YEARBOOK ON HUMAN RIGHTS FOR 1969

UNITED NATIONS, NEW YORK, 1971

UNITED NATIONS PUBLICATION

Sales number: E.72. XIV. 1

Price: $U.S. 9.00

(or equivalent in other currencies)

CONTENTS

YEARBOOK ON HUMAN RIGHTS FOR 1969

INTRODUCTION

The developments in the field of human rights recorded in the *Yearbook on Human Rights for 1969* cover a wide range of the rights enumerated in the Universal Declaration of Human Rights. The material published herein originates from Governments, government-appointed correspondents and research work done within the United Nations Secretariat. The contribution of the French Government relates not only to 1969 but to the years 1967 and 1968 as well.

Following the structure adopted since the *Yearbook for 1956*, this twenty-fourth volume of the *Yearbook on Human Rights* is composed of three parts. Part I describes constitutional, legislative and judicial developments in ninety-two States. Part II surveys similar developments in certain Trust and Non-Self-Governing Territories. Part III reproduces the texts of, or extracts from, international agreements bearing on human rights.

The constitutional developments dealt with in Part I include the adoption of a new Constitution in Ghana, of a revised Constitution in Kenya, of a Constitutional Proclamation in the Libyan Arab Republic and of a Provisional Constitution in the Syrian Arab Republic. Each of these constitutions reflects certain of the principles set out in the Universal Declaration of Human Rights. Chapter IV of the new Constitution of Ghana and Chapter V of the revised Constitution of Kenya are entirely devoted to fundamental rights. The Constitutional Proclamation of the Libyan Arab Republic brings the various provisions on human rights under its Chapter I, entitled "The State". In the Provisional Constitution of the Syrian Arab Republic, provisions on human rights are to be found in Part II, dealing with the rights and duties of citizens, people's organizations and co-operative societies.

During 1969, the constitutions of Gabon, Mexico, Turkey and Zambia have been amended. The Interim Constitution of Iraq was also amended in 1969, whereas the Federal Constitution of Switzerland was completed by the addition of articles 22 *ter* and 22 *quater*, guaranteeing property. In addition, mention may be made of the Constitution of Greece of 1968, articles 13, paragraph 1 (inviolability of residence), 18 (right of assembly) and 19 (right of association) of which, by virtue of Act No. 2 of the National Revolutionary Government of 9 April 1969, entered into force.

The legislative developments reproduced in this *Yearbook* include provisions on the right to protection against all forms of discrimination; the right to protection against interference with privacy, the right to freedom of movement and residence, the right to a nationality, the right to marry and found a family, the right to property, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and association, the right to take part in the government of one's country, the status of women, the protection of young persons, the right to just and favourable conditions of work, the right to social security, the right to health protection and the right to education.

In so far as the right to protection against discrimination is concerned, anti-discrimination measures were taken in 1969 in a number of Canadian provinces. In the provinces of Alberta and New Brunswick, the areas in which discrimination is forbidden were expanded to encompass the renting of apartments; in British Columbia, a provision in the Human Rights Act prohibits discrimination in employment and trade union membership on grounds of sex; and in Nova Scotia, an amendment to the Human Rights Act forbids discrimination on the basis of race, religion, creed, colour or ethnic or national origin in the membership of professional, business or trade associations. In Costa Rica, Act No. 4466 of 19 November 1969 amends article 1 of Act No. 4230 of 21 November 1968, making it an offence to refuse any person admission to associations, places of entertainment, hotels and the like, clubs and private educational centres for reasons of racial discrimination. Reference is also made to United States Executive Order 11278 of 12 August 1969, having as its purpose the furtherance of the existing policy of the United States Government to provide equal opportunity in Federal employment on the basis of merit and fitness, without discrimination because of race, colour, religion, sex or national origin.

Protection against interference with privacy was the subject of legislation in certain countries. The Listening Devices Act, 1969 (No. 70 of 1969) of New South Wales, Australia, prohibits *inter alia* the use of listening devices to invade privacy but reserves the right to certain specially authorized law enforcement officers to use these devices for the prevention and detection of offences. In Liechtenstein, article 1 of the Act of 25 May 1969 concerning the Protection of Privacy under Penal Law, *inter alia*, makes punishable the interception with a listening device of a private conversation among third parties. Whereas according to the general rules of the Swedish Code of Procedure wire-tapping may only be used in connexion with preliminary investigations of very serious offences, a law introduced on 7 March 1969 now permits the authorities in Sweden to wire-tap telephone conversations in connexion with preliminary investigations of offences involving the possession, manufacture, trade or smuggling of narcotics.

Laws relating to the right of freedom of movement and residence were promulgated in Argentina: Law No. 18.235, under article 1 of which the expulsion of an alien, who is a permanent resident, may be ordered by the Executive Branch in certain cases; Burundi: Legislative Decree No. 1/27 of 22 May 1969, on the right of residence; Czechoslovakia: Government Ordinance No. 114/1969 of the Collection, specifying the cases in which the issuance of a travel document may be refused; Ecuador: Decree No. 470 of 20 March 1969, dealing with the freedom of movement of Colombian nationals in Ecuador; Mauritius: The Passport (Amendment) Act, 1969; Romania: Act No. 25 concerning the Régime for Aliens in the Socialist Republic of Romania; Trinidad and Tobago: The Immigration Act No. 41 of 1969; Uganda: The Immigration Act, 1969 and the Immigration Regulation, 1969; the United Kingdom: the Immigration Appeals Act 1969; and Yugoslavia: Act of 16 January 1969, amending the Act on the Movement and Residence of Foreigners in Yugoslavia.

The right to a nationality was dealt with in legislation adopted in 1969 in Czechoslovakia: Act of the Czech National Council No. 39/1969 of the Collection on the Acquisition and Loss of Citizenship of the Czech Socialist Republic; and Monaco: Act No. 865 of 1 July 1969 concerning the acquisition of Monegasque nationality.

As indicated in the contribution of the Union of Soviet Socialist Republics, all republics of the Union, with the exception of the Soviet Socialist Republic of Georgia, adopted during 1969 a new code on marriage and the family. These codes, of which those of the Byelorussian and Ukrainian Soviet Socialist Republic are represented in the present volume, confirm anew the fundamental rules of the Federal legislation which ensure all possible protection of human rights. The codes are based on equality between men and women and on equal rights for all citizens without any distinction as to their nationality, race and attitude towards religion. With regard to the right to marry, the Norwegian Act No. 6 of 7 February 1969, amending Act No. 2 of 31 May 1918, alters the conditions for contracting marriage *inter alia* by lowering the marriage age for men from 20 to 18 years. The United Kingdom Family Law Reform Act 1969, by reducing the age of majority from 21 to 18, enables all persons over the age of 18 to marry without parental or court consent. Where the dissolution of marriage is concerned, the United Kingdom Divorce Act *inter alia* provides that the only ground on which a petition for divorce may in future be presented is that the marriage has irretrievably broken down.

Act No. 69, 050 of 21 January 1969 of Mauritania aims at the protection of the family. It lays down penalties for the offence of family desertion, including failure by a husband for more than two months during his marriage to provide for his wife's needs and failure by a father for more than two months to provide for his children's needs, where the children are under eighteen years of age and are by law his dependents. The above-mentioned United Kingdom Family Law Reform Act 1969 also affects the family since, by reducing the age of maturity from 21 to 18, it now enables all persons over the age of 18 *inter alia* to make binding contracts and valid wills.

The United Kingdom Family Law Reform Act 1969 further affects the right to property in that persons over the age of 18 may now hold and dispose of property. Other legislative developments bearing on the right to property include Act No. 69-015 of 16 December 1969 of Madagascar, concerning the requisitioning of persons and property; and Act No. 69-30 of 29 April 1969 of Senegal, concerning the requisition of persons, property and services. The Tunisian Act No. 69-56 of 22 September 1969 on the reform of agrarian structures also relate to the right to property. Its article 1 *inter alia* provides that the right to own agricultural land shall belong only to individuals possessing Tunisian nationality, but that individuals of foreign nationality may be authorized by decree to acquire one or more specified parcels for the purpose of constructing residence.

Freedom of opinion and expression was a matter of concern to a number of Governments. Botswana adopted the Copyright Act, 1956 as amended in 1969; El Salvador, Decree No. 5 of 20 January 1969 on the National Radio of El Salvador; Hungary, Act III on Author's Rights; the Netherlands, Law and Decree on the organization of radio and television; and Senegal, Act No. 69-31 of 29 April 1969 on the control of political propaganda material of foreign origin. Mention may also be made of a United States Supreme Court decision in the case *Stanley* v. *Georgia*, in which the rule was laid down that a State may not make criminal the mere private possession of obscene material.

Legislation on freedom of peaceful assembly and association was adopted in 1969 in the Byelorussian Soviet Socialist Republic: Decree of 1 September 1969 of the Presidium of the Supreme Soviet of the Byelorussian SSR, confirming regulations concerning general meetings (assemblies) of citizens and public village committees, street committees and block committees in villages, hamlets and settlements in the Byelorussian SSR; Finland: Act No. 10 of 10 January 1969 on Political Parties; Tunisia: Act No. 69-4 of 24 January 1969, regulating public meetings, marches, parades, demonstrations and assemblies; and Zambia: Statutory Instrument No. 307 of 19 June 1969, concerning the declaration of unlawful societies. In addition, mention may be made of the entry into force, as from 9 April 1969, of articles 18 and 19 of the Constitution of Greece of 1968, referred to above, dealing with the right of assembly and the right of association, respectively.

Laws relating to the right of everyone to take part in the government of his country were adopted in Austria: Federal Act of 27 November 1969, amending the Rules for Elections for the National Council, 1962 and Federal Act of 27 November 1969, amending the Registration of Voters Act; Finland: Acts Nos. 341, 342 and 343 of 30 May 1969, respectively, amending the Parliament Act by lowering the age when a person becomes entitled to vote from 21 to 20 years, amending the Act of Parliamentary Election by lowering the age when a person is enrolled in the register of voters from 21 to 20 years, and amending the Guardianship Act by lowering the age of majority from 21 to 20 years; Guyana: The Local Authorities (Elections) Act, 1969 (No. 23 of 1969); Indonesia: Law No. 15 of 1969 on General Elections to Elect Members of the People's

Deliberative/Representative Institutions; Ireland: The Electoral Act, 1969; Kenya: The National Assembly and Presidential Elections Act, 1969; Madagascar: Act No. 69-010 of 2 July 1969, amending certain provisions of Organic Act No. 5 of 9 June 1959 concerning the number and election of members to and the organization and functioning of the National Assembly; New Zealand: Electoral Amendment Act; Norway: Act No. 18 of 6 June 1969, amending Act No. 1 of 1969, concerning Parliamentary Elections; Rwanda: Act of 19 May 1969, amending Act of 5 July 1967 concerning electoral system; Spain: Decree No. 17 of 9 October 1969, dealing with the right of married women to elect and to be elected as members of the Councils of Madrid and Barcelona; Tunisia: Act No. 69-25 of 8 April 1969, promulgating the Electoral Code; the United Kingdom: The Representation of the People Act 1969, reducing the minimum age for voting at Parliamentary and Local Government elections to 18 years; Yugoslavia: Act No. 3/69 on the election of federal deputies; and Zambia: The Referendum Amendment Act, 1969 (No. 5 of 1969). The amendment to the Constitution of Turkey, referred to above, deals with qualifications for election to the National Assembly.

Legal assistance in respect of offenders was the subject of legislation adopted in Australia: the Public Defenders Act, 1969 (No. 60 of 1969) of New South Wales, and the Legal Aid Act 1969 (No. 7919) of Victoria; and New Zealand: the Legal Aid Act of 1969. Provisions on the treatment of offenders and detainees are also to be found in the following laws and codes: The Criminal Injuries Compensation Act, 1969 of Australia; the Bulgarian Penal Enforcement Act of 1 April 1969, under which the enforcement of penalties is designed, *inter alia*, to educate offenders; the Summons (Special Provisions) (Singapore) Act 1909 of Malaysia; the Polish Criminal Executive Act, the Penal Code and the Criminal Procedure Code of 19 April 1969; the Punishment of Corruption Act, 1969 (No. 9 of 1969) of Swaziland; the Act of 11 July 1969 on the re-education of offenders through work and the Regulation of 11 July 1969 concerning preventive detention aimed at improving the guarantees against illegal or abusive arrests of the Union of Soviet Socialist Republics; the Criminal Injuries Compensation Scheme of the United Kingdom; the Fugitive Offenders (Pursuit) Act, 1969 (No. 1 of 1969), the Witness Summonses (Reciprocal Enforcement) Act, 1969 (No. 4 of 1969) and the Resettlement of Offenders Act, 1969 of the United Republic of Tanzania; and the Code of Criminal Procedure of Upper Volta brought into force by the Ordinance of the Head of State of 21 February 1969.

Amendments to existing laws and codes containing provisions on the treatment of offenders and detainees were adopted in 1969 in Canada, Chile, Finland, Italy, Ivory Coast, Luxembourg, New Zealand, Niger, Norway, Panama, the People's Republic of the Congo, Romania, Tunisia, Uganda, and the United Republic of Tanzania.

Legislative Decree No. 97 of 9 October 1969 of Spain, referred to in relation to the right to take part in the government of one's country, affects the status of women in that it confers upon married women the right to elect and to be elected as members of the Councils of Madrid and Barcelona. In Canada, the Royal Commission on the Status of Women concluded in 1969 its report, to be presented to the Government in 1970. Mention may further be made of the institution in Bolivia, by Supreme Decree No. 08943 of 2 October 1969, of a National "Woman of Bolivia" Prize in recognition of eminent and outstanding service performed by a Bolivian woman for the good of the community in cultural, labour and humanitarian activities.

The Algerian Ordinances Nos. 69-5 of 30 January 1969 and 69-60 of 20 July 1969 deal, respectively, with the civil status of children born in Algeria of unknown parents and with the establishment of the National Institute for the education and the development of children. Other legislative developments concerning the protection of young persons include the Child Board Act, 1969, of Barbados; Ordinance No. 69/34 of 1 July 1969 of the Central African Republic, fixing *inter alia* transitional measures relating to the registration of births; Act No. 3/69 of 1 June 1969 of Gabon, concerning the protection of female infants; the Hungarian Government Decree No. 5/1969, amending Government Decree No. 3/1967 on Child Care Allowance, Government Decree No. 20/1969 on the State Care of Minors and the Adoption of Minors under State Care, and Decree No. 6/1969 of the Minister of Culture and Education on Proceeding as before the Guardianship Authority; the Luxembourg Act of 28 October 1969, concerning the protection of children and juvenile workers; the Minors' Contract Act and the Status of Children Act of New Zealand; the Norwegian Act No. 8 of 7 February 1969, amending Act No. 9 of 21 December 1956 relating to children born in wedlock; and the Children and Young Persons Act 1969 of the United Kingdom.

In Argentina, Act No. 18.204 of 12 May 1969 institutes a uniform system of weekly rest to be observed throughout the Republic. Other aspects of labour were dealt with in legislation adopted in Cameroon, Czechoslovakia, France, Ireland, Madagascar, Monaco, New Zealand, Nicaragua, Pakistan, Portugal, Romania, San Marino, Spain, the Sudan, Thailand and the United Republic of Tanzania.

Provisions on social security are contained in laws promulgated in 1969 in Australia, Brazil, Finland, Gabon, Guatemala, Guyana, Ireland, Japan, Liechtenstein, Madagascar, Mexico, Monaco, New Zealand, Romania, San Marino, Spain, Sweden, Togo, Uganda and Yugoslavia.

With regard to the protection of health, laws were adopted in 1969 in Australia, Canada, Gabon, Japan, New Zealand, Poland, Romania, Swaziland, Switzerland, the Union of Soviet Socialist Republics and Yugoslavia.

Norway, in its contribution, makes reference to Act No. 24 of 13 June 1969, which introduces the nine-year compulsory school as a nation-wide system. In the United Kingdom the Open University, which received a Royal Charter in June 1969, aims at the provision of higher education at both the undergraduate and postgraduate level to all those who for any reason have been prevented from achieving it through existing institutions. In Romania, Decision No. 2105 of the Council of Ministers concerns qualification and further training courses for workers and employees with secondary studies. Provisions on the right to education are further to be found in legislation adopted in 1969 in El Salvador, Honduras, Liechtenstein,

PART I

STATES

AFGHANISTAN

NOTE [1]

A. Penal Code

The draft Penal Code has been completed and is in its final phase of enactment.

Efforts have been made to bring the legislation in conformity with the values embodied in the Constitution of October 1964. [2] The draft Penal Code, besides fulfilling its penal purposes, duly takes into consideration the protection of the rights of the accused such as protection against physical punishment, respect for individual rights and personal dignity in conformity with the provisions of the Constitution and the provisions of the Universal Declaration of Human Rights. The draft law also empowers the judiciary to give due regard to the rehabilitation of the criminals as a means of protecting the society and promoting human rights.

The above-mentioned draft legislation is comprised of 50 chapters and 408 articles. The main chapters deal with the following matters: crimes against society; murder; illegal detention; abortion; vilification and insult; violation of domicile; disturbance of peace and public order; illicit traffic; crimes of war and crimes against humanity.

B. Legislation concerning crimes committed by civil servants and crimes against public order

With the purpose of achieving greater coordination between the law and the democratic spirit of the Constitution containing the principles of the Universal Declaration of Human Rights and having in mind the scientific developments of criminal law, an Annex to the above-mentioned law was prepared and adopted by a decree in accordance with article 77 of the Constitution.

Its main contents concerning the protection of human rights are as follows:

(a) *Prohibition of hard labour*

In accordance with article 26 of the Constitution which conforms with the spirit of article 5 of the Universal Declaration of Human Rights, article 6 of the above-mentioned Annex prohibits forced labour.

(b) *The circumstances of the crime*

Article 9 of the Annex requires that the court consider the motives of the accused and the circumstances in which the crime was committed and the degree of his responsibility before rendering sentence. This stipulation which regulates the sentence is in conformity with the provisions of article 11, paragraph 2 of the Universal Declaration of Human Rights.

C. Developments with regard to article 9 and article 25, paragraph 2 of the Universal Declaration of Human Rights

Even though detailed information has already been sent last year to the Human Rights Division of the United Nations regarding this matter, a brief résumé of recent developments will be useful.

(a) *Arbitrary arrest*

Since the promulgation of the Constitution enactment of measures against arbitrary arrest has been one of the primary concerns of the Afghan legislator. Article 26 of the Constitution, which stipulates that "No one may be pursued or arrested except in accordance with the provisions of the law" and is based on the relevant provisions of the Universal Declaration of Human Rights, has been strictly adhered to by all the organs of the State.

