freedoms are fully implemented, must be given the highest encouragement. It is imperative that youth participate in shaping the future of mankind;

18. While recent scientific discoveries and technological advances have opened vast prospects for economic, social and cultural progress, such developments may nevertheless endanger the rights and freedoms of individuals and will require continuing attention;

19. Disarmament would release immense human and material resources now devoted to military purposes. These resources should be used for the promotion of human rights and fundamental freedoms. General and complete disarmament is one of the highest aspirations of all peoples;

Therefore,

The International Conference on Human Rights,

1. *Affirming* its faith in the principles of the Universal Declaration of Human Rights and other international instruments in this field,

2. *Urges* all peoples and governments to dedicate themselves to the principles enshrined in the Universal Declaration of Human Rights and to redouble their efforts to provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare.

*27th plenary meeting
13 May 1968*

CONVENTION ON THE NON-APPLICABILITY OF STATUTORY LIMITATIONS TO WAR
CRIMES AND CRIMES AGAINST HUMANITY

Adopted by General Assembly resolution 2391 (XXIII) of 26 November 1968

PREAMBLE

The States Parties to the present Convention,

Recalling resolutions of the General Assembly of the United Nations 3 (I) of 13 February 1946 and 170 (II) of 31 October 1947 on the extradition and punishment of war criminals, resolution 95 (I) of 11 December 1946 affirming the principles of international law recognized by the Charter of the International Military Tribunal, Nürnberg, and the judgement of the Tribunal, and resolutions 2184 (XXI) of 12 December 1966 and 2202 (XXI) of 16 December 1966 which expressly condemned as crimes against humanity the violation of the economic and political rights of the indigenous population on the one hand and the policies of *apartheid* on the other,

Recalling resolutions of the Economic and Social Council of the United Nations 1074 D (XXXIX) of 28 July 1965 and 1158 (XLI) of 5 August 1966 on the punishment of war criminals and of persons who have committed crimes against humanity,

Noting that none of the solemn declarations, instruments or conventions relating to the prosecution and punishment of war crimes and crimes against humanity made provision for a period of limitation,

Considering that war crimes and crimes against humanity are among the gravest crimes in international law,

Convinced that the effective punishment of war crimes and crimes against humanity is an important element in the prevention of such crimes; the protection of human rights and fundamental freedoms, the encouragement of confidence, the furtherance of co-operation among peoples and the promotion of international peace and security,

Noting that the application to war crimes and crimes against humanity of the rules of municipal law relating to the period of limitation for ordinary crimes is a matter of serious concern to world public opinion, since it prevents the prosecution and punishment of persons responsible for those crimes,

Recognizing that it is necessary and timely to affirm in international law, through this Convention, the principle that there is no period of limitation for war crimes and crimes against humanity, and to secure its universal application,

Have agreed as follows:

ARTICLE I

No statutory limitation shall apply to the following crimes, irrespective of the date of their commission:

(a) War crimes as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, particularly the "grave breaches" enumerated in the Geneva Conventions of 12 August 1949 for the protection of war victims;

(b) Crimes against humanity whether committed in time of war or in time of peace as they are defined in the Charter of the International Military Tribunal, Nürnberg, of 8 August 1945 and confirmed by resolutions 3 (I) of 13 February 1946 and 95 (I) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhuman acts resulting from the policy of *apartheid*, and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they were committed.

ARTICLE II

If any of the crimes mentioned in article I is committed, the provisions of this Convention shall apply to representatives of the State authority and private individuals who, as principals or accomplices, participate in or who directly incite others to the commission of any of those crimes, or who conspire to commit them, irrespective of the degree of completion, and to representatives of the State authority who tolerate their commission.

ARTICLE III

The States Parties to the present Convention undertake to adopt all necessary domestic measures, legislative or otherwise, with a view to making possible the extradition, in accordance with international law, of the persons referred to in article II of this Convention.

ARTICLE IV

The States Parties to the present Convention undertake to adopt, in accordance with their respective constitutional processes, any legislative or other measures necessary to ensure that statutory or other limitations shall not apply to the prosecution and punishment of the crimes referred to in articles I and II of this Convention and that, where they exist, such limitations shall be abolished.

ARTICLE V

This Convention shall, until 31 December 1969, be open for signature by any State Member of the United Nations or member of any of its specialized agencies or of the International Atomic Energy Agency, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

ARTICLE VI

This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE VII

This Convention shall be open to accession by any State referred to in article V. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

ARTICLE VIII

1. This Convention shall enter into force on the ninetieth day after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the tenth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day after the date of the deposit of its own instrument of ratification or accession.

ARTICLE IX

1. After the expiry of a period of ten years from the date on which this Convention enters into force, a request for the revision of the Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

ARTICLE X

1. This Convention shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States referred to in article V.

3. The Secretary-General of the United Nations shall inform all States referred to in article V of the following particulars:

(a) Signatures of this Convention, and instruments of ratification and accession deposited under articles V, VI and VII;

(b) The date of entry into force of this Convention in accordance with article VIII;

(c) Communications received under article IX.

ARTICLE XI

This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 26 November 1968.

IN WITNESS WHEREOF the undersigned, being duly authorized for that purpose, have signed this Convention.