(b) *Illegal detention*

Article 26 of the Constitution prohibits illegal detention: "No deed is considered a crime except by virtue of a law in force before its commission."

Likewise paragraph 4 of the same article stipulates: "No one may be punished except by the order of a competent court rendered after a trial held in the presence of the accused."

Therefore detention as a punishment is legal only when it is ordered by a competent court in accordance with the stipulations of the law. This principle has been duly respected in subsequent laws and draft legislations.

D. The right of the child and the right of the mother

The provisions of article 25 of the Universal Declaration of Human Rights concerning the protection of the child (born within or out of wed-

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

[2] For extracts from this Constitution, see *Yearbook on Human Rights for 1964*, pp. 9-12.

lock) has been taken into consideration in the drafting of laws and regulations in this field.

The following examples can be cited as measures ensuring the protection of children and mothers:

(*a*) The statutes of the Society for Family Guidance institute a co-ordinated approach to the provisions of social and health services to children and mothers. The statutes also make adequate provisions for the establishment of clinics, and the free distribution of medicine to needy families.

(*b*) In order to protect the rights of the child and the mother, a provision has been incorporated in the draft Civil Servants Law concerning government employees and in the Labour Law in accordance with which female staff members, employees and workers are entitled to one month leave with pay before the birth of a child and 40 days after the birth period. This action has been taken by the Government of Afghanistan to secure the purposes of the Universal Declaration of Human Rights and the conventions of the International Labour Organisation (ILO).

(*c*) With regard to the rehabilitation of young criminals and juvenile delinquents, regulations in pursuance of article 94 of the Constitution have been enacted for the establishment of a Reform Institution. This Institution would pay special attention to the rehabilitation of young criminals through training, education (using audio-visual methods and other means), contact with parents etc. This is a significant step towards the promotion of human rights and the protection of youth and children.

ALGERIA

ORDINANCE NO. 69-5 OF 30 JANUARY 1969 CONCERNING THE CIVIL STATUS OF CHILDREN BORN IN ALGERIA OF UNKNOWN PARENTS [1]

Article 1. Children born in Algeria of unknown parents may if their surnames or first names have a foreign sound or origin, apply to the court at their place of birth for a decision authorizing such surnames and first names to be changed.

Article 2. The application, accompanied by civil status certificates, shall be submitted by the child's legal representative.

Article 3. A brief extract from the application shall be published in the *Journal officiel de la République algérienne démocratique et populaire* and displayed publicly at the court for a period of fifteen days.

Article 4. Any person entitled to do so may object to the attribution of the new surname or first names, or surname and first names, within one month from the date of publication referred to in article 3. The chief State counsel shall be notified of the objections by writ.

Article 5. The court, having before it the written conclusions of the chief State counsel, shall issue its judgement, which shall be final, on the application and if necessary, on any objection.

Article 6. On the instructions of the chief State counsel, the new surnames and first names shall be entered in the margin of the civil status certificates of the person concerned, and, if necessary, of those of his spouse and minor children.

...

[1] *Journal officiel de la République algérienne démocratique et populaire*, No. 9, of 31 January 1969.

CHARTER OF THE WILAYA

(Adopted by the Revolutionary Council and the Government on 26 March 1969 and promulgated by Ordinance No. 69-38 of 23 May 1969) [2]

...

IV. THE WILAYA

The *wilaya* is a collectivity or administrative district to which authority in local matters has been delegated under the State's decentralization policy. In order to perform its role to the full and to express and fulfil the aspirations of its inhabitants, it shall be provided with the appropriate organs, that is to say, a people's assembly and an executive that are capable of effective action.

I. People's Assembly of the "Wilaya"

Like the commune, which is the basic unit, the *wilaya* shall exercise its authority under a mandate that can be conferred on it only by meeting the requirements of democracy, namely election and majority voting. Membership of the assembly, the number and selection of its members, the election procedures and the organization of its work shall be subject to the same requirements.

A. *Membership and functions*

1. *Membership of the assembly*

(a) *Membership*

The assembly is the expression of the full and unfettered participation of the people. It shall have no *ex officio* members, since only those elected by direct universal suffrage may be members. Candidates must be the genuine representatives of communities with which they have close connexions, and their selection is therefore a determining factor in the life of the new institution, particularly since the membership of the *wilaya* assembly must not be merely a repetition of what has already occurred at the communal level.

(b) *Size of the assembly*

The assembly shall be large enough to ensure equitable representation of the various geographical areas and economic activities and shall be

[2] *Ibid.*, No. 44, of 23 May 1969.

capable of sub-division into three to five committees, which are essential for the purpose of carrying out the tasks entrusted to it. Its membership shall not be related solely to the size of the population or to the economic importance of a region, since it is equally if not more important that disadvantaged *wilayas* have assemblies that will act as a true spokesman for the aspirations and needs of disadvantaged communities.

Wilaya assemblies shall therefore have between thirty-five and fifty-five members.

(c) *Selection of candidates*

The selection of candidates is inevitably of fundamental importance for achieving the objectives of the Revolution and must be made on the basis of legal and statutory requirements such as age, connexion with the *wilaya,* civil status and the possession of civic rights.

In addition, candidates must, of course, possess those personal qualities that are essential for the exercise of such important responsibilities, namely, honesty, incorruptibility and energy.

Nevertheless, the selection of candidates, which is a responsibility of the Party, must above all and in all cases depend upon their undertaking to serve the revolutionary power and to defend the attainments, interests, programmes and ideals of the socialist revolution. That undertaking must be complete and unequivocal throughout the term of office.

Furthermore, candidates must, of course, have a blameless record and, unless they were too young at the time, must have played their part in the national liberation struggle.

Selection must also depend upon ability in public administration, which will inevitably be required as a result of the multifarious and important duties in the economic, cultural and social fields that will henceforth devolve on people's assemblies of the *wilayas.*

Because of the wide variety of these responsibilities, candidates should be selected from all social and professional groups, including peasants, workers, officials, intellectuals and other professionals.

Furthermore, the nomination of female candidates should be actively promoted and encouraged, so that in accordance with the choices open to us, women may play a full part in the reconstruction of the country.

To these strict conditions for the selection of candidates must be added the need to respect the requirements of democracy, which confer the authority of the people on those elected and thus fully legitimize their mandate.

. . .

(d) *Submission of lists of candidates and the level at which polling shall take place*

The legitimate requirements of democracy have an equally important bearing on the level at which polling takes place. So as to avoid the representation of purely local interests, which would harm the development of a sense of belonging to the *wilaya,* no electoral constituency shall correspond to any one commune or be identified with a narrow grouping of communal interests.

The only way of avoiding such a danger is to delineate constituencies that are sufficiently large.

Similarly, no constituency shall be so large that candidates for the *wilaya* are not known to the electorate and that, in addition, inequalities of geographical representation may arise.

The existing administrative district forms a natural constituency, but in certain special cases, for instance, in the Saharan regions or densely populated areas, *wilayas* may be formed by grouping two or three districts together or, alternatively, consist of part of a single district.

Furthermore, so as to ensure balanced representation in the country as a whole and to prevent large, sparsely populated *wilayas* from having no elected representatives, the number of seats shall be approximately proportionate to the population of the constituency, without ever falling below a certain minimum number. The electorate shall vote on lists of candidates representing each district or group of communes, and the results shall be consolidated for each *wilaya.*

The adoption of lists of candidates from existing districts or groups of communes makes it possible to replace representatives in the event of their death or resignation. With regard to the presentation of lists and the voting procedure, the existing system, which has already proved itself in communal elections, shall continue to be followed.

(e) *Length of the assembly's term of office*

In order to perform its functions efficiently, the assembly, which will be composed of elected delegates, must exercise its mandate for a period long enough to enable newly elected representatives to serve their apprenticeship and improve their knowledge of public affairs so that their decisions acquire homogeneity and weight, but not so long as to prevent all active people from taking part in the management of public affairs. Moreover, the length of the assembly's term of office shall correspond to the average length of time needed to implement national development plans.

The assembly of the *wilaya* shall therefore be re-elected every five years, so as to establish regular and constant rotation in the exercise of its authority and responsibilities, in conformity with the meaning and spirit of the Revolution.

. . .

2. *The assembly's functions and organization of work*

(a) *Sessions*

The assembly shall hold several regular sessions annually, and special sessions may also be held, at the request either of the executive or of at least two thirds of its members, whenever the needs of the *wilaya* so require.

The assembly shall consider reports prepared by the executive and submitted by the *wali* either in pursuance of its own decisions or as a result of the activities of the *wilaya's* secretariat. It shall examine and discuss all documents so prepared.

B. *Functions and resources of the* wilaya *assembly*

1. *Functions*

While remaining close to the commune and the central Government, the *wilaya* shall play a leading part in the country's development. It shall take political, economic, administrative, social and cultural action in all the various areas of national activity.

(a) *Deliberative powers*

The assembly shall exercise its powers in all spheres in which the *wilaya* is competent to make decisions and shall guide and co-ordinate action taken by the communes.

...

(b) *Advisory functions*

The assembly shall perform its functions by formulating proposals or preliminary opinions, gathered by the *wali* in his capacity as representative of the State. It shall also make assessments of progress reports and activity reports.

...

(c) *Promotion and development of the communes*

The scope of all these functions of the *wilaya* in the social and economic fields will be substantially increased by its responsibility for promoting and developing the communes. Such promotion is essential for certain categories of communal investments and facilities. In a variety of activities such as tourism, construction, urban infrastructure and the general stimulation of the economy, such promotion shall take the form of providing whatever material assistance, grants or subsidies are necessary to implement the various plans.

...

2. *Resources of the* wilaya

The new prerogatives of the *wilaya* assembly, which are a vital factor in the practical implementation of the policy of decentralization, must be accompanied by a definite and progressive improvement in human and financial resources.

...

II. THE "WILAYA" EXECUTIVE

The *wilaya*'s executive is an important element in the new organization and may be thought of as the local government. The *wali*, who is the senior responsible official, corresponds to a prefect, and the department chiefs correspond to members of the council.

(a) *Relationship between the wilaya's executive and its assembly*

The executive, as such, is responsible in the first instance to the *wilaya's* assembly for all the tasks entrusted to it.

...

(b) *The wali*

As the representative of the central Government and of its individual ministers, the *wali* alone is entrusted with the authority of the State, since the unitary nature of the State is incompatible with blurred delineation of responsibility. However, this delegation of authority is neither absolute nor unqualified and it does not empower him to interfere in certain spheres, namely justice, national defence, education, financial control and the assessment or collection of taxes.

...

III. CO-ORDINATION AND CONTROL

The policy of decentralization and delegation of authority is not intended to lead to the creation of autonomous, independent collectivities; it is not synonymous with the dispersal of the authority of revolutionary power, which shall, of course, remain the only valid authority.

The policy of decentralization and delegation is simply a means of increasing the active participation of the commune, the *wilaya* and the popular masses in the exercise of revolutionary power and in the rapid development of all areas of the country.

...

ORDINANCE NO. 69-60 OF 28 JULY 1969 ESTABLISHING THE NATIONAL INSTITUTE FOR THE EDUCATION AND DEVELOPMENT OF CHILDREN (ENEPE) [3]

Section I

GENERAL

Article 1. A public administrative institute, having legal status and being financially independent, shall be established and shall be known as the National Institute for the Education and Development of Children (ENEPE).

The Institute shall be responsible to the Minister of Labour and Social Affairs.

The Institute's headquarters shall be at Algiers.

[3] *Ibid.*, No. 65, of 1 August 1969.

Article 2. The Institute's functions shall be:

To study, organize and utilize the necessary means to meet the needs of children who are in trouble, destitute or abandoned and ensure their cultural and social development;

To develop and improve the care facilities of children's centres;

To assist in the implementation of a national policy for children.

. . .

MINISTRY OF INTERIOR DECREE NO. 69-148 OF 2 OCTOBER 1969 ESTABLISHING CONDITIONS FOR THE RECRUITMENT OF ALIENS FOR THE STAFF OF DEPARTMENTS OF THE STATE, LOCAL AUTHORITIES, AND PUBLIC ESTABLISHMENTS AND BODIES [4]

Article 1. Notwithstanding all provisions to the contrary, in particular those of decree No. 66-136 of 2 June 1966, departments of the State, local communities and public establishments and bodies may recruit staff of foreign nationality on a contractual basis.

Pursuant to the preceding paragraph, the following may be recruited:

Teachers of scientific and technical subjects at the secondary and higher educational levels;

Persons performing teaching duties within individual administrations; persons employed in a technical occupation at a level at least equal to that of technologist.

Article 2. The personnel referred to in article 1 shall be required to establish that they have qualifications for employment at least equal to those required of Algerian personnel occupying the same position and performing the same functions. Their possession of these qualifications, as laid down in the relevant regulations, shall be evaluated on the basis of the university or vocational diplomas or certificates held by the individuals concerned and of the work they have done in their special fields.

Article 3. Officials covered by this decree shall, in the exercise of their duties, be subject to the Algerian authorities. They shall neither request nor receive instructions from any authority other than the Algerian authority to which they are responsible by virtue of the duties entrusted to them. They shall not engage in any political activities on Algerian territory. They shall refrain from any action which might harm the material and moral interests of the Algerian authorities.

They shall enjoy such privileges and be subject to such professional obligations as arise from the provisions governing the occupation in which they are employed in Algeria.

They shall undertake to exercise, throughout the period of their contracts and after they have expired, absolute discretion, with regard to all matters, information and documents which have come to their knowledge in the exercise of their duties.

They shall refrain, throughout the period of their employment, from engaging in any gainful activity of any kind without the express permission of the authority to which they are responsible.

Article 4. Personnel covered by this decree shall receive the salary corresponding to the grade at which an Algerian official of the same qualifications might expect to be appointed, increased by a factor of one-quarter. They may also receive any general and individual allowances payable to their Algerian counterparts. Remuneration shall be payable monthly in arrears.

[4] *Ibid.*, No. 86 of 10 October 1969.

ORDINANCE NO. 69-96 OF 6 DECEMBER 1969 ESTABLISHING REGULATIONS FOR THE OFFICIALS OF THE MOSLEM RELIGION [5]

Section I

General

Article 1. This ordinance establishes regulations governing the officials of the Moslem religion.

Article 2. There shall be two groups of officials of the Moslem religion, the first comprising three, and the second two ranks:

I. *Imams*

Principal imams
Imam preachers
Imams of the five daily prayers.

II. *Religious officials*

Muezzins and hazzabs
Qayems.

Article 3. Principal imams and imam preachers shall be responsible for the Friday sermon and for training in "*wâdh* and *irschad*" (preaching and

[5] *Ibid.*, No. 104, of 12 December 1969.

spiritual guidance), in accordance with a programme and time-table established or approved by the chief inspector or regional inspector.

Article 4. "Imams of the five prayers" shall be responsible for leading the five daily prayers, for preaching and for spiritual guidance (*wâdh* and *irschad*).

Article 5. Muezzins, hazzabs and qayems shall be responsible, respectively, for calling to prayer and teaching the Koran, for chanting the Koran daily and for maintaining religious buildings.

Article 6. A committee whose chairman shall be the Minister for Habous and whose members shall include, in addition, the directors of the General Administration of Religious Affairs and the chief inspector of habous, a representative of the Supreme Islamic Council, shall be responsible for determining the size of the establishment of imams and religious officials, following its progress and determining its assignments every year, taking into account the country's requirements for religious officials.

Article 7. Imams and religious officials shall work at the mosques of the places to which they are assigned.

Their assignment shall be decided upon by the appointing authority.

Article 8. Imams and religious officials shall perform their duties every day, including public holidays.

Section II

Training and recruitment

Article 9. No one shall be appointed an imam or official of the Moslem religion unless: (1) he is an Algerian national; (2) he is in possession of his civil rights; (3) he is at least 21 years old; (4) he meets the moral and physical requirements laid down for the performance of his office by Moslem law.

ARGENTINA

ACT NO. 18,204 OF 12 MAY 1969, TO INSTITUTE A UNIFORM SYSTEM OF WEEKLY REST TO BE OBSERVED THROUGHOUT THE REPUBLIC

SUMMARY

The text of the Act was published in *Boletín Oficial,* No. 21,683, of 12 May 1969. The Act came into operation on 1 June 1969.

Section 1 reads as follows: "The performance of material work by one person in the service of another or of work done publicly by a person on his own account in any form of public or private activity, business, establishment or work-place, even if such work is not undertaken for purposes of gain, shall be prohibited throughout the territory of the Republic from 1 p.m. on Saturday until midnight of the following Sunday, subject only to such exceptions as may be authorized in the regulations made in pursuance of this Act."

As indicated in section 2, the prohibition laid down in section 1 shall not reduce the maximum weekly hours of work prescribed in Act No. 11,544, and for this purpose the weekly hours of work may be unequally distributed over the working days of the week, subject to such limitations as may be imposed in regulations.

Under section 4, no exception to the obligation to grant the rest provided for in section 1 shall apply to any person under 16 years of age.

Section 5 provides that the Act shall not apply in cases where the weekly rest is governed by specific regulations laying down special statutory conditions of employment.

Translations of the Act into English and French have been published by the International Labour Office as Legislative Series 1969—Arg.1.

ACT No. 18,235 [1]

Article 1. The Executive Branch may order the expulsion of an alien who is a permanent resident in the following cases:

(*a*) If he has been convicted in a foreign country and has concealed the fact or has not been recognized by the authorities upon being admitted to the country, provided that the acts for which he was convicted constitute an offence under Argentine penal law.

(*b*) If he has been convicted by the Argentine courts for an offence committed with evil intent.

(*c*) If in Argentina he engages in activities affecting social peace, national security or public order.

Article 2. The expulsion shall be decreed by the National Executive Branch, whose decision shall be final.

Article 3. Aliens who are non-permanent residents shall continue to be governed by the rules currently in force. In applying those rules, however, the National Executive Branch may make use of the powers conferred upon it by articles 1 and 2 of this act.

Article 4. An alien whose expulsion has been decreed shall be given five days in which to leave the country. The Executive Branch may, for security reasons, order his detention pending expulsion.

Article 5. This Act shall enter into force on the date on which it is approved by the Executive Branch.

[1] *Boletín Oficial*, No. 21,698, of 6 June 1969.

ACT NO. 18,234 [2]

Article 1. Article 11 of Act No. 17,401 [3] shall be replaced by the following:

"*Article 11.* Any person who, being unquestionably motivated by communist ideology, engages in any of the following activities, shall be liable to imprisonment for one to six years:

"(*a*) Any activity aimed at advocating, disseminating, establishing, expanding or supporting communism;

"(*b*) Agitation or propaganda on behalf of communism or its objectives.

"The penalty shall be increased by one third if the aforementioned activities involve the use of violence or intimidation or disturb the public peace."

Article 2. Article 12 of Act No. 17,401 shall be replaced by the following:

"*Article 12.* Without prejudice to the general provisions of the preceding article, the penalty established therein shall be applied to any person who, being unquestionably motivated by communist ideology:

"(*a*) Requests or provides assistance for the dissemination, establishment, expansion or support of communism;

"(*b*) Attempts to replace or reform the institutional system of the nation or the existing social order by advocating its replacement by a régime based on the doctrine, platform, programmes or objectives of communism;

"(*c*) Establishes indoctrination centres or attends such centres;

"(*d*) Has propaganda materials in his possession;

"(*e*) Raises funds through collections, raffles, charity events or similar means;

"(*f*) Publicly justifies an offence mentioned in this act or publicly defends a person convicted of such an offence;

"(*g*) Has ties entailing operational, economic or ideological dependence on foreign States or extra-national parties, movements, organizations or entities;

"(*h*) Hinders the production of consumer goods or goods intended for processing or marketing or interrupts the normal distribution of such goods;

"(*i*) Takes part in international communist congresses of any kind."

---

[2] *Ibid.*

[3] Articles 11 and 12 of Act No. 17,401, *Boletín Oficial* No. 21,260, of 29 August 1967, read as follows:

"*Article 11.* Any person who, being unquestionably motivated by communist ideology, engages in any kind of proselytizing, subversive or intimidatory activity, or any activity which seriously disturbs the public order, shall be liable to imprisonment for one to eight years.

"*Article 12.* Without prejudice to the provisions of the preceding article, the same penalties shall be applied to persons who, for the purposes mentioned above, engage in any of the following activities: (*a*) the establishment of indoctrination centres; (*b*) the raising of funds through collections, raffles, charity events or similar means; (*c*) the maintenance of ties entailing operational, economic or ideological dependence on foreign States or extra-national parties, movements, organizations or entities."

AUSTRALIA

HUMAN RIGHTS IN AUSTRALIA IN 1969 [1]

I. Legislation

A. The principle of equal treatment

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

The *Aborigines Act*, 1969 (No. 7 of 1969) of New South Wales repeals the *Aborigines Protection Act*, 1909 and a number of Acts that amended that Act and makes new provisions relating to aborigines. The new Act brings the welfare services formerly undertaken by the Aborigines Welfare Board (now abolished) under the control of the Minister for Child Welfare and the Minister for Social Welfare, so that aborigines are not set apart from the general community. An Aborigines Advisory Council, constituted under the new Act, is to consist of the Director of Aboriginal Welfare and nine aborigines appointed by the Governor of the State. Of these nine, three are to be nominated by the Minister administering the Act and six are to be elected by aborigines. The Act will enable reserves or portions of reserves to be leased to aborigines. It will enable reserves to be granted to aborigines also. It enables houses to be built for aborigines by the State Housing Commission and loans to be made to aborigines for the purpose of purchasing furniture.

B. Equality before the Law

(Universal Declaration, articles 7, 10)

The *Public Defenders Act*, 1969 (No. 60 of 1969) of New South Wales alters the method of appointment of Public Defenders. Formerly they were appointed by the Public Service Board: they are now to be appointed by the Governor of the State, who will also determine their remuneration. There are three Public Defenders and this Act will enable more to be appointed. The Act also repeals the *Poor Prisoners Defence Act*, 1907 and establishes a more comprehensive method of providing legal aid to persons who have been charged with the commission of an indictable offence, or who have been committed for trial or sentence for an indictable offence. The provisions cover legal aid for appeals against conviction also.

The *Legal Aid Act*, 1969 (No. 7919) of Victoria amends and consolidates in one measure the provisions of the *Poor Persons Legal Assistance Act*, 1958, and the *Legal Aid Act*, 1961. The Public Solicitor's Office, established in 1928, has provided legal aid in both civil and criminal matters, latterly under the *Poor Persons Legal Assistance Act*, 1958. This service was supplemented in 1964 by a scheme voluntarily established by members of the legal profession, under the *Legal Aid Act*, 1961.

From the commencement of the *Legal Aid Act*, 1969, the Public Solicitor will provide legal aid in criminal matters only and the legal profession, through its Legal Aid Committee, will provide aid in civil matters. Practitioners assisting in the scheme will be paid 80 per cent of their costs, as certified by the Committee.

Under the Act, legal aid in criminal matters will be extended and expedited. So far as civil matters are concerned, it is hoped that the Legal Aid Committee will be able to respond much more quickly to increases in business, because of the number of solicitors assisting in the scheme, and that it will also provide a more satisfactory solicitor-client relationship than the Public Solicitor, with thousands of clients on his books, was able to do.

C. Right to privacy

(Universal Declaration, article 12)

The *Listening Devices Act*, 1969 (No. 70 of 1969) of New South Wales regulates the use of certain electronic devices capable of being used for listening to private conversations. The Act prohibits the use of listening devices to invade privacy but reserves the right to certain specially authorized law enforcement officers to use these devices for the prevention and detection of offences.

There is a general prohibition on communication or publication of private conversations unlawfully listened to, with certain expressed exceptions. Evidence of private conversations unlawfully obtained is made inadmissible in civil or criminal proceedings, with certain exceptions. Finally, there is a prohibition of advertising listening devices for sale.

D. Social security

(Universal Declaration, article 22)

The *Aged Persons Homes Act*, 1969 (No. 68 of 1969) of the Commonwealth provides financial

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

assistance to organizations conducting homes for the aged. The assistance will be towards providing accommodation and personal care services for persons over 80 years of age who do not require full-time nursing care.

The *Social Services Act,* 1969 (No. 94 of 1969) of the Commonwealth increases pensions payable to a wide range of pensioners, at an estimated cost of $96 million for a full year.

The *National Health Act,* 1969 (No. 102 of 1969) of the Commonwealth enables both persons on low incomes (persons in receipt of unemployment, sickness or special benefit under the Social Services Act and families on low incomes) and immigrants, within two months of their entry into Australia, to obtain health benefits under the National Health Act without payment of contributions to a medical or hospital benefits fund.

The *States Grants (Dwellings for Aged Pensioners) Act,* 1969 (No. 87 of 1969) of the Commonwealth grants financial assistance to the States, to the extent of $25 million over five years, for the erection of self-contained accommodation for unmarried aged pensioners and those who qualify for service pensions by reason of age.

The *Criminal Injuries Compensation Act,* 1969 (No. 97 of 1969) of South Australia enables a court which has convicted a person of an offence to order him to pay compensation to any person who has suffered injury in consequence of the commission of the offence, up to a maximum of $1,000. Where an order so made is for an amount over $100, the person in whose favour the order was made may apply to have the compensation paid out of the general revenue of the State.

E. Right to social services

(Universal Declaration, article 25)

The *Maintenance Ordinance,* 1968 (No. 20 of 1968) of the Australian Capital Territory repeals a number of earlier Ordinances dealing with the subject of the maintenance of wives by their husbands and the maintenance of children by their parents and replaces those Ordinances with a single Ordinance designed to reform the law. The new Ordinance will also facilitate the enforcement of maintenance orders made in the Territory and provide for the reciprocal enforcement of orders made outside the Territory. It is part of a uniform scheme of legislation put into force by each of the States and Territories of the Commonwealth.

II. Court Decisions

A. Fair hearing

(Universal Declaration, article 10)

Right to be heard on the question of penalty. — K., a girl aged sixteen, and M., another young girl, went together in the lunch hour and stole a perfume spray and other goods. They were charged in the Children's Court and pleaded not guilty. The magistrate found M. guilty and imposed a fine of ten dollars on her. At the conclusion of the evidence against K., who had no previous convictions, her counsel and the prosecuting officer addressed the magistrate on the question of guilt or innocence, but not on the question of penalty.

When they had concluded, the magistrate said: "I am satisfied that the case is established. Fined the sum of ten dollars. In default five days detention in a shelter. Allowed twenty-one days to pay."

Counsel for K. then sought to make two points: (1) that he wished to be heard on the question of penalty; and (2) that he regarded the magistrate as *functus officio* by reason of the sentence already pronounced.

On appeal, *held:*

(1) That it is the right of every defendant convicted by a court on a charge of stealing to have some say in the question of penalty.

(2) That, in the present case, there was no opportunity given to K.'s counsel to address on this question.

(3) That this amounted to a denial of natural justice.

(4) That the rule *nisi* for prohibition would be made absolute.

Ex parte Kent; Re Callaghan and Another (1969) 90 W.N. 40.

B. Right to privacy

(Universal Declaration, article 12)

By section 10 (*b*) of the *Crimes Act* 1914-1966 of the Commonwealth, if a Justice of the Peace is satisfied by information on oath that there is reasonable ground for suspecting that there is in any house, vessel, or place anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any offence against any law of the Commonwealth or of a Territory, he may grant a search warrant authorizing any constable named therein, with such assistance as he thinks necessary, to enter at any time any house, vessel or place named or described in the warrant, if necessary by force, and to seize any such thing which he may find in the house, vessel or place.

Held: That it is essential to the validity of a search warrant granted under this provision that the warrant:

(1) should show on its face that the Justice of the Peace himself was satisfied by information on oath that there was reasonable ground for suspecting that there were in the premises things as to which there were reasonable grounds for believing that they would afford evidence as to the commission of a particular offence against the law of the Commonwealth or of a Territory specified in the warrant; and

(2) should authorize seizure by reference to the offence specified.

The Queen v. *Tillett; Ex parte Newton* (1969) 14 F.L.R. 101.

AUSTRIA

NOTE [1]

1. As in former contributions, it may be pointed out here again that Austria has been in possession of a comprehensive catalogue of fundamental rights and freedoms for over a century. These basic rules have been thoroughly elaborated and expounded in the rich case law of the Constitutional Court and the former Imperial Court, so that there is hardly any scope left for new developments in this field. Austria's highly developed system of constitutional jurisdiction safeguards far-reaching judicial control not only of individual administrative acts but also of general administrative rulings (regulations, orders and decrees) and of legislative enactments.

2. Efforts towards a new codification of the fundamental rights and freedoms remain the focus of the Austrian Federal Government's work in the field of human rights. The activities of the panel of experts set up for that purpose in 1964 have been reported in the Austrian contributions to the *Yearbook on Human Rights* for the years 1964 to 1968. In 1969, the panel held 11 meetings, each lasting a day, devoted to thorough discussions of the following topics:

(*a*) The freedom of scientific research and instruction; the autonomy of the universities; artistic freedom; the freedom of private education and the right to establish private schools, homes for pupils and nursery schools; the right of parents to ensure the education and instruction of their children in accordance with their religious and philosophical convictions; freedom of access to educational facilities;

(*b*) The free choice of occupation and occupational training;

(*c*) Freedom of expression; freedom of information; freedom of the press; the recognition of the public function of the press, sound broadcasting and television; the prohibition of censorship; the prohibition of postal prohibitions; the general and equal accessibility of the public communication media (post, telephone, telegraph, telex, facilities for the transmission of pictures, etc.);

(*d*) The freedom to establish and join associations, the workers' right of combination and the right to collective bargaining.

3. In the decisions passed in 1969 on matters concerning fundamental rights and freedoms, the courts have continued to uphold the principles evolved over the past few decades. No new tendencies have emerged in the case law.

4. In the field of legislation, the following enactments are particularly worth mentioning:

(a) *Federal Act of 27 November 1969 (Federal Law Gazette, No. 437/1969), Amending the Rules for Elections to the National Council, 1962*

Amongst other things, this amendment extends the arrangements for the issuing of "voting cards". In future, any voter intending to be absent on election day from the locality where his name is on the voters' list, may apply for a voting card, which will enable him to exercise his right to vote in the place where he is staying. Votes cast by card voters are added to the ballot of the locality where those voters are registered. Furthermore, the amendment endorses the principle that the appellant has a right to a hearing in appeal proceedings relating to the composition of voters' lists.

(b) *Federal Act of 27 November 1969 (Federal Law Gazette, No. 438/1969), Amending the Registration of Voters Act*

This amendment directs that voters called up for military service—except where the voter changes his domicile during his period of service—shall be registered in the locality where they were domiciled before the date at which their period of service is scheduled to begin. Again, this amendment endorses the principle that the appellant has a right to a hearing in appeal proceedings relating to the composition of voters' lists.

(c) *Federal Act of 27 November 1969 (Federal Law Gazette, No. 459/1969), Amending the Administrative Court Act, 1965*

Amongst other things, this amendment contains new provisions regarding the start of the period of prescription for complaints to the Administrative Court. In this context, the law also refers to those cases where legal aid is granted to an applicant in order to enable him to appeal to the Administrative Court. Further, in future an application for a stay of enforcement pending appeal will not be decided upon by the authority from whose decision the complainant is appealing, but by the Administrative Court itself—corresponding to a similar rule for proceedings before the Constitutional Court.

5. In the period under review, Austria ratified the following international agreements relating to fundamental rights and freedoms:

[1] Note furnished by the Government of Austria.

(a) *Convention on the Political Rights of Women (Federal Law Gazette, No. 256/1969)*

Austria's instrument of ratification was deposited with the Secretary-General of the United Nations on 18 April 1969, so that the convention under its article VI (2) came into effect for Austria on 17 July 1969;

(b) *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 (Federal Law Gazette, No. 434/1969)*

Austria's instrument of ratification was deposited with the Secretary-General of the Council of Europe on 18 September 1969, so that the Protocol under its article 7 (1) came into force for Austria on the same day;

(c) *The European Social Charter (Federal Law Gazette, No. 460/1969)*

Austria's instrument of ratification was deposited with the Secretary-General of the Council of Europe on 29 October 1969, so that the Charter under its article 35 (3) came into force for Austria on 28 November 1969.

6. Finally, it may be noted that all legislation effecting improvements in the field of education and training, social security, public health, housing and law enforcement in the last analysis also serves the aims laid down in the Universal Declaration of Human Rights. As in previous years, many such legislative enactments were passed in Austria in 1969.

BARBADOS

NOTE [1]

1. *Legal Aid in Criminal Cases (Amendment) Act, 1969-24*

This Act amended the Second Schedule to the Act 1968-19 to make better provision for the payment of appropriate fees.

2. *Legal Aid in Criminal Cases Rules, S.I. 1969 No. 114*

These are Rules made under the Legal Aid in Criminal Cases Act 1968 and establishes the procedure for assigning counsel in Cases where a legal aid certificate has been granted.

3. *The National Assistance Act, 1969-37*

This Act provides for National Assistance and the payment of Old Age Pensions to the Poor of Barbados.

Every person in whose case the conditions laid down by this Act and in any regulations made thereunder for the receipt of an old age pension are fulfilled, shall be entitled to receive such a pension under this Part so long as those conditions continue to be fulfilled and so long as he is not disqualified under this Act or any regulations made thereunder for the receipt of such pension.

4. *National Assistance Regulations, S.I. 1969 No. 144*

National Assistance may be provided to a person who is in need by reason of his being prevented by some disability from earning a living, or who has no resources to maintain himself and is unable to find work, and shall normally be given to the person who in the opinion of the Welfare Officer is the head of a family and whose needs shall be deemed to include those of his dependents.

National Assistance may consist of assistance in cash or in kind provided as a matter of necessity. A cash grant may be awarded for any period of from one to twenty-six weeks duration and any such grant may be renewed on the expiration of such period.

5. *The Health Services Act, 1969-38*

This Act relates to the promotion and preservation of the health of the inhabitants of Barbados. As from 1 July 1969 functions relating thereto were transferred to the Minister responsible for Health.

6. *The Shops Order, S.I. 1969 No. 210*

(*a*) The number of hours, excluding intervals for meals, during which employees may remain or be employed in any shop in any one week shall not exceed forty-two.

(*b*) No employee shall be employed in any shop on any day for more than four and one-half consecutive hours calculated from the time of commencing duty without an interval for mealtime, nor for more than nine hours in the aggregate excluding intervals for meals.

(*c*) In reckoning the number of hours during which any employee remains or is employed in any shop in any week or on any day for the purpose of this paragraph, account shall not be taken of any extended hours during which such employee is employed in accordance with the provisions of the Act or of this Order and for which such employee is paid at a special rate of pay.

(*d*) There shall be kept constantly exhibited in a conspicuous part of the inner portion of each shop in such manner that it may be readily seen and read by any person in such shop a list duly signed by the proprietor of the names of every employee together with the hours of employment of each such employee.

[1] Note furnished by the Government of Barbados.

CHILD CARE BOARD ACT, 1969 [2]

...

PART I

Establishment of the Child Care Board

3. (1) For the purposes of this Act there shall be established a Board to be known as the Child Care Board.

...

4. (1) The functions of the Board shall be:

(*a*) To provide and maintain Child Care Institutions for the safe keeping of children in need of care and protection.

(*b*) To make grants to voluntary organizations or bodies operating Child Care Institutions.

...

[2] *Supplement to Extraordinary Gazette* of 30 August 1969.

BOLIVIA

SUPREME DECREE NO. 08943 OF 2 OCTOBER 1969 [1]

Article 1. A National "Woman of Bolivia" Prize is hereby instituted in recognition of eminent and outstanding service performed by a Bolivian woman for the good of the community in cultural, labour and humanitarian activities.

Article 2. The prize shall consist of a Gold Medal, bearing the arms of the Republic and an inscription proclaiming the merit of the Bolivian woman, and of a sum of money.

Article 3. The Ministry of Labour and Social Security shall issue regulations for the awarding of the prize.

[1] *Official Gazette of Bolivia*, No. 472 of 6 October 1969.

BOTSWANA

THE COPYRIGHT ACT, 1956 AS AMENDED BY THE PERFORMERS' PROTECTION ACTS, 1958 AND 1963; THE FILMS ACT, 1960; THE COPYRIGHT (BECHUANALAND) ORDER, 1965; AND THE REVISED EDITION OF LAWS (COPYRIGHT ACT, 1956) ORDER, 1969 (S.I. NO. 23 OF 1969) [1]

PART I

COPYRIGHT IN ORIGINAL WORKS

NATURE OF COPYRIGHT UNDER THIS ACT

1. — (1) In this Act "copyright" in relation to a work (except where the context otherwise requires) means the exclusive right, by virtue and subject to the provisions of this Act, to do, and to authorise other persons to do, certain acts in relation to that work in Botswana or in any other country to which the relevant provision of this Act extends.

The said acts, in relation to a work of any description, are those acts which, in the relevant provision of this Act, are designated as the acts restricted by the copyright in a work of that description.

(2) In accordance with the preceding subsection, but subject to the following provisions of this Act, the copyright in a work is infringed by any person who, not being the owner of the copyright, and without the licence of the owner thereof, does, or authorises another person to do, any of the said acts in relation to the work in Botswana or in any other country to which the relevant provision of this Act extends.