INTERNATIONAL LABOUR ORGANISATION

RECOMMENDATION CONCERNING THE IMPROVEMENT OF CONDITIONS OF LIFE AND WORK OF TENANTS, SHARE-CROPPERS AND SIMILAR CATEGORIES OF AGRICULTURAL WORKERS

Recommendation 132, adopted on 25 June 1968 by the International Labour Conference at its Fifty-second Session ¹

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-second Session on 5 June 1968, and

Having decided upon the adoption of certain proposals with regard to improvement of conditions of life and work of tenants, share-croppers and similar categories of agricultural workers, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation, and

Considering that these proposals constitute only one aspect of the problem of agrarian reform, and must be placed in that wider framework, and

Noting that the United Nations and the specialised agencies, in particular the International Labour Organization and the Food and Agriculture Organization of the United Nations, have been called upon in resolutions of the Economic and Social Council of the United Nations to devote greater attention to all aspects of land reform, and

Noting further that, for the success of action relating to the very varied aspects of agrarian reform, it is essential that close co-operation be maintained in their respective fields between the United Nations and the specialised agencies, and especially the Food and Agriculture Organization of the United Nations, whose major role regarding land reform has been recognised by the Economic and Social Council of the United Nations, and

Noting that the following standards have accordingly been framed in co-operation with the United Nations and the Food and Agriculture

Organization of the United Nations and that, with a view to avoiding duplication and to ensuring appropriate co-ordination, there will be continuing co-operation in promoting and securing the application of the standards, and

Noting in particular that any reports submitted by Members in pursuance of article 19 of the Constitution of the International Labour Organization would be made available to the United Nations and the Food and Agriculture Organization of the United Nations to enable them to take account of such reports in their own work regarding land reform and for any reports on progress of land reform requested by the Economic and Social Council of the United Nations,

adopts this twenty-fifth day of June of the year one thousand nine hundred and sixty-eight the following Recommendation, which may be cited as the Tenants and Share-croppers Recommendation, 1968:

I. SCOPE

1. (1) This Recommendation applies to agricultural workers—

(a) Who pay a fixed rent in cash, in kind, in labour, or in a combination of these,

(b) Who pay rent in kind consisting of an agreed share of the produce,

(c) Who are remunerated by a share of the produce, in so far as they are not covered by laws or regulations applicable to wage earners,

when they work the land themselves or with the help of their family, or when they engage outside help within limits prescribed by national laws or regulations.

(2) These workers are hereinafter referred to as "tenants, share-croppers and similar categories of agricultural workers".

¹ Text furnished by the International Labour Office.

2. This Recommendation does not apply to employment relationships in which work is remunerated by a fixed wage.

3. The provisions of this Recommendation which refer to "landowners" apply to any person with whom a worker covered thereby enters into a tenancy, share-cropping or similar arrangement, whether this person is the owner of the land, a representative of the owner of the land or any other person having the authority to enter into the contracts in question.

II. OBJECTIVES

4. It should be an objective of social and economic policy to promote a progressive and continuing increase in the well-being of tenants, share-croppers and similar categories of agricultural workers and to assure them the greatest possible degree of stability and security of work and livelihood, account being taken of the need to follow good farming techniques and to make efficient use of natural and economic resources, and regard being had to the financial capacity of the country concerned.

5. Members should, without prejudice to the essential rights of landowners, take appropriate measures so that tenants, share-croppers and similar categories of agricultural workers may themselves have the main responsibility for managing their holding; they should give them necessary assistance to that end while ensuring that the resources are used to the greatest advantage and are properly maintained.

6. In conformity with the general principle that agricultural workers of all categories should have access to land, measures should be taken, where appropriate to economic and social development, to facilitate the access of tenants, share-croppers and similar categories of agricultural workers to land.

7. The establishment and development, on a voluntary basis, of organisations representing the interests of tenants, share-croppers and similar categories of agricultural workers and of organisations representing the interests of landowners should be encouraged and every facility provided to that end.

8. It should be recognised that all measures provided for in this Recommendation with a view to attaining the objectives set out in Paragraphs 4 to 7 would be more effective if they were integrated in a comprehensive national agrarian reform plan.

III. METHODS OF IMPLEMENTATION

9. Where the foregoing objectives of policy, and in particular those set forth in Paragraph 4, cannot be adequately attained on the basis of existing tenancy or labour legislation, such legislation should be amended or special laws or regulations should be adopted, after consultation with the organisations concerned or, where they do not exist, with representatives of those concerned.

10. Steps should be taken and procedures appropriate to national conditions established with a view to—

- (a) Ensuring that rent is at a level which—
 - (i) permits a standard of living for the occupant which is compatible with human dignity;
 - (ii) gives each of the parties concerned a just and equitable return;
 - (iii) promotes progressive husbandry;

(b) Determining the minimum share of the produce to which the persons referred to in Paragraph 1, subparagraph (1) (c), are entitled;

(c) Making rent adjustments in certain circumstances such as substantial changes in yield, prices and value of land;

(d) Postponing the payment of rent and, where circumstances so require, reducing it in case of crop failure or other disasters affecting the holding, due to natural causes which the tenant, share-cropper or agricultural worker in a similar category could not foresee or control.

11. Appropriate provision should be made for the protection of tenants, share-croppers and similar categories of agricultural workers against the imposition on them by landowners of the obligation to perform personal services in any form, paid or unpaid, and any attempts at such imposition should be subject to an appropriate penalty determined by the competent authority.

12. There should be appropriate machinery suited to national conditions for—

(a) The enforcement of laws, regulations, contracts and customary arrangements which promote the well-being, encourage the spirit of initiative and ensure the protection of tenants, share-croppers and similar categories of agricultural workers;

(b) The speedy settlement, with minimum expense, of disputes between landowners, on the one hand, and tenants, share-croppers and similar categories of agricultural workers, on the other.

13. Organisations representing the interests of tenants, share-croppers and similar categories of agricultural workers and organisations representing the interests of landowners or, where they do not exist, representatives of those concerned should be associated with the working of the procedures and machinery referred to in Paragraphs 10 and 12 and with the consideration of contracts referred to in Paragraph 14, subparagraph (1) (a), and Paragraph 15.

14. (1) Contracts governing the relationship between landowners, on the one hand, and tenants, share-croppers and similar categories of agricultural workers, on the other—

(a) Should preferably be in writing or should conform to a model contract established by the competent authority;

(b) Should be agreed to in a prescribed manner and, in order to ensure that the tenant, share-cropper or agricultural worker in a similar category has fully understood the terms of the contract, under conditions which ensure adequate supervision by the competent authority;

(c) Should be of such duration, with such provision for automatic renewal, as to provide security of tenure and to encourage good agricultural practices.

(2) The requirement by the landowner of any special fees or gifts, or of any other contribution, for the granting or the renewal of the contract should be prohibited and any attempt at such requirement should be subject to an appropriate penalty determined by the competent authority.

15. (1) Every contract should contain all such particulars as may be necessary in conjunction with relevant laws or regulations to define the rights and obligations of the parties.

(2) The particulars to be contained in the contract should in all cases include the following:

(a) The names of the contracting parties and any other particulars necessary for their identification;

(b) The description of the holding together with an inventory;

(c) The rent to be paid for the holding or the remuneration due for the labour of the occupant and the form of payment in either case.

(3) The particulars to be contained in the contract should also include the following, to the extent that they are not sufficiently provided for in national laws or regulations:

(a) The duration of the contract and the method of calculating this duration;

(b) Provisions concerning the renewal and the termination of the contract and, as appropriate, the assignment of the contract, and subcontracts;

(c) Determination of the types of repairs for which each of the parties concerned would be responsible;

(d) The respective rights and obligations of the parties concerning the costs of production and the produce of the holding and its disposal;

(e) The right to compensation for improvements made by the occupant during the currency of the contract, as envisaged in Paragraph 17;

(f) The right to compensation for disturbance in the case of termination of the contract by the landowner before its expiry, as envisaged in Paragraph 16, subparagraph 4;

(g) The respective rights and obligations of the parties concerning damage to buildings and equipment;

(h) Procedures for settlement of disputes;

(i) Provision concerning the case of the death of the occupant;

(j) Provision to protect the respective rights of the parties relating to minerals, water and other resources connected with the holding.

(4) Where appropriate, contracts should also contain the following particulars:

(a) The methods of husbandry to be used to ensure the proper maintenance of the holding and its resources;

(b) The facilities to be provided by the landowner, such as housing and other amenities;

(c) The insurance to be carried against agricultural and other risks, and responsibility for the cost of such insurance.

16. (1) The right of the landowner to terminate the contract before its expiry, after giving due

notice, should be limited to cases prescribed by laws or regulations, such as bad husbandry on the part of the occupant or resumption of the occupancy of the holding for justifiable purposes determined by the competent authority.

(2) Where a contract is so terminated, tenants, share-croppers and similar categories of agricultural workers should be given sufficient time to gather in their crops or be adequately compensated therefor, at their option.

(3) Tenants, share-croppers and similar categories of agricultural workers should be given notice in writing, sufficiently in advance, in the case of sale by the landowner; where they have satisfactorily cultivated the holding which they occupy for a prescribed number of years, they should have the right of pre-emption over that holding.

(4) Tenants, share-croppers and similar categories of agricultural workers should be entitled to compensation for disturbance in the case of termination of the contract by the landowner before its expiry for reasons other than failure to meet agreed commitments.

17. Tenants, share-croppers and similar categories of agricultural workers should have the right to make such improvements as may be necessary on the holding which they occupy, and should, if they obtain the prior approval of the landowner or of the competent authority to make such improvements, or in cases where these are authorised by law, be entitled to compensation for the unexhausted added value of such improvements on giving up the holding.

18. Where it is customary or necessary for the tenants, share-croppers and similar categories of agricultural workers to live on the holding, landowners should be encouraged to provide them with adequate housing conforming to standards compatible with human dignity with respect to such matters as protection against natural elements, provision of drinking-water, sanitary installations and separate accommodation for animals. The competent authority should take such measures as may be appropriate and practicable to assist the landowners in this responsibility.

19. Where appropriate, and in so far as this is not inherent in the nature of the contractual arrangement, tenants, share-croppers and similar categories of agricultural workers should be authorised to use some land for producing food for themselves and their families.

20. Appropriate steps should be taken within the framework of systems of public registration properly to record the rights of tenants, share-croppers and similar categories of agricultural workers, free of charge, and to maintain relevant entries up to date.