(3) In the preceding subsections references to the relevant provision of this Act, in relation to a work of any description, are references to the provision of this Act whereby it is provided that (subject to compliance with the conditions specified therein) copyright shall subject in works of that description.

(4) The preceding provisions of this section shall apply in relation to any subject matter (other than a work) of a description to which every provision of Part II of this Act relates, as they apply in relation to a work.

(5) For the purposes of any provision of this Act which specifies the conditions under which copyright may subsist in any description of work or other subject matter, "qualified person",—

(*a*) In the case of an individual, means a person who is a citizen of Botswana or (not being a citizen of Botswana) is domiciled or resident in Botswana or in another country to which that provision extends; and

(*b*) In the case of a body corporate, means a body incorporated under the laws of Botswana or of another country to which that provision extends.

COPYRIGHT IN LITERARY, DRAMATIC AND MUSICAL WORKS

2. — (1) Copyright shall subsist, subject to the provisions of this Act, in every original literary, dramatic or musical work which is unpublished, and of which the author was a qualified person at the time when the work was made, or, if the making of the work extended over a period, was a qualified person for a substantial part of that period.

(2) Where an original literary, dramatic or musical work has been published, then, subject to the provisions of this Act, copyright shall subsist in the work (or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist) if, but only if—

(*a*) The first publication of the work took place in Botswana, or in another country to which this section extends, or

(*b*) The author of the work was a qualified person at the time when the work was first published, or

(*c*) The author had died before that time, but was a qualified person immediately before his death.

(3) Subject to the last preceding subsection, copyright subsisting in a work by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the author died, and shall then expire:

Provided that if before the death of the author none of the following acts had been done, that is to say,—

(*a*) The publication of the work,

(*b*) The performance of the work in public,

(*c*) The offer for sale to the public of records of the work, and

[1] Text reprinted by direction of the Attorney-General in terms of section 3 of the Amendments Incorporation Law, 1961 and published in *Government Gazette*, Vol. II, No. 13, of 28 March 1969, Supplement C.

(*d*) The broadcasting of the work,

the copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year which includes the earliest occasion on which one of those acts is done.

. . .

COPYRIGHT IN ARTISTIC WORKS

3. — (1) In this Act "artistic work" means a work of any of the following descriptions, that is to say,—

(*a*) The following, irrespective of artistic quality, namely paintings, sculptures, drawings, engravings and photographs;

(*b*) Works of architecture, being either buildings or models for buildings;

(*c*) Works of artistic craftsmanship, not falling within either of the preceding paragraphs.

(2) Copyright shall subsist, subject to the provisions of this Act, in every original artistic work which is unpublished, and of which the author was a qualified person at the time when the work was made, or, if the making of the work extended over a period, was a qualified person for a substantial part of that period.

(3) Where an original artistic work has been published, then, subject to the provisions of this Act, copyright shall subsist in the work (or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist) if, but only if,—

(*a*) The first publication of the work took place in Botswana or in another country to which this section extends, or

(*b*) The author of the work was a qualified person at the time when the work was first published, or

(*c*) The author had died before that time, but was a qualified person immediately before his death.

(4) Subject the last preceding subsection, copyright subsisting in a work by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the author died, and shall then expire:

Provided that—

(*a*) In the case of an engraving, if before the death of the author the engraving had not been published, the copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which it is first published;

(*b*) The copyright in a photograph shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the photograph is first published, and shall then expire.

(5) The acts restricted by the copyright in an artistic work are—

(*a*) Reproducing the work in any material form;

(*b*) Publishing the work;

(*c*) Including the work in a television broadcast;

(*d*) Causing a television programme which includes the work to be transmitted to subscribers to a diffusion service.

. . .

PART II

COPYRIGHT IN SOUND RECORDINGS, CINEMATOGRAPH FILMS, BROADCASTS, ETC.

COPYRIGHT IN SOUND RECORDINGS

12. — (1) Copyright shall subsist, subject to the provisions of this Act, in every sound recording of which the maker was a qualified person at the time when the recording was made.

(2) Without prejudice to the preceding subsection, copyright shall subsist, subject to the provisions of this Act, in every sound recording which has been published, if the first publication of the recording took place in Botswana or in another country to which this section extends.

(3) Copyright subsisting in a sound recording by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the recording is first published, and shall then expire.

. . .

COPYRIGHT IN CINEMATOGRAPH FILMS

13. — (1) Copyright shall subsist, subject to the provisions of this Act, in every cinematograph film of which the maker was a qualified person for the whole or a substantial part of the period during which the film was made.

(2) Without prejudice to the preceding subsection, copyright shall subsist, subject to the provisions of this Act, in every cinematograph film which has been published, if the first publication of the film took place in Botswana or in another country to which this section extends.

(3) Copyright subsisting in a cinematograph film by virtue of this section shall continue to subsist until the film is published and thereafter until the end of the period of fifty years from the end of the calendar year which includes the date of its first publication and shall then expire, or, if copyright subsists in the film by virtue only of the last preceding subsection, it shall continue to subsist as from the date of its first publication until the end of the period of fifty years from the end of the calendar year which includes that date and then expire.

. . .

COPYRIGHT IN TELEVISION BROADCASTS AND SOUND BROADCASTS

14. — (1) Copyright shall subsist, subject to the provisions of this Act—

(*a*) In every television broadcast made by any person or body specified by the Minister by notice in the *Gazette* as being a person to whom this section relates (in this Act referred to as a specified authority) from a place in Botswana; and

(*b*) In every sound broadcast made by a specified authority from such place.

(2) Subject to the provisions of this Act, the specified authority shall be entitled to any copyright subsisting in a television broadcast or sound broadcast made by it; and any such copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the broadcast is made, and shall then expire.

(3) In so far as a television broadcast or sound broadcast is a repetition (whether the first or any subsequent repetition) of a television broadcast or sound broadcast previously made as mentioned in subsection (1) of this section (whether by a specified authority), and is made by broadcasting material recorded on film, records or otherwise,—

(*a*) Copyright shall not subsist therein by virtue of this section if it is made after the end of the period of fifty years from the end of the calendar year in which the previous broadcast was made; and

(*b*) If it is made before the end of that period, any copyright subsisting therein by virtue of this section shall expire at the end of that period.

...

COPYRIGHT IN PUBLISHED EDITIONS OF WORKS

15. — (1) Copyright shall subsist, subject to the provisions of this Act, in every published edition of any one or more literary, dramatic or musical works in the case of which either—

(*a*) The first publication of the edition took place in Botswana, or in another country to which this section extends, or

(*b*) The publisher of the edition was a qualified person at the date of the first publication thereof:

Provided that this subsection does not apply to an edition which reproduces the typographical arrangement of a previous edition of the same work or works.

(2) Subject to the provisions of this Act, the publisher of an edition shall be entitled to any copyright subsisting in the edition by virtue of this section; and any such copyright shall continue to subsist until the end of the period of twenty-five years from the end of the calendar year in which the edition was first published, and shall then expire.

...

PART III

REMEDIES FOR INFRINGEMENTS OF COPYRIGHT

ACTION BY OWNER OF COPYRIGHT FOR INFRINGEMENT

17. — (1) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright; and in any action for such an infringement all such relief, by way of damages, interdict or otherwise, shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

...

PROHIBITED PUBLICATIONS ORDER, 1969 [2]

...

DECLARATION OF PROHIBITED PUBLICATIONS

2. All publications of every class published by the Executive Secretariat of the Organisation of Solidarity of the Peoples of Africa, Asia and Latin America, of Havana, Cuba, are declared to be prohibited publications.

[2] Published as Statutory Instrument No. 67 of 1969 in *Government Gazette*, No. 22, of 30 May 1969.

PROHIBITED PUBLICATIONS (NO. 2) ORDER, 1969 [3]

...

DECLARATION OF PROHIBITED PUBLICATIONS

2. All publications of every class published by—

(*a*) The International Union of Students, of Prague, Czechoslovakia;

(*b*) The Secretariat of the Afro-Asian Journalists Association, of Peking, China;

(*c*) The Progressive Labor Party, of New York, United States of America;

are declared to be prohibited publications.

[3] Published as Statutory Instrument No. 78 of 1969 in *Government Gazette*, No. 37, of 15 August 1969.

BRAZIL

DECREE-LAW NO. 593 OF 27 MAY 1969 [1]

...

Article 1. The Executive Power shall be authorized to establish a foundation, under the Ministry of Labour and Social Welfare, for the purpose of providing assistance to mothers, children and adolescents belonging to impoverished families, on the basis of its study of medical and social data, periodically and systematically reviewed.

1. In furnishing the assistance referred to in this article, priority shall be given to persons not protected by another system of assistance.

2. Except in cases in which such action is manifestly impracticable or inappropriate, and in conformity with article 10, paragraph 6, of Legislative Decree No. 200 of 25 February 1967, the execution of the assistance programmes shall, in general, be delegated, by agreement, wholly or partly to other bodies responsible for similar services.

Article 2. The foundation to be established under article 1 shall acquire the assets of the society incorporated under the name of Legião Brasileira de Assistência, referred to in Legislative Decree No. 4.830 of 15 October 1942 and subsequent legislation, shall have the same name and acronym (LBA) as that society, and shall become its successor for all legal purposes.

...

[1] *Diário Oficial*, No. 99, of 28 May 1969.

DECREE-LAW NO. 941 OF 13 OCTOBER 1969 [2]

This Decree-Law, the text of which was published in the *Supplement to the Official Gazette* of 15 October 1969, defines the legal status of aliens in Brazil and deals with other measures.

[2] Text based upon the Secretary-General's note on the *Study of discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country* (E/CN.4/1042/Add.1).

BULGARIA

NOTE [1]

CONSOLIDATION OF THE NEW SYSTEM OF MANAGING THE NATIONAL ECONOMY

1. The new system of managing the national economy of the People's Republic of Bulgaria was introduced as an experiment until the end of 1968. In early 1969 this system was extended to apply to all aspects of the national economy, by virtue of Order No. 50 of the Council of Ministers of 6 November 1968 respecting "the coherent application and gradual development of the new system of managing the national economy", and by virtue of the regulations, ordinances and other normative acts based on this Order.

The following were published in the *Official Gazette*, Nos. 89, 90, 91 and 92 of 15, 19, 22 and 26 November 1968: the Regulations on economic unions, the Regulations on State enterprises, the Regulations on the organization, management and control of foreign trade, the Ordinance on planning, the Ordinance on the formation and distribution of the revenue of economic organizations, the Ordinance on contracts between socialist organizations, the Ordinance on the funds of economic organizations (with the exception of co-operative farms), the Ordinance on contributions by economic organizations to the State budget, the Ordinance on the relations between banks and economic organizations, the Ordinance on the purchase and sale of agricultural products, the Ordinance on co-operation between enterprises and the establishing of prices of supplies within the framework of this co-operation, the Ordinance on the transfer of production or services among enterprises, and the Ordinance on balanced management. All these normative acts and the Order itself came into force on 1 January 1969. In other words, the beginning of that year was marked by the consolidation and definitive acceptance of the new system, which then became the basis for the further development of the rights of Bulgarians.

As can be seen from the preamble of Order No. 50 of the Council of Ministers, the basic characteristics of the new system of managing the national economy consist in the introduction of a programme guaranteeing "the harmonization of State interests with those of collective organizations of producers, an extension of the roles of planning, material incentives and material responsibility, and an increase in economic efficiency". This programme requires an improved financial and credit system and increased self-management by economic organizations through the application of the principle of consistent and stable taxation and through the observance of the laws governing the accumulation of funds by enterprises and the constitution of individual incomes.

The regulations listed above are the first step towards the "full development of the workers' creative initiative and activity" and all the desirable consequences this implies.

2. In 1969, in close connexion with the implementation of the new system of managing the national economy, Bulgaria promulgated a series of normative acts which guaranteed a net increase in the standard of living of its nationals. In this respect, they affect the human rights proclaimed in the Universal Declaration.

The Order of 30 August 1969 of the Central Committee of the Bulgarian Communist Party and the Council of Ministers of the People's Republic of Bulgaria on the further raising of the people's level of living (*Official Gazette*, No. 7, of 12 September 1969) states that in 1968 national *per capita* income was more than four times higher than in 1939. During the period 1956 to 1968 the mean annual remuneration of manual and non-manual workers rose by 75.5 per cent and the remuneration for work done by members of agricultural co-operatives rose more than three times. The real *per capita* income rose 2.2 times during this period. The Order in question provides for another increase in remuneration for manual and non-manual workers who are relatively poorly paid. At the same time there are to be increases in salaries for intermediate and young, top-level staff. The relatively low retirement and survivors' pensions have also been increased. Along with these increases, there have been reductions in the prices of certain consumer goods in general use and in prices for housing construction. In order to encourage housing construction, the public authorities have published Regulations on loans for housing construction (*Official Gazette*, No. 80, of 14 October 1969) which offer new facilities to future house owners. The State grants loans for housing construction, which are long-term loans (twenty-five years) at a low interest rate (article 25 of the Universal Declaration).

[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.

DEVELOPMENT OF A MORE HUMANE PENAL SYSTEM

3. On 1 April 1969 the National Assembly of the People's Republic of Bulgaria adopted the Penal Enforcement Act (*Official Gazette*, No. 80, of 30 April 1969). Under this Act, the enforcement of penalties is designed to re-educate offenders, encourage them to obey socialist laws and regulations and act as a deterrent for them and for other members of society. Its purpose is not to inflict physical suffering or to humiliate the persons convicted. To achieve the aim of penal enforcement, as laid down in the Act, Bulgaria has a system of top-level supervision which ensures that the organs under the jurisdiction of the Procurator conform strictly to socialist legality.

The Act deals especially with the enforcement of the penalty of imprisonment. This penalty is enforced in prisons and, for minors, in reformatory homes. Persons serving a sentence of imprisonment enjoy all rights laid down in the law, with the exception of the rights of which they are specifically deprived in their sentence, the rights of which they are totally or partially deprived by the law under which they were sentenced, and the rights of which the enjoyment is incompatible with the enforcement of the penalty. Prisoners have the right to undertake appropriate work. The prison administration is required within seven days after the arrival of the prisoner, to assign him to work which is remunerated according to fixed rates. The laws in force for all workers apply to their working conditions. Prisoners have the right to free medical treatment. Pregnant women and nursing mothers are accommodated in specially designed quarters. Prisoners are insured against accidents at work and have the right to a civil disability pension if an accident at work occurred during the time they were serving their sentence, article 24 "d", of the Pensions Act (article 5 of the Universal Declaration).

IMPROVEMENT AND CODIFICATION OF THE SYSTEM OF DEALING WITH PETTY OFFENCES

4. On 20 November 1969 the National Assembly of the People's Republic of Bulgaria adopted the Petty Offences and Administrative Penalties Act. Under this Act, petty offences and the administrative penalties they incur must be specified in a law or decree. The law in force at the time the offence is committed shall be applied to the offence. Where various laws come into force consecutively before the final sentence is pronounced, the law most favourable to the person who has committed the offence shall be applied. Administrative penalties shall be enforced by the competent authorities through sentences pronounced after the necessary inquiry, which shall include any inquiry requested by the person who committed the offence. All sentences involving administrative penalties, such as public censure, fines or the temporary privation of the right to exercise a profession or a professional activity, may be appealed (article 8 of the Universal Declaration).

RATIFICATIONS OF INTERNATIONAL CONVENTIONS

5. In its Decree of 10 April 1969 (*Official Gazette*, No. 51, of 18 April 1969) the Presidium of the National Assembly of the People's Republic of Bulgaria ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

LEGISLATION RESPECTING THE SYSTEM OF PASSPORTS FOR TRAVEL ABROAD

6. On 20 November 1969 the National Assembly of the People's Republic of Bulgaria adopted the Passports Act (*Official Gazette*, No. 92, of 28 November 1969). This Act provides facilities for travel and temporary residence abroad by Bulgarian nationals (article 15 (1) of the Universal Declaration).

BURUNDI

LEGISLATIVE DECREE NO. 1/27 OF 22 MAY 1969 ON THE RIGHT OF RESIDENCE [1]

Article 1. Any person who, by his presence or conduct, seriously endangers or threatens to endanger public order may be compelled, by an order issued by the Minister of the Interior and accompanied by a statement of reasons, to remove from particular places or from a particular region of the country or to reside in a prescribed part of Burundi.

Article 2. The order shall include in its statement of reasons a precise account of the facts and circumstances justifying the residence restriction.

The order shall specify the period of time in which it is to be executed and, where applicable, the itinerary to be followed.

If necessary, the Governor of the Province in which the notification has been given may grant an extension of time and approve changes in the itinerary.

The order shall establish the duration of the residence restriction, within the limits laid down in article 4.

The order shall be declared null and void unless it reproduces the text of article 5 hereunder.

The order may prescribe special measures for the surveillance of the activities and correspondence of the person on whom the residence restriction is imposed.

Article 3. The individual concerned shall be notified of the order in person by an official of the Administration, who shall prepare a record thereof.

A copy of the record of notification and of the order shall be given to the person notified.

Article 4. The residence restrictions envisaged by the present legislative decree may not be imposed for a period of more than two years.

They may be revoked before the end of that period.

They may be renewed one or more times.

Article 5. By a note appended to the record of notification or a letter addressed to the Minister of Justice, President of the Appeals Commission, not later than the fifteenth day following the notification, the person notified may lodge an appeal against the order imposing the residence restriction.

The appeal shall not be a stay of execution of the order.

The Commission shall decide not later than thirty days after receiving the appeal.

Article 6. The Appeals Commission shall be composed of the Minister of Justice, presiding, and two ministers appointed by the Head of State after consultation with the ministers.

The file relating to the case shall be transmitted to the President of the Commission by the Minister of the Interior.

The Commission may decide to grant a hearing, or cause a hearing to be granted, to the person on whom the residence restriction has been imposed.

Article 7. At intervals of three months, a person subjected to a residence restriction may request the Minister of the Interior to review his case.

The Minister of the Interior shall give his decision not later than thirty days after receiving the request for review, after consultation with the Governor of the Province where the person concerned resides and, where appropriate, with the administrative authority of the place in which the residence of that person has been deemed undesirable.

The decisions of the Minister of the Interior regarding requests for review shall be notified to the person concerned in accordance with article 3 and may be appealed in accordance with the procedure laid down in articles 5 and 6.

Article 8. Any person who, having received notification of an order imposing a residence restriction, fails to comply with that order or evades the special arrangements for surveillance prescribed by the order shall be sentenced to imprisonment for a term of two weeks to six months.

If a further offence is committed, the penalty shall be doubled.

...