IV. COMPLEMENTARY MEASURES

21. Where appropriate, the competent authorities, in collaboration in so far as possible with the organisations concerned, should encourage, and give instruction in, the organisation by tenants, share-croppers and similar categories of agricultural workers of co-operative institutions,

such as production co-operatives, co-operatives for the processing of agricultural produce, credit co-operatives, marketing co-operatives and purchasing co-operatives, and the strengthening of such institutions where they already exist.

22. (1) Measures should be taken in the light of available national resources and conditions prevailing in the country to make adequate low-cost credit in cash and kind available to tenants, share-croppers and similar categories of agricultural workers so as, in particular, to—

(a) Contribute to raising levels of production and consumption;

(b) Promote access to land;

(c) Increase the effectiveness of agrarian reform and of land settlement projects.

(2) So far as practicable, the provision of such credit should be associated with approved and supervised farm development and management schemes.

(3) Special consideration should be given in the light of national conditions to systems of—

(a) Low-cost co-operative credit;

(b) Supervised credit;

(c) Low-cost bank credit;

(d) Interest-free government loans.

(4) Tenants, share-croppers and similar categories of agricultural workers should not be required to obtain the authorisation of landowners to obtain credit to be used for improving their holding.

23. (1) The competent authorities and bodies should take appropriate measures to ensure that general education as well as programmes of agricultural education and vocational training in agriculture are effectively available to tenants, share-croppers and similar categories of agricultural workers and their dependants.

(2) Where such persons are covered by agrarian reform or land settlement projects, special pro-

grammes of education and training should be developed to enable them to benefit fully therefrom.

(3) Representatives of agricultural organisations concerned should be associated with the work of governmental bodies responsible for the application of the provisions of this Paragraph.

24. Particular attention should be paid by the competent authorities to integrated programmes for rural employment promotion so as to—

(a) Give tenants, share-croppers and similar categories of agricultural workers, as well as their families, every opportunity of making fuller use of their capacity for work;

(b) Provide permanent non-agricultural employment for those unable to obtain employment in agriculture.

25. The competent authorities should ensure that tenants, share-croppers and similar categories of agricultural workers—

(a) Are covered in so far as practicable by appropriate and adequate social security schemes; and

(b) Benefit from programmes for rural development concerned with matters such as education, public health, housing and social services, including cultural and recreational activities, and, in particular, from the extension of community development programmes to them.

26. (1) Tenants, share-croppers and similar categories of agricultural workers should be protected as far as possible and practicable against risks of loss in income resulting from natural calamities such as drought, floods, hail, fire and animal and plant diseases.

(2) Where appropriate and practicable, the competent authorities, after taking into account the situation in the country, should introduce or encourage insurance schemes to cover these workers against such risks and play a prominent role in financing them.

UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

RECOMMENDATION CONCERNING THE PRESERVATION OF CULTURAL PROPERTY ENDANGERED BY PUBLIC OR PRIVATE WORKS

Adopted by the General Conference at its fifteenth session, Paris, 19 November 1968¹

...

The General Conference recommends that Member States should apply the following provisions by taking whatever legislative or other steps may be required to give effect within their respective territories to the norms and principles set forth in this recommendation.

The General Conference recommends that Member States should bring this recommendation to the attention of the authorities or services responsible for public or private works as well as to the bodies responsible for the conservation and the protection of monuments and historic, artistic, archaeological and scientific sites. It recommends that authorities and bodies which plan programmes for education and the development of tourism be equally informed.

The General Conference recommends that Member States should report to it, on the dates and in a manner to be determined by it, on the action they have taken to give effect to this recommendation.

I. DEFINITION

1. For the purpose of this recommendation, the term "cultural property" applies to:

(a) Immovables, such as archaeological and historic or scientific sites, structures or other features of historic, scientific, artistic or architectural value, whether religious or secular, including groups of traditional structures, historic quarters in urban or rural built-up areas and the ethnological structures of previous cultures still extant in valid form. It applies to such immovables constituting ruins existing above the earth as well as to archaeological or historic remains found within

the earth. The term cultural property also includes the setting of such property;

(b) Movable property of cultural importance including that existing in or recovered from immovable property and that concealed in the earth, which may be found in archaeological or historical sites or elsewhere.

2. The term "cultural property" includes not only the established and scheduled architectural, archaeological and historic sites and structures, but also the unscheduled or unclassified vestiges of the past as well as artistically or historically important recent sites and structures.

II. GENERAL PRINCIPLES

3. Measures to preserve cultural property should extend to the whole territory of the State and should not be confined to certain monuments and sites.

4. Protective inventories of important cultural property, whether scheduled or unscheduled, should be maintained. Where such inventories do not exist, priority should be given in their establishment to the thorough survey of cultural property in areas where such property is endangered by public or private works.

5. Due account should be taken of the relative significance of the cultural property concerned when determining measures required for the:

(a) Preservation of an entire site, structure, or other forms of immovable cultural property from the effects of private or public works;

(b) Salvage or rescue of cultural property if the area in which it is found is to be transformed by public or private works, and the whole or a part of the property in question is to be preserved and removed.

¹Text furnished by the Secretariat of UNESCO.

6. Measures should vary according to the character, size and location of the cultural property and the nature of the dangers with which it is threatened.