[1] *Bulletin officiel du Burundi*, No. 1/70, of 1 January 1970.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC[1]

1. REPORT OF THE CENTRAL STATISTICAL BOARD OF THE COUNCIL OF MINISTERS OF THE BYELORUSSIAN SSR ON THE FULFILMENT OF THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SSR IN 1969

(EXTRACT)

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

National income was 8 per cent higher than in 1968 and increased by 43 per cent in the first four years of the current five-year plan.

The average number of manual and non-manual workers employed in the national economy was over 2.9 million, an increase of 4 per cent during the year.

The past year saw an increase in the wages of middle-income workers employed in construction, building repair and the building materials industry.

The average monthly cash earnings of manual and non-manual workers in the national economy increased by 4 per cent. Collective farm workers' income increased by approximately 6 per cent.

The population of the Republic received grants and benefits from social consumption funds amounting to more than 1,900 million roubles, or 8 per cent more than in 1968, in pensions, allowances, students' grants, paid vacations, free education, free medical care and other State services.

Individual deposits in savings banks increased by 21 per cent during the year and totalled more than 1,100 million roubles on 1 January 1970; the number of depositors increased by 8 per cent and by the end of the year had reached 2,200 million.

The volume of State and co-operative retail trade during 1969 amounted to 4,741 million roubles, an increase of 8 per cent over 1968 in comparable prices. The retail trade turnover of consumer co-operatives rose by 7 per cent during this period.

During the first four years of the current five-year plan, the volume of retail trade has increased 53 per cent in comparable prices.

Approximately 86,000 new and well-equipped apartments and individual dwellings with a total floor space of 4,155 million square metres, financed by the State, by collective farms and by individuals, were brought into occupancy in towns and rural localities in the Republic. In the past year alone, more than 400,000 persons have moved into new homes or improved their living conditions in existing housing.

Large-scale capital investment has been made in the construction of educational, cultural and health institutions. General education schools with places for more than 55,000 pupils, pre-school establishments with places for 15,000 children and a large number of hospitals, polyclinics and other cultural and social facilities were built with State funds.

The annual plan for household services provided to the population was fulfilled by 102 per cent. The plan was over-fulfilled in all regions and in the city of Minsk. The volume of household services provided was 25 per cent higher—52 per cent in rural areas—than in 1968. During the year, more than 400 units were added to the network of enterprises providing household services.

Steps were taken to provide better amenities in towns and rural localities, In the past year, more than 112,000 apartments were supplied with gas and the annual plan for supplying apartments with gas was over-fulfilled.

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

More than 2.8 million persons received education of one type or another. These included 1,852,200 persons attending general education schools of various types, 137,300 people at higher educational establishments and 144,400 persons at *tekhnikums* and other specialized secondary educational establishments.

The number of persons graduating from eight-year schools and general secondary schools was 174,300 and 101,100 respectively. These figures include 15,800 who received eight-year education and 21,200 who received secondary education in schools for young manual and rural workers (including correspondence courses).

Enrolment in extended-day schools and groups was 155,000, or 13 per cent higher than in the previous school year.

Attendance at permanent kindergartens and crèches totalled over 259,000 or nearly 13 per cent more than in 1968.

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

In addition, more than 152,000 children attended seasonal children's establishments.

More than 731,000 children and young people spent the summer at pioneer and school camps, children's sanitoria and resorts or went to children's establishments in rural areas for the summer.

In 1969 some 51,900 young specialists graduated from higher educational establishments and *tekhnikums*, 17,700 of them with higher education and 34,200 with specialized secondary education; the number of persons graduating from higher educational establishments and *tekhnikums* rose by 4,000 or 8 per cent, as compared with the previous year.

Enrolment in higher educational establishments totalled 29,400 and in specialized secondary educational establishments 45,200.

A large number of manual and non-manual workers and collective farm workers were trained or improved their qualifications. Fifty-two thousand young skilled workers were trained at vocational-technical schools during the year. By means of individual or group apprenticeship or course instruction, approximately 550,000 persons trained for new occupations or improved their qualifications directly at enterprises, establishments, organizations or collective farms.

By the end of the year scientific workers numbered over 20,000, of whhom 5,400 held the academic degree of doctor or candidate of sciences.

The number of cinema installations rose to over 6,000. Cinema attendances during the year totalled more than 133 million.

Medical services continued to improve. There was an increase in the number of beds in hospitals, sanitoria, rest homes and preventive clinics. The number of doctors of all kinds reached 22,000.

2. ACT OF 18 DECEMBER 1968 OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC CONCERNING THE STATE BUDGET OF THE BYELORUSSIAN SSR FOR 1969

(EXTRACTS)

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

Article 1. To approve the State budget of the Byelorussian SSR for 1969 submitted by the Council of Ministers of the Byelorussian SSR, together with the amendments adopted on the report of the plan-budget and sectoral commissions of the Supreme Soviet of the Byelorussian SSR, providing for revenue and expenditure of 2,205,284,000 roubles.

Article 2. To establish the revenue from State and co-operative undertakings and organizations—turnover tax, payments to production funds, fixed payments, free remainder of profits, deductions from profits, income tax and other revenue from the socialist economy—under the State budget of the Byelorussian SSR for 1969 at the sum of 2,321,472,000 roubles.

Article 3. To allocate a total of 1,274,199,000 roubles under the State budget of the Byelorussian SSR for 1969 for the financing of the national economy: continued development of heavy industry, construction, light industry, the foodstuffs industry, agriculture, transport, housing and municipal services and other branches of the national economy.

Article 4. To allocate a total of 1,142,835,000 roubles under the State budget of the Byelorussian SSR for 1969 including 219,363,000 roubles under the State social insurance budget, for social and cultural activities: general education schools, *tekhnikums*, higher educational establishments, scientific research institutions, vocational-technical educational establishments librairies, clubs, theatres, the press, broadcasting and other educational and cultural activities; hospitals, crèches, sanatoria and other health and physical culture establishments; pensions and allowances.

3. DECREE OF 27 JANUARY 1969 OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR RATIFYING THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

The International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly of the United Nations on 21 December 1965 and signed on behalf of the Byelorussian SSR on 7 March 1966, which has been approved by the Council of Ministers of the Byelorussian SSR and submitted for ratification is hereby ratified, subject to the following reservation concerning article 22 and declaration concerning article 17, paragraph 1:

"The Byelorussian Soviet Socialist Republic does not consider itself bound by the provisions of article 22 of the Convention, under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any of the parties to the dispute, to be referred to the International Court of Justice for decision, and states that, in each individual case, the consent of all parties to such a dispute is necessary for

referral of the dispute to the International Court";

"The Byelorussian Soviet Socialist Republic declares that the provision in article 17, paragraph 1, of the Convention on the Elimination of All Forms of Racial Discrimination whereby a number of States are deprived of the opportunity to become Parties to the Convention is of a discriminatory nature, and holds that, in accordance with the principle of the sovereign equality of States, the Convention should be open to participation by all interested States without discrimination or restriction of any kind."

4. DECREE OF 27 MARCH 1968 OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR RATIFYING THE CONVENTION ON THE NON-APPLICABILITY OF STATUTORY LIMITATIONS TO WAR CRIMES AND CRIMES AGAINST HUMANITY

The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, signed by the representative of the Byelorussian SSR in New York on 7 January 1969 which has been approved by the Council of Ministers of the Byelorussian SSR and submitted for ratification, is hereby ratified, subject to the following declaration:

"The Byelorussian Soviet Socialist Republic declares that the provisions of articles V and VII of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which prevent certain States from signing the Convention or acceding to it, are contrary to the principle of the sovereign equality of States."

5. DECISION OF 26 MAY 1969 OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR CONCERNING SHORTCOMINGS IN THE WORK OF THE MINISTRIES, DEPARTMENTS AND EXECUTIVE COMMITTEES OF THE LOCAL SOVIETS OF WORKING PEOPLE'S DEPUTIES OF THE REPUBLIC IN EXAMINING LETTERS FROM AND RECEIVING WORKING PEOPLE

(EXTRACT)

The Presidium of the Supreme Soviet of the Byelorussian SSR decides:

1. To call upon ministries, departments and executive committees of local Soviets of Working People's Deputies to recognize that their work in connexion with letters, statements and complaints from citizens, in all its aspects, constitutes one of the most important means of strengthening contact with the masses;

To request them to discuss systematically at meetings of boards, sessions of Soviets, meetings of executive committees, assemblies of active party members and production conferences questions concerning the examination of statements and complaints and to give careful and thorough consideration to the needs and inquiries of working people.

2. To propose that ministries, departments and executive committees of local Soviets of Working People's Deputies should:

(*a*) Intensify their organizational activities in connexion with and their supervision of the implementation by administrations and departments, enterprises, institutions and organizations of the decision of the Central Committee of the Communist Party of the Soviet Union of 29 August 1967 concerning "improved methods of examining letters and receiving working people" and the Decree of the Presidium of the Supreme Soviet of the USSR of 12 April 1968 concerning "procedures for examining citizens' proposals, statements and complaints";

(*b*) Improve methods of explaining existing legislation to the population, particularly with reference to housing, pensions and labour;

(*c*) Set up a systematic register of written and oral communications from citizens and analyse them at regular intervals; identify and remove the causes of complaints.

3. To propose that ministries, departments and executive committees of district and city Soviets of Working People's Deputies and directors of enterprises should consider the question of setting aside special premises for receiving working people, establishing for that purpose a roster of officials who would serve by turns and would have the necessary authority to settle the questions put before them by citizens, equipping such premises with information desks and organizing periodic consultations on matters of concern to citizens;

To propose that executive committees of city Soviets, district Soviets in cities, and village and settlement Soviets should designate places in electoral districts where deputies to the Soviets can receive voters, and should ensure that such premises are set aside and provided with the necessary equipment for this purpose.

4. To recommend that ministries, departments and executive committees of regional, Minsk city, city (under regional jurisdiction) and district Soviets of Working People's Deputies of the Republic should, during the third quarter of 1969, organize study groups with the workers who examine letters and receive citizens, in order to discuss means of improving the method of examining working people's proposals, statements and complaints and the procedures for receiving citizens, in the light of the provisions of the decision of 29 August 1967 of the Central Committee of the CPSU and the decree of 12 April 1968 of the Presidium of the Supreme Soviet of the USSR.

6. ACT OF 13 JUNE 1969 OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC CONFIRMING THE CODE ON MARRIAGE AND THE FAMILY OF THE BYELORUSSIAN SSR

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

Article 1. To confirm the Code on Marriage and the Family of the Byelorussian SSR, which shall enter into force on 1 November 1969.

Article 2. To establish that, in accordance with article 2 of the Act of the USSR of 27 June 1968 confirming the Principles of Legislation of the USSR and the Union Republics on Marriage and the Family, the rule in article 53 of the Code on Marriage and the Family of the Byelorussian SSR concerning judicial proceedings to establish the paternal filiation of a child whose parents are not married to each other shall apply to children born after the entry into force of the Principles of Legislation of the USSR and the Union Republics on Marriage and the Family, that is, after 1 October 1968.

Article 3. The paternal filiation of children born before the entry into force of the Principles of Legislation of the USSR and the Union Republics on Marriage and the Family to persons who are not married to each other may be established by a joint declaration by the child's mother and a person who acknowledges paternity of the child. In the event of the death of a person who was providing support for the child and who acknowledged that he was the child's father, the fact that he acknowledged paternity may be established judicially, on the basis of a joint declaration by the parents or a court decision establishing the fact that paternity has been acknowledged, the appropriate entry concerning the father shall be made in the child's birth certificate at the civil registry office.

Article 4. When paternity is established in accordance with the procedure specified in article 3 of this Act the children shall have the same rights and duties in respect of their parents and their parents' relatives as to children born to persons who are married to each other.

Article 5. On the basis of a declaration by the mother of a child born before the entry into force of the Principles of Legislation of the USSR and the Union Republics on Marriage and the Family, the entry concerning the child's father in the register of births and in the child's birth certificate shall be made in accordance with the procedure specified in article 58 of the Code on Marriage and the Family of the Byelorussian SSR.

Article 6. The unmarried mother of a child whose paternal filiation is not established in accordance with the procedure specified by law shall retain the right to receive the State allowance established by law for the maintenance and upbringing of her child, and the right to place the child in a children's institution to be supported and brought up entirely at the State's expense.

Article 7. Minors who, prior to the entry into force of the Code on Marriage and the Family of the Byelorussian SSR, were taken by persons into their families permanently for their upbringing and support shall retain the right to receive support from such persons.

Article 8. The Presidium of the Supreme Soviet of the Byelorussian SSR shall be instructed to establish the procedure for bringing into force the Code on Marriage and the Family of the Byelorussian SSR and to bring the legislation of the Byelorussian SSR into conformity with the Code.

CODE ON MARRIAGE AND THE FAMILY OF THE BYELORUSSIAN SSR

(EXTRACTS)

The care of the Soviet family harmoniously combining the interests of society and the personal interests of citizens, is one of the most important duties of the Soviet State.

In the Soviet Union, of which the Byelorussian Soviet Socialist Republic is a member on the basis of voluntary union and equality of rights with the other Union Republics, the best possible conditions have been created for strengthening the family and enabling it to prosper. The economic well-being of citizens is steadily increasing and the living and cultural conditions of the family are constantly being improved. Socialist society attaches great importance to protecting and encouraging motherhood and enabling children to have a happy childhood.

The communist upbringing of the rising generation and the development of its physical and spiritual strength are among the most important obligations of the family. The State and society help the family in every possible way in the rearing of children, and the system of kindergartens, crèches, boarding-schools and other children's institutions is being developed on a broad scale.

Soviet women are assured of the social and living conditions necessary for combining happy motherhood with an increasingly active and creative part in production and in social and political life.

Soviet legislation on marriage and the family is designed actively to assist in freeing family relations once and for all from material considerations, eliminating the vestiges of women's inequality in everyday life and creating a communist family in which people's deepest personal feelings will find their fullest satisfaction.

PART I

GENERAL PROVISIONS

Chapter 1

BASIC PROVISIONS

Article 1. Purposes of the legislation of the Byelorussian SSR on marriage and the family

The purposes of the legislation of the Byelorussian SSR on marriage and the family are:

The further strengthening of the Soviet family based on the principles of communist morality;

The building of family relations on the basis of the voluntary union of men and women in marriage and on feelings of mutual love, friendship and respect, free from material considerations, among all members of the family;

The rearing of children by the family in close co-ordination with their upbringing by society in a spirit of devotion to the Motherland and the communist attitude towards work, and their preparation for active participation in the building of a communist society;

The comprehensive protection of the interests of mothers and children and the maintenance of conditions enabling every child to have a happy childhood;

The final elimination of the harmful survivals and customs of the past in family relations;

The inculcation of a sense of responsibility to the family.

Article 2. Relations regulated by the legislation of the Byelorussian SSR on marriage and the family

The legislation of the Byelorussian SSR on marriage and the family, in accordance with the Principles of Legislation of the Union of Soviet Socialist Republics and the Union Republics on Marriage and the Family, lays down the procedure for and conditions governing the contracting of marriage and regulates personal and property relations arising in the family between spouses, between parents and children, and between other members of the family, relations arising in connexion with adoption, guardianship and curatorship and fosterage, the procedure for and conditions governing termination of marriage, and the procedure for civil registration.

Article 3. Equality of rights of men and women in family relations

Men and women have equal personal and property rights in family relations.

The equality of rights in the family is based on the equality of men and women as in all aspects of the government, social, political, economic and cultural life of the country confirmed in the Constitution of the USSR and the Constitution of the Byelorussian SSR.

Article 4. Equality of rights of citizens in family relations, irrespective of their nationality, race or attitude towards religion

All citizens, irrespective of their nationality, race or attitude towards religion, shall have equal rights in family relations.

Any direct or indirect restrictions of rights and the establishment of any direct or indirect privileges on the occasion of entry into marriage or in family relations on the basis of national or racial origin or attitude toward religion shall be prohibited.

Article 5. Protection and encouragement of motherhood

Motherhood in the Byelorussian SSR is universally honoured and respected and is protected and encouraged by the State.

The protection of the interests of mothers and children is assured through the organization of a wide network of maternity homes, crèches, kindergartens, boarding-schools and other children's institutions, the granting to women of paid maternity leave, the establishment of benefits for pregnant women and mothers, labour protection at places of work, the payment of State allowances to unmarried mothers and mothers of many children, and other State and public assistance to the family.

Article 6. Legal regulation of marriage and family relations by the State

The legal regulation of marriage and family relations in the Byelorussian SSR is exercised exclusively by the State.

Only marriages contracted in State civil registry offices shall be recognized. Religious marriage rites, like other religious rites, shall have no legal validity.

This regulation shall not apply to religious rites performed before the establishment or the restoration of the Soviet civil registry offices or to birth, marriage, divorce and death certificates attesting thereto.

. . .

Article 8. Application in the Byelorussian SSR of legislation on marriage and the family

In the Byelorussian SSR, the contracting of marriage, relations between spouses and between parents and their children, adoption, paternity, maintenance payments, guardianship and curator-

ship, the dissolution of marriage and civil registration shall be regulated by the legislation of the Byelorussian SSR.

In accordance with the Principles of Legislation of the Union of Soviet Socialist Republics and the Union Republics on Marriage and the Family, the validity of marriages, adoptions, guardianships or curatorships and the validity of civil registration shall be determined by the legislation of the Union Republic in whose territory the marriage was contracted, the adoption took place, the guardianship or curatorship was established or the civil registration was effected.

Chapter 2

LIMITATION OF ACTIONS AND CALCULATION OF TIME PERIODS

Article 9. Application of a period of limitation of actions

Periods of limitation shall not apply to claims arising out of marital and family legal relations except in cases where a time-limit for the protection of a right that has been violated has been laid down in this Code.

...

PART II

MARRIAGE

Chapter 3

PROCEDURE FOR AND CONDITIONS GOVERNING THE CONTRACTING OF MARRIAGE

Article 13. The contracting of marriage

Marriages are contracted at State civil registry offices.

Registration of marriage is required both in the interests of the State and society and for the purpose of safeguarding the personal and property rights and interests of spouses and children.

The rights and obligations of the spouses arise only from a marriage contracted at a State civil registry office.

Article 14. Procedure for contracting marriage

Marriages shall be contracted one month after the prospective spouses have submitted an application to the State civil registry office.

If there are valid reasons for doing so, the official in charge of the civil registry bureau of the executive committee of the district or city Soviet of Working Peoples' Deputies, or in rural areas or settlements the chairman of the executive committee of the village or settlement Soviet of Working Peoples' Deputies, may reduce the one-month period or extend it to a maximum of three months.

A marriage shall be contracted with solemnity. The civil registry offices shall, with the consent of the parties, ensure that an atmosphere of solemnity is maintained during the registration.

Article 15. Conditions governing the contracting of marriage

Marriage may be contracted only with the mutual consent of the parties and only if they have attained the minimum age for marriage.