7. Measures for the preservation or salvage of cultural property should be preventive and corrective.

8. Preventive and corrective measures should be aimed at protecting or saving cultural property from public or private works likely to damage and destroy it, such as:

(a) Urban expansion and renewal projects, although they may retain scheduled monuments while sometimes removing less important structures, with the result that historical relations and the setting of historic quarters are destroyed;

(b) Similar projects in areas where groups of traditional structures having cultural value as a whole risk being destroyed for the lack of a scheduled individual monument;

(c) Injudicious modifications and repair of individual historic buildings;

(d) The construction or alteration of highways which are a particular danger to sites or to historically important structures or groups of structures;

(e) The construction of dams for irrigation, hydro-electric power or flood control;

(f) The construction of pipelines and of power and transmission lines of electricity;

(g) Farming operations including deep ploughing, drainage and irrigation operations, the clearing and levelling of land and afforestation;

(h) Works required by the growth of industry and the technological progress of industrialized societies such as airfields, mining and quarrying operations and dredging and reclamation of channels and harbours.

9. Member States should give due priority to measures required for the preservation *in situ* of cultural property endangered by public or private works in order to preserve historical associations and continuity. When overriding economic or social conditions require that cultural property be

transferred, abandoned or destroyed, the salvage or rescue operations should always include careful study of the cultural property involved and the preparations of detailed records.

10. The results of studies having scientific or historic value carried out in connexion with salvage operations, particularly when all or much of the immovable cultural property has been abandoned or destroyed, should be published or otherwise made available for future research.

11. Important structures and other monuments which have been transferred in order to save them from destruction by public or private works should be placed on a site or in a setting which resembles their former position and natural, historic or artistic associations.

12. Important movable cultural property, including representative samples of objects recovered from archaeological excavations, obtained from salvage operations should be preserved for study or placed on exhibition in institutions such as museums, including site museums, or universities.

III. PRESERVATION AND SALVAGE MEASURES

13. The preservation or salvage of cultural property endangered by public or private works should be ensured through the means mentioned below, the precise measures to be determined by the legislation and organizational system of the State:

(a) Legislation;

(b) Finance;

(c) Administrative measures;

(d) Procedures to preserve and to salvage cultural property;

(e) Penalties;

(f) Repairs;

(g) Awards;

(h) Advice;

(i) Educational programmes.

...

COUNCIL OF EUROPE

MEASURES TO BE TAKEN AGAINST INCITEMENT TO RACIAL, NATIONAL AND RELIGIOUS HATRED

Resolution (68) 30 adopted by the Ministers' Deputies on 31 October 1968¹

The Committee of Ministers,

Having regard to Recommendation 453 of the Consultative Assembly on measures to be taken against incitement to racial, national and religious hatred;

Considering that the harmonious development of the European community of nations implies guaranteeing for all the preservation of tolerance, reciprocal understanding and respect for human dignity necessary to the upholding of democratic traditions and to full and fruitful collaboration between democratic States;

Believing that such development could be encouraged by appropriate action on the national and international levels;

Having regard to the International Convention on the Elimination of all Forms of Racial Discrimination concluded under the auspices of the United Nations;

Considering it desirable that this convention enter into force without delay;

Taking into account that the United Nations is currently preparing a draft convention on the elimination of all forms of intolerance and of discrimination based on religion or belief,

A. *Recommends* to the Governments of member States of the Council of Europe:

1. That those Governments which have not yet done so sign and ratify the Convention on the

Elimination of all Forms of Racial Discrimination concluded under the auspices of the United Nations and, subsequent to its entry into force, give all possible support to its effective implementation;

2. That Governments, when depositing their instruments of ratification with the United Nations, stress by an interpretative statement the importance which they attach, on the one hand, to the reference made in the Convention on the Elimination of all Forms of Racial Discrimination concluded under the auspices of the United Nations, to the safeguarding of all rights proclaimed in the Universal Declaration of Human Rights and, on the other hand, to the respect for the rights laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms;

3. That Governments exert their influence in the United Nations with a view to obtaining as soon as possible a satisfactory conclusion to the work on the draft convention on the elimination of all forms of intolerance and of discrimination based on religion or belief;

4. That Governments review their legislation in order to ensure that it provides for effective measures on the matter of prohibition of racial discrimination as well as on the related question of the elimination of all forms of intolerance and of discrimination based on religion or belief;

B. *Invites* the member States of the Council of Europe to keep the Secretary-General informed of all measures concerning the implementation of the International Convention on the Elimination of all Forms of Racial Discrimination.

¹ Text furnished by the Secretariat-General of the Council of Europe.

OTHER INTERNATIONAL AGREEMENTS

CHARTER OF THE SOUTHEAST ASIAN MINISTERS OF EDUCATION ORGANIZATION

Done at Singapore on 7 February 1968¹

PREAMBLE

We, the Peoples of Southeast Asia,

Desirous of attaining the benefits of peace, prosperity and security through an enlightened citizenry,

Recognizing the forces and the challenge of change in the contemporary world,

Anxious to provide for constructive direction to these forces of change,

And resolved upon joint and co-operative efforts for regional educational development,

Have, through our governments, adopted hereby this Charter of the Southeast Asian Ministers of Education Organization.

ARTICLE I

PURPOSE AND FUNCTIONS

1. The purpose of the Organization is to promote co-operation among the Southeast Asian nations through education, science and culture in order to further respect for justice, for the rule of law and for the human rights and fundamental freedoms which are the birthrights of the peoples of the world.

2. To realize this purpose the Organization will:

(a) Collaborate in the work of advancing the mutual knowledge and understanding of the peoples in Southeast Asia as well as the rest of the world;

(b) Promote and collaborate with the Member States, at their request, in joint projects and programmes of mutual benefit concerning education, science and culture and assist the members in the development of educational activities;

(c) Maintain, increase and diffuse knowledge;
(d) Assist in articulating education to the economic and social goals in the individual Member States.

3. With a view to preserving the independence, integrity and fruitful diversity of the cultures and educational systems of the Member States, the Organization is prohibited from intervening in matters which are essentially within their domestic jurisdiction.

ARTICLE II

MEMBERSHIP

1. The original Member States of this Organization shall be:

Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and the Republic of Viet-Nam.

2. Southeast Asian States not members of this Organization may be admitted as Member States by a two-third majority vote of the Southeast Asian Ministers of Education Council.

3. Any Member State of the Organization may withdraw from the Organization by notice addressed to the Secretariat. Such notice shall take effect on 31 December of the year following the year during which the notice is given. Such withdrawal shall not affect the financial obligations owed to the Organization on the date the withdrawal takes effect.

ARTICLE III

ORGANS

The Organization shall include a Southeast Asian Ministers of Education Council and a Secretariat.

¹Text of Charter furnished by the Government of Thailand.

ARTICLE VII

RELATIONS WITH OTHER INTERNATIONAL ORGANIZATIONS AND AGENCIES

1. This Organization may co-operate with other specialized regional and international organizations and agencies whose interests and activities are related to its purposes. To this end the Director, acting under the general authority of the Council, may establish effective working relationships with such organizations and agencies and make arrangements for establishing such joint committees as may be necessary to ensure effective co-operation. Any formal arrangements entered into with such organizations and agencies shall be subject to the approval of the Council.

2. This Organization may make appropriate arrangements with other specialized regional and international organizations and agencies for reciprocal representation at meetings.

3. This Organization may make suitable arrangements for consultation and co-operation with governmental and non-governmental organizations and agencies concerned with matters within its competence, and may invite them to undertake specific tasks.

ARTICLE IX

AMENDMENTS

1. Proposals for amendments to this Charter shall become effective upon receiving the approval of a two-third majority of the Member States.

The draft texts of the proposed amendments shall be communicated by the Director to the Member States at least six months in advance of their consideration by the Council.

2. The Council shall have the power to adopt, by a two-third majority of the Member States present and voting, rules of procedure for carrying out the provisions of this Article.

ARTICLE X

INTERPRETATION

Any question or dispute concerning the interpretation of this Charter shall be decided by the Council.

ARTICLE XI

ENTRY INTO FORCE

1. This Charter shall be subject to acceptance. The instruments of acceptance shall be deposited with the Royal Government of Thailand.

2. This Charter shall come into force when it has been accepted by five of the original Member States. Subsequent acceptance shall take effect immediately.

3. The said Government will inform all the Member States of the receipts of all instruments of acceptance and of the date on which the Charter comes into force in accordance with the preceding paragraph.

STATUS OF CERTAIN INTERNATIONAL¹ AGREEMENTS

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 1968, Jamaica and Saudi Arabia became parties to the Convention, by instruments of accession deposited on 23 September and 13 September respectively.

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 1968, Finland became a party to the Convention, by instrument of accession deposited on 10 October.

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 1968, the following States became parties to the Convention by the instruments and on the dates indicated: Cyprus (ratification, 12 November), Ireland (accession, 14 November), Italy (accession, 6 March), Malta (accession, 9 July), New Zealand (accession, 22 May) and Tunisia (accession, 24 January).

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 1968, Mongolia became a party to the Convention, by instrument of accession deposited on 20 December.

5. *Convention relating to the Status of Stateless Persons* (New York, 1954; entered into force on 6 June 1960) (see *Yearbook on Human Rights for 1954*, pp. 369-375)

During 1968, 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 1968, Mongolia became a party to the Convention, by instrument of accession deposited on 20 December.

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 1968, the following States became parties to the Convention by the instruments and on the dates indicated: Austria (accession, 19 January), Brazil (ratification, 4 December), Finland (accession, 15 May) and Tunisia (accession, 24 January).

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 1968, 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)

¹ Concerning the status of these agreements at the end of 1967, see *Yearbook on Human Rights for 1967*, p. 395. The information contained in the present statement concerning International Labour Conventions and agreements adopted under the auspices of the Organization of American States and the Council of Europe was furnished by the International Labour Office, the Pan American Union and the Secretariat-General of the Council of Europe, respectively. The information concerning the Geneva Conventions of 12 August 1949 was taken from the *Annual Report 1968*, 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 Protocol thereto (for which the Secretary-General of the United Nations acts as depositary), the information concerning agreements under the auspices of UNESCO was furnished by the Secretariat of UNESCO.

During 1968, Tunisia became a party to the Convention, by instrument of accession deposited on 24 January.

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 1968, the following States became parties to the Convention by the instruments and on the dates indicated: Argentina (ratification, 2 October), Brazil (ratification, 27 March), India (ratification, 3 December), Iran (ratification, 20 August), Kuwait (accession, 15 October), Libya (accession, 3 July), Poland (ratification, 5 December), Spain (accession, 13 September) and Uruguay (ratification, 30 August).

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)

Costa Rica ratified the Covenant on 29 November 1968.