Article 16. Minimum age for marriage

The minimum age for marriage is eighteen years.

In certain exceptional circumstances, the executive committees of district or city Soviets of Working Peoples' Deputies may reduce the age for marriage as established by this article, but by no more than one year.

Article 17. Impediments to marriage

Marriage shall be prohibited:

Between persons either of whom is already married;

Between relatives in the direct ascending and descending line, between a brother and sister or a half-brother and half-sister, and between an adopter and an adopted child;

Between persons either one of whom is declared by a court to be incapable because of mental illness or imbecility.

Chapter 4

RIGHTS AND OBLIGATIONS OF SPOUSES

Article 18. Origin of the rights and obligations of spouses

The rights and obligations of spouses arise at the time the marriage is registered in the State civil registry office.

Article 19. Right of the spouses to choose their surname at the time the marriage is contracted

When a marriage is contracted, the spouses may choose, at their discretion, the surname of one or the other as their common surname, or each of the spouses may retain the surname he or she had prior to their marriage.

The spouses may also combine both surnames.

Article 20. Right of the spouses to decide jointly questions of family life and to the free choice of occupation, trade and place or residence

Questions concerning the upbringing of children and other questions of family life shall be decided jointly by the spouses.

Each of the spouses shall have freedom of choice in respect of occupation, trade and place of residence.

Article 21. Community property of the spouses

Property acquired by the spouses during the marriage shall be their community property. Each of the spouses shall have an equal right to possess, use and dispose of such property.

The spouses shall enjoy equal rights to the property even if one of them has been engaged in managing the household or caring for the children or for other valid reasons has not been receiving independent earnings.

Article 22. Determination of the share of the community property of each of the spouses when the property is divided

If the community property of the spouses is divided, their shares shall be equal. In special circumstances, the court may deviate from the principle of equality of shares of the spouses for the purpose of taking into account the interests of minor children or the legitimate interests of one of the spouses. In particular, the share of one of the spouses may be increased if the other spouse has shirked socially useful labour or has spent the community property in a manner detrimental to the interests of the family.

A period of limitation of three years shall be established for claims concerning the division of the property of divorced spouses.

Article 23. Personal property of each of the spouses

Property belonging to the spouses prior to their marriage and property acquired by them during the marriage by donation or inheritance shall be the separate property of the spouse concerned.

If property belonging to one of the spouses during the marriage has substantially increased in value as a consequence of work performed or funds provided by the other spouse or by both spouses, it may be recognized as the community property of the spouses.

Article 24. Execution against the property of the spouses

For liabilities incurred by one of the spouses, an execution may be levied only against his or her personal property and against that share of the community property of the spouses that would be due him or her on the division of the property.

An obligation incurred by one of the spouses shall create liabilities in regard to the community property of the spouses if the court rules that the benefit derived from the incurring of the obligation has been used in the interests of the family as a whole.

. . . .

Article 26. Property transactions between spouses

The spouses may engage between themselves in all property transactions which are permitted by law.

Article 27. Obligations of spouses to support each other

Spouses shall be obliged to provide for each other's material support. If such support is refused, a spouse in need of material assistance who is incapable of working and a wife during pregnancy and for one year after the birth of her child are entitled to obtain a court order requiring the other spouse to provide support (maintenance payments), if the latter is able to do so.

Article 28. Retention of a spouse's right to support after dissolution of the marriage

A needy spouse who is incapable of working shall retain the right to receive support from the other spouse even after the dissolution of the marriage.

A divorced spouse in need who becomes incapable of working within one year after the dissolution of the marriage shall also be entitled to support. If the spouses had been married for a long time, the court may also order that maintenance payments be made to a divorced spouse who reaches pensionable age not later than five years after the marriage was dissolved.

A wife shall retain the right to receive support from her husband during pregnancy and for one year after the birth of her child if the pregnancy began before the dissolution of the marriage.

Article 29. Amount of alimony

The amount of alimony to be paid shall be determined on the basis of the financial position and family status of both spouses, as a fixed sum of money payable monthly.

If a change occurs in the financial position or family status of one of the spouses, either spouse may bring suit in court for a change in the amount of the payments.

Article 30. Release of a spouse from the obligation to support the other spouse or limitation of its duration

In consideration of the brevity of a marriage or the misbehaviour of the spouse requesting maintenance payments, the court may release the other spouse from the obligation to pay maintenance or may limit the duration of this obligation.

Article 31. Forfeiture by a spouse of the right to support

The right of a spouse to receive support from the other spouse shall be forfeited if the conditions for the receipt of support established in article 27 of this Code are no longer met or if a divorced spouse receiving alimony enters into another marriage.

If alimony has been awarded by a court decision, the spouse liable for the payments may, in the cases specified in this article, bring suit in court for release from further payments.

Chapter 5

TERMINATION OF MARRIAGE

Article 32. Termination of marriage

A marriage shall be terminated when one of the spouses dies or is declared dead by judicial proceedings.

During the lifetime of the spouses a marriage may be dissolved by divorce upon the petition of one or both of the spouses.

Article 33. Inadmissibilty of a petition by the husband for dissolution of marriage

A husband may not, without the consent of his wife, bring an action for the dissolution of marriage while the wife is pregnant or for one year following the birth of a child.

Article 34. Procedure for dissolution of marriage

A marriage shall be dissolved by judicial proceedings or, in the cases specified in articles 40 and 41 of this Code, by the civil registry office.

Article 35. Dissolution of marriage by the court

An action for dissolution of marriage shall be considered by the court in accordance with the procedure for the institution of civil proceedings

established by the Code of Civil Procedure of the Byelorussian SSR.

The court shall take steps to reconcile the spouses and may postpone its hearing of the suit and designate a time-limit not exceeding six months for the reconciliation of the spouses.

The marriage shall be dissolved if the court establishes that the continued cohabitation of the spouses and the preservation of the family have become impossible.

In declaring a marriage dissolved, the court shall, when necessary, take steps to protect the interests of minor children and of a spouse who is incapable of working.

Article 36. Settlement of a dispute regarding the upbringing of children

In the event of a dispute between the spouses concerning the custody and maintenance of the children after the dissolution of the marriage, the court shall, in declaring the marriage dissolved, determine which of the parents is to have custody of each of the children and also which of the parents is to be liable for the maintenance payments for the support of the children and on what scale.

Article 37. Alimony

At the request of the spouse who is entitled to support from the other spouse, the court shall, in declaring the marriage dissolved, determine the amount of alimony to be paid by the other spouse.

Article 38. Division of community property of spouses

At the request of one or both of the spouses, the court shall, in declaring the marriage dissolved, divide the property which is the community property of the spouses.

If this division of property involves the rights of third parties, a dispute concerning the division of the property may not be decided at the same time as the suit for the dissolution of marriage.

...

Article 40. Dissolution of marriage by mutual consent of spouses having no minor children

Where there is mutual consent to the dissolution of a marriage between spouses having no minor children, the marriage shall be dissolved by the civil registry office. In such cases, the divorce shall become final and a certificate of the dissolution of the marriage shall be issued to the spouses three months after the date on which they filed the divorce petition.

Article 41. Dissolution of marriage by the civil registry office upon the petition of one spouse

A marriage shall be dissolved by the civil registry office upon the petition of one spouse if the other spouse has been:

Duly recognized as missing;

Duly recognized as incapable because of mental illness or imbecility;

Condemned for a crime to imprisonment for a period of not less than three years.

Where there is a dispute concerning the children or the division of property which is the community property of the spouses, or a dispute concerning the payment of maintenance to a needy spouse who is incapable of working, the marriage shall be dissolved by the court.

Article 42. Date of termination of marriage by divorce

A marriage shall be considered to be terminated from the date on which the divorce is registered in the civil register.

Article 43. Retention or change of surname by a spouse on dissolution of marriage

A spouse who changed surname on entering into marriage may continue to use the same surname after the dissolution of the marriage unless, at his or her request, the organ dissolving the marriage restores to that spouse the surname which he or she bore prior to the marriage.

Article 44. Reinstatement of marriage in the event of the reappearance of a spouse who has been declared dead or missing

In the event of the reappearance of a spouse who has been duly declared dead and the quashing of the court's decision declaring him or her dead, the marriage shall be deemed to be reinstated if the other spouse has not entered into a new marriage.

If one spouse has been duly declared missing and the marriage has been dissolved on that ground, in the event of the reappearance of that spouse and the quashing of the court decision declaring him or her missing, the marriage may be reinstated by the civil registry office at the joint request of the spouses and in cases where the marriage has been dissolved by a court, the court shall, at their request, quash the decision dissolving the marriage.

A marriage may not be reinstated if the spouse of a person declared missing has entered into a new marriage.

Chapter 6

NULLITY OF MARRIAGE

Article 45. Grounds for annulment of marriage

A marriage may be annulled if the conditions specified in articles 15 to 17 of this Code have been violated and in cases where a marriage has been registered without any intention of founding a family (fictitious marriage).

If when the case is heard the circumstances which represent an impediment to the marriage no longer obtain, the marriage may be recognized as valid from the time when those circumstances ceased to obtain.

Article 46. Procedure for annulment of marriage.

Marriages shall be annulled by judicial proceedings.

Annulment of a marriage may be requested by the spouses, by persons whose rights have been violated by the contracting of the marriage or by the guardianship and curatorship authorities or the procurator.

The guardianship and curatorship authorities shall be invited to participate in the hearing of a case concerning annulment of a marriage on the ground that it was contracted with a person recognized as incapable because of mental illness or imbecility.

When the court decision annulling the marriage becomes final, a copy of the decision shall be sent by the court to the civil registry office at the place where the marriage was registered.

Article 47. Annulment of marriage on the ground that a spouse had not attained the minimum age for marriage

A marriage contracted with a person who had not attained the minimum age for marriage may be annulled if this is in the interests of the spouse who entered into marriage before attaining the minimum age.

Annulment of a marriage on this ground may be requested by the minor spouse or that spouse's parents or guardian (curator), or by the guardianship and curatorship authorities or the procurator.

The guardianship and curatorship authorities shall always be invited to participate in the hearing of the case.

If when the case is decided the minor spouse has attained his or her majority, the marriage may be annulled only at that spouse's request.

Article 48. Date from which the marriage is considered null and void

A marriage which has been annulled shall be considered null and void from the date on which it was contracted.

Article 49. Consequences of annulment of marriage

Persons who were parties to a marriage which has been annulled shall have none of the rights and obligations of spouses except for those specified in the third and fourth paragraphs of this article.

Property acquired jointly by persons who were parties to a marriage which has been annulled shall be subject to the rules established in chapter II of the Civil Code of the Byelorussian SSR.

If one spouse concealed from the other the fact that he or she was married, the court, in annulling the marriage, may require that spouse to pay alimony to the person who entered into the annulled marriage with him or her, in accordance with the rules set out in articles 27 to 31 of this Code, and may also apply to property acquired jointly by such persons prior to the annulment of the marriage the provisions of articles 21 to 25 of this Code.

A spouse who did not know of the existence of impediments to the marriage may retain the surname which he or she chose when the marriage was registered.

The annulment of a marriage shall not affect the rights of children born of such a marriage.

PART III

THE FAMILY

Chapter 7

ESTABLISHMENT OF THE FILIATION OF CHILDREN

Article 50. Basis for the origin of the rights and obligations of parents and children

The mutual rights and obligations of parents and children shall be based on the filiation of the children, determined in the manner established by law.

Article 51. Establishment of the filiation of children whose parents are married to each other

The filiation of a child whose parents are married to each other shall be determined by the entry in the civil register concerning the marriage of the parents.

Article 52. Establishment of the filiation of children by a joint declaration of the parents

The filiation of a child whose parents are not married to each other shall be established by presentation of a joint declaration by the father and the mother of the child to the State civil registry office.

Article 53. Establishment of paternal filiation by judicial proceedings

In the case of a child whose parents are not married to each other, paternal filiation may be established by judicial proceedings where there is no joint declaration by the parents.

In establishing paternal filiation, the court shall take account of whether the child's mother and the respondent cohabited and maintained a joint household prior to the child's birth or have been jointly bringing up or supporting the child, and of any reliable evidence of acknowledgement of paternity by the respondent.

Article 54. Entry concerning parents who are married to each other

A father and mother who are married to each other shall be registered as the parents of the child in the register of births on the basis of a declaration by either of them.

Article 55. Entry concerning parents who are not married to each other

If the parents are not married to each other, the entry concerning the child's mother shall be made on the basis of a declaration by the mother and the entry concerning the child's father shall be made on the basis of a joint declaration by the child's mother and father; alternatively, the father shall be registered in accordance with a court decision.

In the event of the death of the mother or if it is impossible to determine her place of residence, the entry concerning the child's father shall be made on the basis of a declaration by the father.

Article 56. Contestation of registration as a parent

A person who has been registered as the father or mother of a child may contest the entry within one year from the time when he or she learnt or ought to have learnt of the entry in the register.

Article 57. Consequences of establishment of paternal filiation

When paternal filiation is established in accordance with the procedure specified in articles 52 and 53 of this Code, the children shall have the same rights and obligations in respect of their parents and their parent's relatives as do children born to persons who are married to each other.

Article 58. Entry concerning the child's father in cases where paternal filiation has not been established

When a child is born to a mother who is not married and if there is no joint declaration by the parents or court decision establishing paternal filiation, the entry concerning the child's father in the register of births shall show the surname of the mother; the first name and patronymic of the child's father shall be inscribed as indicated by the mother.

Article 59. First name and patronymic of the child

A child shall be given a first name chosen by the parents and receive a patronymic derived from the father's first name or, in the case specified in article 58 of this Code, from the first name of the person registered as the father.

Article 60. Surname of the child

The surname of a child shall be determined by the surname of the parents. Where the parents have different surnames, the child shall receive the surname of either the mother or the father, by agreement between the parents, or, in the absence of such agreement, as directed by the guardianship and curatorship authorities.

Article 61. Change in the surname of children

The termination of marriage between the parents shall not entail any change in the surname of the children.

If the parent who retains custody of a child following the termination or annulment of the marriage wishes to give the child his or her surname, the guardianship and curatorship authorities may in the interests of the child permit a change in the surname of a minor child.

Chapter 8

RIGHTS AND OBLIGATIONS OF PARENTS AS REGARDS THE UPBRINGING OF CHILDREN

Article 62. Parental rights cannot exist where they are contrary to the interests of the children.

Article 63. Obligations of parents to protect the rights and interests of children

Parents shall be responsible for protecting the rights and interests of their minor children.

Parents shall be the legal representatives of their minor children and shall protect their rights and interests in dealings with all authorities, including the judicial authorities, without special authorization.

Article 64. Equality of rights and obligations of both parents

The father and mother shall have equal rights and obligations in respect of their children.

Parents shall enjoy equal rights and have equal obligations in respect of their children even when their marriage has been dissolved.

Article 65. Need for agreement between both parents in the upbringing of children

All questions relating to the upbringing of children shall be decided by both parents by mutual agreement.

In the absence of such agreement, the question at issue shall be decided by the guardianship and curatorship authorities with the participation of the parents.

Article 66. Domicile of children when the parents have separate domicile

If as a result of the dissolution of the marriage or for any other reason the parents do not live together, the question of which of them shall have custody of any minor children shall depend on their agreement.

In the absence of agreement between the parents, the dispute shall be settled by the court in the interests of the children.

Article 67. Participation in the upbringing of children by a parent living apart

A parent living apart from the children shall have the right to visit the children and shall be obliged to participate in their upbringing. The parent who has custody of the children may not prevent the other parent from visiting the children and participating in their upbringing.

The guardianship and curatorship authorities may, for a specified period of time, deprive a parent living apart from a child of visiting rights if such rights interfere with the normal upbringing of the child or expose him to a harmful influence.

Article 68. Settlement of disputes concerning the upbringing of children between parents living apart

If the parents cannot reach agreement on the manner in which the parent living apart from the children should participate in their upbringing, the manner of such participation shall be determined by the guardianship and curatorship authorities with the participation of the parents. In cases when the parents do not abide by the decision of the guardianship and curatorship authorities, the latter may request the court to settle the dispute.

Article 69. Protection of parental rights

Parents may request the return of their children from any person detaining the children illegally or in contravention of a court decision.

The court may refuse to accede to such requests if it reaches the conclusion that it would be contrary to the interests of the child to hand him over to his parents.

Article 70. Deprivation of parental rights

One or both of the parents may be deprived of parental rights if it is established that they are evading their obligations as regards the upbringing of their children or that they are abusing their parental rights, maltreating the children or exerting a harmful influence on the children by their amoral and antisocial conduct or if the parents are chronic alcoholics or drug addicts.

Parents may be deprived of parental rights only by judicial proceedings. The procurator shall participate in any case concerning deprivation of parental rights.

...

Article 72. Consequences of deprivation of parental rights

Parents who have been deprived of parental rights shall forfeit all rights based on their rela-

tionship to the child in respect of whom they have been deprived of parental rights.

Deprivation of parental rights shall not release parents from the obligation to support their children.

Article 73. Eviction of a parent deprived of parental rights

If a parent who has been deprived of parental rights makes it impossible by systematically violating the principles of socialist society for the child to live with him and if warnings and other means of social pressure have not achieved results, that parent may be evicted in accordance with article 326 of the Civil Code of the Byelorussian SSR without being provided with alternative accommodation.

Article 74. Care of children of persons deprived of parental rights

In cases where both parents have been deprived of parental rights, the child shall be entrusted to the care of the guardianship and curatorship authorities.

...

Article 76. Restoration of parental rights

Restoration of parental rights shall be permitted if it corresponds to the interests of the children and if the children have not been adopted. Parental rights shall be restored only by judicial proceedings instituted by the person who was deprived of parental rights or by the procurator.

...

Chapter 9

MAINTENANCE OBLIGATIONS OF PARENTS AND CHILDREN

Article 80. Obligations of parents to support children

Parents shall be obliged to support their minor children and their children of full legal age who need assistance and are incapable of working.

Article 81. Scale of maintenance payments to be made by parents in respect of minor children

Maintenance payments in respect of minor children shall be made by their parents according to the following scale: for one child—one quarter of the parents' earnings (income); for two children—one third of the parents' earnings (income); for three or more children—one half of the parents' earnings (income).

These amounts may be reduced by the court if the parent liable for the payments has other minor children who would, if payments were made on the scale specified in this article, be materially less well provided for than the children receiving the payments, and also in cases where the parent liable for the payments is a disabled person in group I or group II or if the children are working and have adequate earnings.

The court may reduce the amount of maintenance payments or waive such payments if the children are fully supported by the State or by a public organization.

...

Article 89. Scale of maintenance payments to be made in respect of children of full legal age who are incapable of working

Where maintenance payments are to be made by parents in respect of children of full legal age who need assistance and are incapable working, the scale of such payments shall be established, on the basis of the financial situation and family status of the person liable for the payments and of the person receiving them, as a fixed sum of money payable monthly.

Article 90. Obligation of children to support parents and care for them

Children of full legal age shall be obliged to support and to care for parents who need assistance and are incapable of working.

Article 91. Release of children from the obligation to support parents

Children may be released from the obligation to support their parents if the court establishes that the parents have evaded their parental obligations.

Parents who have been deprived of parental rights shall forfeit the right to be supported by their children.

Article 92. Scale of maintenance payments to be made in respect of parents

The amount payable by each child towards the support of parents who need assistance and are incapable of working shall be determined by the court, on the basis of the financial situation and family status of the parents and the children, as a fixed sum of money payable monthly.

In determining this sum, the court shall take into consideration all the children of the parent concerned who are of full legal age, irrespective of whether a claim has been addressed to all the children or only to one or more of them.

Article 93. Change in the scale of maintenance payments to be made by parents in respect of children of full legal age who are incapable of working and by children in respect of parents

If, after the court has established the amount payable by parents for the support of their children of full legal age who need assistance and are incapable of working or payable by children for the support of parents who need assistance and are incapable of working, the financial situation or family status of the parents or the children changes, the court may, at the request of either party, change the scale of maintenance payments established.

Chapter 10

MAINTENANCE OBLIGATIONS OF OTHER FAMILY MEMBERS

Article 94. Maintenance obligations of other family members

If minor children have no parents, the obligation to support them may be entrusted to other relatives—the grandfather, grandmother, brother or sister, or to the stepfather or stepmother of a child.

If members of the family of full legal age who need assistance and are incapable of working have no spouse, parents or children of full legal age, the obligation to support them may be entrusted to their grandchildren or to stepsons or stepdaughters.

Other instances of rights and obligations relating to the mutual support of the aforementioned persons are specified in articles 95 to 99 of this Code.

Article 95. Obligations of stepfather and stepmother to support stepsons and stepdaughters

Stepfathers and stepmothers shall be obliged to support their minor stepsons and stepdaughters if the latter were brought up or supported by them and have no parents or receive insufficient means for their support from their parents.

Article 96. Obligations of stepsons and stepdaughters to support stepfather and stepmother

Stepsons and stepdaughters shall be obliged to support their stepfather and stepmother who need assistance and are incapable of working, if the latter brought them up or supported them.

The court may release stepsons and stepdaughters from the obligation to support a stepfather and stepmother, if the latter brought them up or supported them for less than five years or did not fulfil in a proper manner their obligations as regards the upbringing or support of the stepsons and stepdaughters.

Article 97. Obligations of brothers and sisters to support their minor brothers and sisters or their brothers and sisters of full legal age who are incapable of working

Brothers and sisters possessing sufficient means shall be obliged to support their minor brothers and sisters who need assistance if the latter have no parents or cannot be supported by them. They shall have the same obligation in respect of brothers and sisters of full legal age who need assistance and are incapable of working if the latter have no parents or cannot be supported by their parents, spouses or children.

Article 98. Obligations of grandfathers and grandmothers to support grandchildren

Grandfathers and grandmothers possessing sufficient means shall be obliged to support their minor grandchildren who need assistance if the latter have no parents or cannot be supported by them. They shall have the same obligations in respect of grandchildren of full legal age who need assistance and are incapable of working if the latter have no parents or cannot be supported by their parents or spouses.

Article 99. Obligations of grandchildren to support grandfathers and grandmothers

Grandchildren possessing sufficient means shall be obliged to support their grandfathers and grandmothers who need assistance and are incapable of working if the latter cannot be supported by their children or spouses.

Article 100. Scale of maintenance payments to be made in respect of family members

The scale of maintenance payments to be made in respect of the persons specified in this chapter shall be determined by the courts on the basis of the financial situation and family status of the person liable for the payments and of the person receiving them, as a fixed sum of money payable monthly. If more than one person has an obligation to support someone at the same time, the court shall determine, on the basis of their financial situation and family status, the amount each person shall pay in fulfilment of this obligation, and in doing so the court shall take into consideration all the persons who have an obligation to make maintenance payments, irrespective of whether a claim has been addressed to all such persons or only to one or more of them.

Article 101. Change in the scale of maintenance payments

In cases where, after the court has established the amounts payable for the support of the persons specified in this chapter, a change occurs in the financial situation or family status of a person who is obliged to provide support or of a person receiving maintenance payments, the court may, at the request of either party, change the scale of maintenance payments established.

...

Chapter 12

ADOPTION

Article 112. Children in respect of whom adoption is permitted

Adoption shall be permitted only in respect of minor children and when it is in their interests.

Article 113. Organ establishing adoption

Adoption shall be effected by decree of the executive committee of the district or city Soviet of Working People's Deputies at the request of the person wishing to adopt the child.

Article 114. Citizens entitled to be adopters

All citizens of full legal age may be adopters with the exception of persons who have been deprived of parental rights or duly recognized as incapable or of limited legal capacity and persons who have previously been adopters if the adoption was terminated because of their failure to fulfil their obligations in the proper manner.

Article 115. Consent of child's parents to adoption

The consent of the child's parents shall be required for adoption, provided that they have not been deprived of parental rights.

Parents may give their consent to the adoption of the child by a particular person (or persons) or, having given their consent to adoption, they may leave the choice of adopters to the guardianship and curatorship authorities.

The consent of the parents to adoption must be given in writing.

Parents may withdraw their consent provided that the adoption decree has not yet been pronounced.

Article 116. Adoption without consent of parents

The consent of the parents shall not be required for adoption if the parents have been deprived of

parental rights or duly recognized as incapable or missing.

By way of exception, adoption may be effected without the consent of the parents if it is established that they have not lived with the child for more than one year and, despite the warnings of the guardianship and curatorship authorities, have avoided participating in the child's upbringing and support.

Article 117. Adoption of children who are wards or are in State children's institutions

In the case of adoption of children who are wards because they have no parents, the written consent of the guardian (curator) to adoption shall be required and in the case of children who are in State children's institutions, the consent of the administrator of the children's institution shall be required.

The administrator of a children's institution shall, when a child is admitted to the institution, obtain the consent of the parent to his eventual adoption.

Article 118. Consent of the adopted child to adoption

The consent of the adopted child shall be required for adoption if the child has reached the age of ten.

If, before the submission of an application for adoption, the child has lived in the family of the adopter and considers the adopter as his parent, the adoption may, by way of exception, be effected without obtaining the consent of the adopted child.

The consent of the child to adoption shall be obtained by the guardianship and curatorship authorities.

Article 119. Consent of adopter's spouse to adoption

In the case of the adoption of a child by a person who is married, the consent of the other spouse shall be required for adoption, unless the child is being adopted by both spouses.

The spouse's consent to adoption shall not be required if the spouse has been duly recognized as incapable or if the spouses have ceased family relations, or have not been living together for more than one year or if the domicile of the other spouse is not known.

...

Article 121. Change of surname, first name and patronymic of adopted child

At the request of the adopter, when the adoption decree is pronounced, the adopted child shall be given the surname of the adopter and a patronymic derived from the adopter's first name. In the case of adoption by a woman, the adopted child shall be given a patronymic specified by her, except in cases where the child's father retains his rights and obligations in respect of the child. At the request of the adopter, the first name of the child may also be changed.

An adopted child who has reached the age of ten may be given a surname and a patronymic or have his first name changed only with his consent, except in the cases specified in the second paragraph of article 118 of this Code.

The fact that the adopted child has been given the surname and patronymic of the adopter and that the first name of the adopted child has been changed shall be indicated in the adoption decree.

Article 122. Registration of adopters as parents of adopted child

At the request of the adopters, they may be registered in the register of births as the parents of an adopted child.

In the case of an adopted child who has reached the age of ten, the child's consent shall be required for such registration, except in the cases specified in the second paragraph of article 118 of this Code.

The fact that such registration has been effected shall be indicated in the adoption decree.

Article 123. Date on which adoption takes effect

Adoption shall take effect from the date on which the adoption decree is pronounced by the executive committee of the district or city Soviet of Working People's Deputies.

Article 124. Registration of adoption

Adoption shall be subject to compulsory registration with the civil registry office at the place where the adoption decree is pronounced.

The guardianship and curatorship authorities at the place where the adoption decree is pronounced shall, within one month, send a copy of the decree of the executive committee of the district or city Soviet of Working People's Deputies to the civil registry office for registration.

Article 125. Equal status of adopted children and relatives of the adopter

Adopted children and their progeny shall have in respect of adopters and adopters' relatives, and adopters and their relatives shall have in respect of adopted children and such children's progeny the same personal and property rights and obligations as blood relatives. Adopted children shall forfeit personal and property rights and shall be released from obligations in respect of their parents and their parents' relatives.

Article 126. Retention of juridical relationships with one parent

In the case of the adoption of a child by one person, if the adopter is a man, rights and obligations in respect of the mother and her relatives may be retained at the request of the mother and, if the adopter is a woman, rights and obligations in respect of the father and his relatives may be retained at the request of the father.

If one parent is dead, rights and obligations in respect of the relatives of that parent may be retained at the request of the parents of the deceased (the grandfather and grandmother of the child), provided that the adopter expresses no objection.

The fact that juridical relationships with one parent or with the relatives of a deceased parent are retained shall be indicated in the adoption decree.

Article 127. Retention of the right to pensions or allowances payable as a result of parents' death

Minor children who, up to the time of adoption,

were entitled to pensions or allowances from State or public organizations payable as a result of the loss of the breadwinner, shall retain this right even when they are adopted.

Article 128. Ensuring the secrecy of adoption

The secrecy of adoption shall be protected by law.

In order to ensure the secrecy of adoption, the recorded place of birth of an adopted child may be changed at the request of the adopter. The fact that the recorded place of birth has been changed shall be indicated in the adoption decree.

Without the consent of the adopters or, in the event of their death, without the consent of the guardianship and curatorship authorities, it shall be forbidden to impart any information or to issue extracts from the civil register which would indicate that the adopters are not the natural parents of an adopted child.

Persons who violate the secrecy of adoption against the wishes of the adopter may be held liable under the law.

Article 129. Procedure for the annulment and termination of adoption

Annulment and termination of adoption may be effected only by judicial proceedings.

The guardianship and curatorship authorities shall participate in any case concerning annulment or termination of adoption.

Article 130. Grounds for annulment of adoption

Any person whose rights have been violated by an adoption, as well as the guardianship and curatorship authorities or the procurator may request the annulment of the adoption.

Article 131. Consequences of annulment of adoption

An adoption which has been annulled shall be considered null and void from the date on which the adoption decree was pronounced. In such case no rights and obligations resulting from adoption shall exist between the adopter, his relatives and the adopted child.

When an adoption is annulled, the rights and obligations of the child in respect of his parents and their relatives shall be restored.

By decision of the court, the child shall be handed over to his parents, or where this is contrary to the child's interests, to the guardianship and curatorship authorities.

Article 132. Grounds for termination of adoption

An adoption may be terminated if the interests of the child so require.

...

Article 137. Consequences of termination of adoption

When an adoption is terminated, the mutual rights and obligations of the child, on the one hand, and of his parents and blood relatives, on the other, shall be restored and the mutual rights and obligations of the adopted child, on the one hand, and the adopter and the adopter's relatives, on the other, shall cease to exist. The court may, however, oblige the former adopter to pay for the support of the child.

...

Chapter 13

GUARDIANSHIP AND CURATORSHIP

Article 140. Purposes of guardianship and curatorship

Guardianship and curatorship shall be established for the upbringing of minor children who, because of their parents' death, deprivation of parental rights or illness, or for other reasons, are lacking parental care, and also for the protection of the personal and property rights and interests of such children.

Guardianship and curatorship shall also be established for the protection of the personal and property rights and interests of persons of full legal age who, for health reasons, are unable to exercise their rights and fulfil their obligations on their own.

Article 141. Guardianship and curatorship authorities

The guardianship and curatorship authorities shall be the executive committees of the district, city, settlement or village Soviets of Working People's Deputies.

Guardianship and curatorship functions shall be exercised by the departments of public education in the case of minors, by the departments of public health in the case of persons recognized by the court as incapable or of limited legal capacity and by the departments of social security in the case of capable persons needing curatorship for health reasons.

The regulations concerning the guardianship and curatorship authorities shall be confirmed by the Council of Ministers of the Byelorussian SSR.

Article 142. Persons subject to guardianship

Guardianship shall be established for children under fifteen years of age and for persons recognized by the court as incapable because of mental illness or imbecility (articles 13 and 16 of the Civil Code of the Byelorussian SSR).

Article 143. Persons subject to curatorship

Curatorship shall be established for minors between the ages of fifteen and eighteen.

Curatorship shall be established for capable persons of full legal age who, for health reasons, are unable to exercise their rights and fulfil their obligations on their own, and for persons whose legal capacity has been limited by the court because of their abuse of alcoholic beverages or narcotics (article 17 of the Civil Code of the Byelorussian SSR).

...

Article 146. Place of establishment of guardianship and curatorship

Guardianship and curatorship shall be established at the place of residence of the person who is to be made a ward or at the place of residence of the guardian (curator).

Article 147. Obligation to report minors in need of guardianship or curatorship

Institutions and persons receiving information concerning minors lacking parental care shall be

obliged to report the matter immediately to the guardianship and curatorship authorities at the place where the children who are to be made wards are actually located.

Article 148. Obligation of guardianship and curatorship authorities to make interim arrangements for minors who are to be made wards

Upon receipt of information concerning minors lacking parental care, the guardianship and curatorship authorities shall be obliged to conduct immediate inquiries and, on ascertaining the lack of parental care, to make interim arrangements for the minors pending the solution of the question of the establishment of guardianship or curatorship.

Article 149. Establishment of guardianship or curatorship for a minor whose parents evade their obligation as regards his upbringing

In cases where a child does not live with his parents and the latter evade their obligation as regards his upbringing, the child shall be made a ward. In such cases, the guardianship and curatorship authorities may request that the parents be deprived of parental rights by judicial proceedings.

Article 150. Establishment of guardianship or curatorship for minors during temporary parental absence

If, during the temporary absence of parents for valid reasons (such as official business or illness), the child is placed by them under the care and supervision of relatives or other persons with whom they are closely acquainted, guardianship or curatorship shall not necessarily be established. Children whose parents are absent for more than six months shall be made wards if this is necessary for their interests.

Article 151. Obligation of the court to inform the guardianship and curatorship authorities of the need to establish guardianship or curatorship

The court shall be obliged, within three days from the date on which a decision recognizing someone as incapable or of limited legal capacity becomes final, to notify the guardianship and curatorship authorities at the place of residence of the person concerned, so that the person may be made a ward.

Article 152. Establishment of curatorship for persons of full legal age at their request

Capable persons of full legal age who for health reasons are unable to protect their rights and fulfil their obligations on their own may be made wards only at their request.

Article 153. Appointment of a guardian or curator

The guardianship and curatorship authorities shall appoint a guardian or curator to perform the obligations relating to guardianship or curatorship.

A guardian or curator may be appointed only with his consent.

A guardian or curator shall be appointed not later than one month from the time when the guardianship and curatorship authorities learnt of the need to establish guardianship or curatorship.

Article 154. Choice of a guardian or curator

In the choice of a guardian or curator, account shall be taken of the individual's personal qualities, ability to discharge the obligations of guardian or curator, relations with the person in need of guardianship or curatorship and, if possible, the wishes of the ward.

A guardian for a capable person of full legal age who for health reasons is unable to protect his rights and fulfil his obligations on his own may be chosen only with the consent of that person.

Article 155. Persons who may not be appointed guardians or curators

The following may not be appointed guardians or curators:

(*a*) Persons under eighteen years of age;

(*b*) Persons recognized by the court as incapable or of limited legal capacity;

(*c*) Persons whom the court has deprived of parental rights;

(*d*) Persons who have been adopters, if the adoption was terminated because of the adopter's failure to fulfil his obligations in the proper manner;

(*e*) Persons dismissed from the office of guardian or curator because of failure to fulfil in the proper manner the obligations entrusted to them.

Article 156. Supervision of the activities of guardians and curators

Supervision of the activities of guardians and curators shall be exercised by the guardianship and curatorship authorities at the ward's place of residence.

Article 157. Performance of the obligations of guardian and curator without remuneration

Obligations relating to guardianship and curatorship shall be performed without remuneration.

. . .

Article 161. Obligations of guardians and curators to safeguard the person and health of wards of full legal age and to protect their rights and interests

Guardians and curators shall be obliged to support their wards of full legal age, to provide them with the necessary living conditions, to ensure that they receive care and treatment and to protect their rights and interests.

Guardians of mentally sick persons shall also be obliged to ensure that their wards are under constant medical supervision.

The obligations provided for in this article shall not be entrusted to curators of persons whose legal capacity has been limited by the court because of their abuse of alcoholic beverages or narcotics.

. . .

Article 164. Obligations of the guardian of a mentally sick person to request to be relieved of the guardianship in the event of the ward's recovery

The guardian of a mentally sick person shall be obliged, in the event of the ward's recovery, to request the court to recognize the ward as capable and to relieve him of the guardianship.

Article 165. Civil law obligations of guardians and curators

Guardians shall be the legal representatives of wards and shall perform any necessary transactions on their behalf and in their interests.

Curators shall help wards to exercise their rights and fulfil their obligations, and shall protect them from abuse by third parties.

Curators of minors between the ages of fifteen and eighteen shall give their consent to the performance of transactions which a minor is not legally entitled to perform on his own.

Curators of persons of limited legal capacity shall give their consent to the receipt by such persons of payments due to them and to the disposal of sums of money received and other property of the ward, in accordance with the second paragraph of article 17 of the Civil Code of the Byelorussian SSR.

Article 166. Transactions requiring the prior permission of the guardianship and curatorship authorities

Without the prior permission of the guardianship and curatorship authorities, a guardian may not perform and a curator may not consent to the performance of any transactions on behalf of the ward which are out of the ordinary.

In particular, the prior permission of the guardianship and curatorship authorities shall be required for the conclusion of contracts which must be witnessed by a notary, for the renunciation of rights pertaining to the ward, for the division of property, for the conveyancing of residential premises and for the alienation of property.

Article 167. Transactions which may not be performed by a guardian or curator

A guardian or curator, his spouse and his close relatives may not perform transactions with the ward or represent him in transactions or court proceedings between the ward and the spouse or close relatives of the guardian or curator.

Formulation or a deed of gift on behalf of a ward shall not be permitted.

...

Article 171. Protection of wards' rights by guardians and curators

Guardians and curators shall protect the rights and interests of wards in dealings with all authorities, including the judicial authorities without special authorization.