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)

Costa Rica ratified the Covenant on 29 November 1968.

13. *Optional Protocol 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)

Costa Rica ratified the Optional Protocol on 29 November 1968.

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 1968, the following States acceded to the Protocol on the dates indicated: Cyprus (9 July), Denmark (29 January), Finland (10 October), Ghana (30 October), Greece (7 August), Guinea (16 May), Iceland (26 April), Ireland (6 November), Israel (14 June), Liechtenstein (20 May), Netherlands (29 November), Nigeria (2 May), Switzerland (20 May), Tunisia (16 October), Turkey (31 July), United Kingdom (4 September), United Republic of Tanzania (4 September), United States (1 November) and Yugoslavia (15 January).

15. *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity* (New York, 1968; not yet in force) (see above, pp. 459-460)

Poland and Yugoslavia signed the Convention on 16 December 1968.

II. INTERNATIONAL LABOUR ORGANISATION

1. *Social Policy (Non-Metropolitan Territories) Convention, 1947* (Convention No. 82; entered into force on 19 June 1955) (see *Yearbook on Human Rights for 1948*, pp. 420-425)

During 1968, no States became parties to the Convention.

2. *Right of Association (Non-Metropolitan Territories) Convention, 1947* (Convention No. 84; entered into force on 1 July 1953) (see *Yearbook on Human Rights for 1948*, pp. 425-427)

During 1968, no States became parties to the Convention.

3. *Freedom of Association and Protection of the Right to Organise Convention, 1948* (Convention No. 87; entered into force on 4 July 1950) (see *Yearbook on Human Rights for 1948*, pp. 427-430)

During 1968, no States became parties to the Convention.

4. *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 1968, Dahomey, Jordan and Venezuela ratified the Convention on 16 May, 12 December and 19 December respectively.

5. *Equal Remuneration Convention, 1951* (Convention No. 100; entered into force on 23 May 1953) (see *Yearbook on Human Rights for 1951*, pp. 469-470)

During 1968, the following States ratified the Convention on the dates indicated: Dahomey (16 March), Ghana (14 March), Mali (12 July), Sierra Leone (15 November) and Tunisia (11 October).

6. *Social Security (Minimum Standards) Convention, 1952* (Convention No. 102; entered into force on 27 April 1955) (see *Yearbook on Human Rights for 1952*, pp. 377-389)

During 1968, Ireland and Mauritania ratified the Convention on 17 June and 31 August respectively.

7. *Maternity Protection Convention (Revised), 1952* (Convention No. 103; entered into force on 2 September 1955) (see *Yearbook on Human Rights for 1952*, pp. 389-392)

During 1968, no States became parties to the Convention.

8. *Abolition of Penal Sanction (Indigenous Workers) Convention, 1955* (Convention No. 104; entered into force on 7 June 1958) (see *Yearbook on Human Rights for 1955*, pp. 325-327)

During 1968, no States became parties to the Convention.

9. *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 1968, the following States ratified the Convention on the dates indicated: Italy (15 March), New Zealand (14 June), Paraguay (16 May) and Uruguay (22 November).

10. *Discrimination (Employment and Occupation) Convention, 1958* (Convention No. 111; entered into force on 15 June 1960) (see *Yearbook on Human Rights for 1958*, pp. 307-308)

During 1968, Argentina, Cyprus and Malta ratified the Convention on 18 June, 12 February and 1 July 1968 respectively.

11. *Social Policy (Basic Aims and Standards) Convention, 1962* (Convention No. 117; entered into force on 23 April 1964) (see *Yearbook on Human Rights for 1962*, pp. 391-394)

During 1968, no States became parties to the Convention.

12. *Equality of Treatment (Social Security) Convention, 1962* (Convention No. 118; entered into force on 25 April 1964) (see *Yearbook on Human Rights for 1962*, pp. 394-397)

Mauritania ratified the Convention on 15 July 1968.

13. *Guarding of Machinery Convention, 1963* (Convention No. 119; entered into force on 21 April 1965) (see *Yearbook on Human Rights 1963*, pp. 417-420)

During 1968, no States became parties to the Convention.

14. *Employment Policy Convention, 1964* (Convention No. 122; entered into force 15 September 1966) (see *Yearbook on Human Rights for 1964*, pp. 329-330)

During 1968, the following States ratified the Convention on the dates indicated: Byelorussian SSR (26 February), Chile (24 October), Finland (23 September) and the Ukrainian SSR (19 June).

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)

Malta acceded to the Convention on 19 August 1968.

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)

Morocco ratified the Convention and Protocol on 30 August 1968.

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 1968, Malta, Morocco and Norway became parties to the Convention by instruments of acceptance deposited on 26 February, 30 August and 19 September respectively.

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 1964*, p. 434)

During 1968, Morocco and Norway became parties to the Convention by instruments of acceptance deposited on 30 August and 19 September respectively.

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 1968, the following States became parties to the Convention, by the instruments and on the dates indicated: Algeria (acceptance, 24 December), Brazil (ratification, 29 April), Congo (Brazzaville) (ratification, 17 July), Iran (acceptance, 17 July), Morocco (acceptance, 30 August), Niger (acceptance, 16 July), Republic of Viet-Nam (acceptance, 12 June), Sweden (ratification, 21 March), Uganda (acceptance, 9 September) and Venezuela (ratification, 16 December).

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; entered into force 25 October 1968) (see *Yearbook on Human Rights for 1962*, pp. 398-401)

During 1968, the following States became parties to the Protocol, by the instruments and on the dates indicated: Argentina (ratification, 17 July), Federal Republic of Germany (ratification, 17 July), Norway (acceptance, 19 September), Republic of Viet-Nam (acceptance, 12 June), Senegal (ratification, 24 July) and Uganda (acceptance, 9 September).

IV. ORGANIZATION OF AMERICAN STATES

1. *Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works* (Washington, D.C., 1946; entered into force on 14 April 1947) (see *Pan American Union: Law and Treaty Series*, No. 19)

During 1968, no States became parties to the Convention.

2. *Inter-American Convention on the Granting of Political Rights to Women* (Bogotá, 1948; entered into force on 22 April 1949) (see *Yearbook on Human Rights* for 1948, pp. 438-439)

Venezuela became a party to the Convention by instrument of ratification deposited on 11 September 1968.

3. *Inter-American Convention for the Granting of Civil Rights to Women* (Bogotá, 1948; entered into force on 22 April 1949) (see *Yearbook on Human Rights* for 1948, pp. 439-440)

Venezuela became a party to the Convention, by instrument of ratification deposited on 11 September 1968.

4. *Convention on Diplomatic Asylum* (Caracas, 1954; entered into force on 29 December 1954) (see *Yearbook on Human Rights* for 1955, pp. 330-332)

During 1968, no States became parties to the Convention.

5. *Convention on Territorial Asylum* (Caracas, 1954; entered into force on 29 December 1954) (see *Yearbook on Human Rights* for 1955, pp. 329-330)

Colombia became a party to the Convention, by instrument of ratification deposited on 11 December 1968.

6. *Protocol of Amendment to the Charter of the Organization of American States* (Buenos Aires, 1967; not yet in force) (see *Yearbook on Human Rights* for 1967, pp. 391-394)

During 1968, the following States ratified the Protocol on the dates indicated: Guatemala (26 January); Mexico (22 April); Paraguay (23 January); Trinidad and Tobago (20 May); and the United States of America (23 April).

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 1968, no ratifications were deposited.

2. *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms* (Paris, 1952; entered into force on 18 May 1954) (see *Yearbook on Human Rights* for 1952, pp. 411-412)

During 1968, no ratifications were deposited.

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. 355-357)

No ratifications were deposited during 1968.

4. *European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors, and Protocol thereto* (Paris, 1953; Agreement entered into force on 1 July 1954 and

Protocol on 1 October 1954) (see *Yearbook on Human Rights* for 1953, pp. 357-358)

No ratifications were deposited during 1968.

5. *European Convention on Social and Medical Assistance and Protocol thereto* (Paris, 1953; Convention and Protocol entered into force on 1 July 1954) (see *Yearbook on Human Rights* for 1953, pp. 359-361)

Malta signed the Protocol on 7 May 1968.

6. *European Convention on Establishment* (Paris, 1955; entered into force on 23 February 1965) (see *Yearbook on Human Rights* for 1956, pp. 292-297)

No ratifications were deposited during 1968.

7. *European Social Charter* (Turin, 1961; entered into force on 26 February 1965) (see *Yearbook on Human Rights* for 1961, pp. 442-450)

Cyprus ratified the Charter on 7 March 1968.

8. *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)

Turkey ratified the Protocol on 25 March 1968.

9. *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)

Turkey ratified the Protocol on 25 March 1968.

10. *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; entered into force on 2 May 1968) (see *Yearbook on Human Rights for 1963*, pp. 425-426)

The Federal Republic of Germany, Ireland and Luxembourg ratified the Protocol on 1 May, 29 October and 2 May 1968 respectively.

11. *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)

Italy and Luxembourg ratified the Protocol on 25 March and 26 June 1968 respectively.

12. *European Code of Social Security* (Strasbourg, 1964; entered into force on 17 March 1968) (see *Yearbook on Human Rights for 1964*, pp. 331-334)

Belgium, Luxembourg and the United Kingdom signed the Code on 13 August, 3 April and 12 January 1968 respectively.

13. *Protocol to the European Code of Social Security* (Strasbourg 1964; entered into force on 17 March 1968) (see *Yearbook on Human Rights for 1964*, p. 335)

Luxembourg ratified the Protocol on 3 April 1968.

14. *European Convention on the Adoption of Children* (Strasbourg, 1967; entered into force on 26 April 1968) (see *Yearbook on Human Rights for 1967*, pp. 386-389)

Ireland and Sweden ratified the Convention on 25 January and 26 June 1968 respectively.

15. *Protocol to the European Convention on Consular Functions concerning the Protection of Refugees* (Paris, 1967; not yet in force) (see *Yearbook on Human Rights for 1967*, pp. 389-390)

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)

The following States became parties to the Conventions, by the instruments and on the dates indicated: Barbados (declaration of continuity of 20 August 1968, with effect from 30 November 1966), Botswana (accession, 29 March 1968), Guyana (declaration of continuity of 22 July 1968, with effect from 26 May 1966), Lesotho (declaration of continuity of 20 May 1968, with effect

from 4 October 1966), Malawi (accession, 5 January 1968), and Malta (declaration of continuity of 22 August 1968, with effect from 21 September 1964).

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)

No States became parties to the Convention during 1968.

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