Article 172. Parents and adopters as guardians or curators of their children

Parents and adopters shall automatically be the guardians or curators of their minor children.

Article 173. Complaints about the actions of guardians and curators

Any person, including the ward, may complain about the actions of guardians and curators to the guardianship and curatorship authorities at the place of residence of the ward.

Article 174. Release of guardians and curators from their obligations

The guardianship and curatorship authorities shall release guardians and curators from their obligations if children are returned to be brought up by their parents and if wards are adopted or placed in a State or public institution (article 117 of this Code).

Guardians and curators may also be released from their obligations at their own request, if the guardianship and curatorship authorities accept that the request was made for valid reasons (illness of the guardian or curator, change in his financial situation, lack of the necessary contact with the ward, etc.).

Article 175. Dismissal of guardians or curators in the event of their failure to fulfil their obligations in the proper manner

If a guardian or curator fails to fulfil in the proper manner the obligations entrusted to him, the guardianship and curatorship authorities shall dismiss him from office.

If the guardian uses his office for personal gain or if the ward is left without supervision and the necessary assistance, the guardianship and curatorship authorities shall be obliged to transmit to the procurator the material necessary for deciding whether the guilty person shall be held liable under the law.

...

Article 177. Termination of guardianship when a ward reaches the age of fifteen

When a ward reaches the age of fifteen, guardianship shall terminate but the person who performed the obligations of guardian shall automatically become the curator of the minor.

Article 178. Termination of curatorship when a minor reaches the age of eighteen

When a ward reaches the age of eighteen, curatorship shall automatically terminate.

Curatorship shall also terminate in the event of the minor's marriage, if the minimum age for marriage has been reduced in his case by the executive committee of the district or city Soviet of Working People's Deputies, in accordance with article 16 of this Code.

PART IV

CIVIL REGISTRATION DOCUMENTS

Chapter 14

GENERAL PROVISIONS

Article 179. Civil registration

Civil registration is required both in the interests of the State and society and for the purpose of safeguarding the personal and property rights of citizens.

Births, deaths, marriages, the dissolution of marriages, adoptions, the establishment of paternal filiation and changes of first name, patronymic or surname shall be subject to registration with the State civil registry offices.

Article 180. Civil registration organs

Civil registration shall be effected in cities and district centres by the civil registry bureaux of

the executive committees of the district and city Soviets of Working People's Deputies and in rural areas and settlements by the executive committees of the village and settlement Soviets of Working People's Deputies.

Article 181. Jurisdiction of civil registration organs

The civil registry bureaux of the executive committees of district and city Soviets of Working People's Deputies shall register births, deaths, marriages, the dissolution of marriages, adoptions, the establishment of paternal filiation and changes of first name, patronymic or surname; they shall correct alter and cancel entries in the civil register, replace entries which have been lost, keep the register and issue duplicate certificates.

The executive committees of village and settlement Soviets of Working People's Deputies shall register births, deaths, marriages, the dissolution of marriages, and the establishment of paternal filiation.

...

Article 183. Procedure for making entries in the civil register

Each entry made in the civil register shall be read to the persons making the declaration, signed by them and by the official making the entry and stamped with a seal.

An appropriate civil registration certificate shall be issued to the persons making the declaration.

...

Article 185. Procedure for contesting entries in the civil register

Where there are sufficient grounds and where there is no dispute between the interested parties, the civil registry offices may correct mistakes and alter entries in the civil register. If a civil registry office refuses to correct or alter an entry, a protest may be made to the court.

Where there is a dispute between the interested parties, a correction to an entry shall be made on the basis of a court decision.

...

PART V

APPLICATION TO ALIENS AND STATELESS PERSONS OF SOVIET LEGISLATION ON MARRIAGE AND THE FAMILY. APPLICATION OF LEGISLATION OF FOREIGN STATES GOVERNING MARRIAGE AND THE FAMILY AND OF INTERNATIONAL TREATIES AND AGREEMENTS

Chapter 22

APPLICATION TO ALIENS AND STATELESS PERSONS OF SOVIET LEGISLATION ON MARRIAGE AND THE FAMILY

Article 215. Citizenship of children

In accordance with the Principles of Legislation of the USSR and the Union Republics on Marriage and the Family, a child born to parents who at the time of his birth were both citizens of the USSR shall be recognized as a citizen of the USSR irrespective of where he was born.

If the parents are citizens of different countries and one of them was a citizen of the USSR at the time of the child's birth, the child shall be recognized as a citizen of the USSR provided that at least one of the parents was domiciled in the territory of the USSR at that time. If, however, at that time both parents were domiciled outside the USSR, the citizenship of the child shall be determined by agreement between them.

Article 216. Contracting of marriages between Soviet citizens and aliens and between aliens in the Byelorussian SSR.

Marriages between Soviet citizens and aliens and marriages between aliens shall be contracted in the Byelorussian SSR in the usual manner.

Entry into marriage by Soviet citizens with aliens shall not entail any change of citizenship.

Marriages between aliens contracted in the Byelorussian SSR or in other Union Republics in embassies or consulates of foreign States shall, subject to reciprocity, be recognized in the Byelorussian SSR if at the time of entering into marriage the persons concerned were citizens of the State which appointed the ambassador or consul.

Article 217. Contracting of marriages between Soviet citizens and performance of other civil registration formalities in embassies and consulates of the USSR. Recognition of marriages contracted outside the USSR

In accordance with the Principles of Legislation of the USSR and the Union Republics on Marriage and the Family, marriages between Soviet citizens domiciled outside the USSR shall be contracted in embassies or consulates of the USSR.

The contracting of marriages and performance of other civil registration formalities in embassies and consulates of the USSR abroad shall be subject to the legislation of the Byelorussian SSR if the persons concerned are citizens of the Byelorussian SSR. If the persons concerned are citizens of different Union Republics or if it is not established of which Republic they are citizens, the legislation of one of the Union Republics shall be applied with their agreement or, if there is a disagreement, by a decision of the official making the registration.

In cases where marriages between Soviet citizens and marriages between Soviet citizens and aliens are contracted outside the USSR in accordance with the form of marriage established by the legislation of the place where the marriage is contracted, such marriages shall be recognized as valid in the Byelorussian SSR if there are no impediments to recognition arising out of articles 15 to 17 and article 45 of this Code.

Marriages between aliens concluded outside the USSR in accordance with the legislation of the States concerned shall be recognized as valid in the Byelorussian SSR.

Article 218. Dissolution of marriages between Soviet citizens and aliens and of marriages between aliens in the Byelorussian SSR. Recognition of divorces granted outside the USSR

The dissolution of marriages between Soviet citizens and aliens and of marriages between aliens

in the Byelorussian SSR shall be effected in the usual manner.

The dissolution of marriages between Soviet citizens and aliens effected outside the USSR in accordance with the legislation of the States concerned shall be recognized as valid in the Byelorussian SSR if at the time of the dissolution of the marriage at least one of the spouses was domiciled outside the USSR.

The dissolution of marriages between Soviet citizens effected outside the USSR in accordance with the legislation of the States concerned shall be recognized as valid in the Byelorussian SSR if at the time of the dissolution of the marriage both spouses were domiciled outside the USSR.

The dissolution of marriages between aliens effected outside the USSR in accordance with the legislation of the States concerned shall be recognized as valid in the Byelorussian SSR.

Soviet citizens who are permanently domiciled abroad may have their marriages dissolved by the judicial organs of the Byelorussian SSR on instructions from the Supreme Court of the USSR.

Article 219. Adoption of children who are Soviet citizens domiciled outside the USSR. Rules governing adoption of children by aliens in the Byelorussian SSR

In accordance with the Principles of Legislation of the USSR and the Union Republics on Marriage and the Family, the adoption of a child who is a citizen of the Byelorussian SSR domiciled outside the USSR shall be effected in an embassy or consulate of the USSR. If the adopter is not a Soviet citizen, the permission of the Ministry of Education of the Byelorussian SSR shall be required for adoption.

The adoption of a child who is a citizen of the Byelorussian SSR effected by the organs of the State in whose territory the child is domiciled shall also be recognized as valid, provided that prior permission for the adoption is received from the Ministry of Education of the Byelorussian SSR.

The adoption of children who are Soviet citizens by aliens in the territory of the Byelorussian SSR shall be effected in the usual manner established in chapter 12 of this Code, provided that in each case permission for the adoption is received from the executive committee of the regional or Minsk city Soviet of Working People's Deputies.

Article 220. Application of the legislation of the Byelorussian SSR governing marriage and the family in respect of stateless persons

Stateless persons domiciled in the Byelorussian SSR shall enter into marriage or have their marriages dissolved, enjoy the rights arising from the legislation governing marriage and the family and assume the obligations specified in that legislation in the same manner as Soviet citizens.

Chapter 23

APPLICATION IN THE BYELORUSSIAN SSR OF LEGISLATION OF FOREIGN STATES GOVERNING MARRIAGE AND THE FAMILY AND OF INTERNATIONAL TREATIES AND AGREEMENTS

Article 221. Application in the Byelorussian SSR of foreign legislation and international treaties and agreements

Foreign legislation governing marriage and the family may not be applied in the Byelorussian SSR and civil registration documents based on such legislation may not be recognized if such application or recognition would be contrary to the principles of the Soviet system.

If an international treaty or international agreement to which the USSR or the Byelorussian SSR is a party establishes rules other than those contained in the legislation of the Byelorussian SSR governing marriage and the family, the rules in the international treaty or international agreement shall apply in the territory of the Byelorussian SSR.

7. DECREE OF 1 SEPTEMBER 1969 OF THE PRESIDIUM OF THE SUPREME SOVIET OF THE BYELORUSSIAN SSR CONFIRMING REGULATIONS CONCERNING GENERAL MEETINGS (ASSEMBLIES) OF CITIZENS AND PUBLIC VILLAGE COMMITTEES, STREET COMMITTEES AND BLOCK COMMITTEES IN VILLAGES, HAMLETS AND SETTLEMENTS IN THE BYELORUSSIAN SSR.

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

To confirm Regulations concerning general meetings (assemblies) of citizens and public village committees, street committees and block committees in villages, hamlets and settlements in the Byelorussian SSR.

REGULATIONS

concerning general meetings (assemblies) of citizens and public village committees, street committees and block committees in villages, hamlets and settlements in the Byelorussian SSR.

(EXTRACTS)

I. GENERAL MEETINGS (ASSEMBLIES) OF CITIZENS RESIDENT IN VILLAGES, HAMLETS AND SETTLEMENTS

Article 1. In accordance with article 72 of the Act concerning Village and Settlement Soviets of Working People's Deputies in the Byelorussian SSR, general meetings (assemblies) of citizens resident in the area of a village or settlement

Soviet in general or in individual inhabited localities, streets or blocks, and meetings of representatives of the residents of a village, hamlet or settlement shall be convened by the executive committee of the village or settlement Soviet to discuss the most important questions affecting the citizens' lives and to explain to the workers the legislation and the principal decisions of the local Soviets.

Article 2. The general meeting (assembly) of citizens of a village, hamlet or settlement is an important form of direct popular participation in the consideration of questions of economic, social and cultural development which concern the district, the region, the Republic or the whole Union.

The general meeting (assembly) of citizens shall consider:

(*a*) Physical planning, urban development and provision of amenities in inhabited localities;

(*b*) Community services for the population;

(*c*) Maintenance of law and order, respect for the principles of socialist society, fire prevention, health regulations;

(*d*) Reports on the work of the executive committees of local Soviets of Working People's Deputies, cultural and educational institutions, medical institutions, schools, shops, catering establishments and establishments providing household services;

(*e*) Nominations of candidates for the office of working people's deputy or people's judge and of representatives to electoral commissions, and elections of people's assessors to the district (city) people's court and comrades' courts.

At general meetings, citizens shall consider drafts of laws, resolutions and decisions of local Soviets which have been submitted for public discussion and shall familiarize themselves with the legislation in force and with the principal decisions of the local Soviets.

The general meeting (assembly) of citizens may also consider other questions concerning economic, social and cultural development.

. . .

Article 4. General meetings (assemblies) of citizens shall be convened whenever necessary but at least twice a year.

Any persons over sixteen years of age who are resident in the village, hamlet, settlement, street or block or who represent residents from each household or family may attend general meetings (assemblies) of citizens.

Half of the residents or representatives of the residents of the village, hamlet, settlement, street or block who are entitled to attend the general meeting (assembly) of citizens shall constitute a quorum.

. . .

Article 6. A presidium shall be elected for the conduct of the general meeting (assembly) of citizens. A record shall be kept of the proceedings, showing the date, the number of citizens present, the agenda, the names of the speakers and the decisions adopted. A decision for which over half of the citizens present at the meeting have voted shall be deemed to be adopted. The record shall be signed by the chairman and secretary of the meeting (assembly).

Article 7. The general meeting (assembly) of citizens may adopt decisions and, where necessary, make recommendations to State organs and officials on the questions which it considers.

State organs and officials shall be obliged, within a period of two weeks, to consider the recommendations of the general meeting (assembly) of citizens and to inform the general meeting (assembly) of citizens of the decisions taken.

Article 8. When considering cases of improper conduct by individual citizens who have committed infringements of law and order, the principles of socialist society, fire prevention rules or health regulations, the general meeting (assembly) of citizens shall be competent to deliver a public warning or reproof to the offender, to refer material to the comrades' court or to request the appropriate authorities to prosecute the offender more severely in accordance with the legislation in force.

Article 9. If a decision of a general meeting (assembly) of citizens is at variance with the legislation in force, a stay of execution may be ordered by the executive committee of the village or settlement Soviet and the decision itself may be rescinded by the village or settlement Soviet of Working People's Deputies.

II. Public village committees, street committees and block committees

Article 10. In accordance with article 73 of the Act concerning Village and Settlement Soviets of Working People's Deputies in the Byelorussian SSR, general meetings (assemblies) of citizens shall elect public village committees, street committees and block committees, respectively, for individual inhabited localities in the area of a village or settlement Soviet and for streets and blocks in settlements, villages and hamlets.

. . .

Article 12. Public village committees, street committees and block committees shall be elected by show of hands at general meetings (assemblies) of citizens of a village or hamlet or of a street or block in a settlement, village or hamlet for a term of two years and shall have from five to seven members.

Citizens resident in the inhabited locality concerned shall be eligible for election to public village committees, street committees and block committees.

A person receiving more votes than any other candidate and over half the votes of the citizens present at a meeting shall be deemed to be elected a member of the public village committee, street committee or block committee.

The public village committee, street committee and block committee shall elect a chairman and secretary from among their members.

When necessary, all or some of the members of a public village committee, street committee or block committee may, following a decision of a general meeting (assembly) of citizens, be re-

placed before the expiry of their term of office. New members of the committee shall be elected in accordance with the procedure provided in this article.

Article 13. The functions of the public village committees, street committees and block committees shall be:

(*a*) To facilitate implementation of decisions taken by the village or settlement Soviet of Working People's Deputies and its executive committee in pursuance of the mandate given by the electors, and to arrange for the execution of decisions of general meetings (assemblies) of citizens;

(*b*) To organize popular participation in the provision of amenities and the improvement of health facilities in inhabited localities, the construction and maintenance of local roads, bridges, streets, pavements, wells, bath houses, playgrounds and sports fields, the laying of water mains, the planting of greenery, the creation of public gardens and parks, the care and upkeep of green areas and the maintenance of cemeteries and graves of soldiers of the Soviet Army and partisans; to see that streets, courtyards and public places are kept clean, that streets are lighted and that houses are numbered; to assist in the upkeep of the water supply system, telephone and telegraph service, electric grid and radio network;

(*c*) To exercise public control over the observance of the rules governing building in inhabited localities and to decide on citizens' applications for building materials;

(*d*) To assist cultural institutions in their cultural and educational work among the public, to facilitate the organization of cultural leisure activities for workers and to encourage amateur art, physical culture and sports;

(*e*) To assist educational institutions in providing universal compulsory education and improving the upbringing of children, take part in the enumeration of children of school age, find out which children are not attending school and take steps to remove the causes of absenteeism, organize children's leisure and arrange free transportation to and from school for pupils of general education schools resident in rural areas;

(*f*) To assist health institutions in organizing medical services for the population, giving preventive and epidemiological care, and providing health education to the public;

(*g*) To help trade enterprises, public catering enterprises and enterprises providing household services for the population to improve their response to public demands;

(*h*) To work for the improvement of the material, housing and personal situation of disabled persons, elderly persons, families of servicemen and of soldiers and partisans who have been killed, families which have no breadwinner and families with many children;

(*i*) To inculcate in citizens a communist attitude to work, respect for Soviet laws and for the principles of socialist society and consideration for socialist property and see that law and order are maintained;

(*j*) To promote observance of the legislation on the protection of nature and of cultural monuments and reserves.

...

Article 15. Public village committees, street committees and block committees shall be competent:

(*a*) To convene general meetings (assemblies) of citizens, at the request of the executive committee of the village or settlement Soviet of Working People's Deputies or on their own initiative;

(*b*) To submit proposals for the agenda of meetings of a village or settlement Soviet of Working People's Deputies, in accordance with article 27 of the Act concerning Village or Settlement Soviets of Working People's Deputies in the Byelorussian SSR;

(*c*) To submit petitions to the executive committee of a village or settlement Soviet of Working People's Deputies, the management boards of collective farms, the directorate of State farms, and to other enterprises, institutions and organizations on matters brought to the attention of the committees;

(*d*) To check on citizens' observance of fire prevention rules and health regulations;

(*e*) To hear explanations by citizens who have committed infringements of law and order, the principles of socialist society, fire prevention rules and health regulations; to submit proposals on these matters, where necessary, for consideration by general meetings (assemblies) of citizens.

Article 16. Meetings of the public village committee, street committee and block committee shall be convened by the chairman whenever necessary but at least once every two months; half of the members of the committee shall constitute a quorum. Decisions of the committee shall be taken by a simple majority of votes.

Article 17. Meetings of public village committees, street committees and block committees shall be open to the public. Citizens who are not members of the committee may take part in the discussion of matters referred to it.

Article 18. Public village committees, street committees and block committees shall follow a plan of work approved at a committee meeting and shall prepare a report on their work.

Article 19. Public village committees, street committees and block committees shall report on their work to a general meeting (assembly) of citizens at least once a year.

Article 20. The executive committee of the village or settlement Soviet of Working People's Deputies, the directors of enterprises, institutions and organizations and management boards of collective farms shall be obliged to consider a petition from a public village committee, street committee or block committee and to report to the committee on the results of the consideration within a period of two weeks.

Article 21. Public village committees, street committees and block committees shall be answerable for their activities to the meetings (assemblies) of citizens which elected them, to the

village or settlement Soviet of Working People's Deputies and to its executive committee.

Article 22. Public village committees, street committees and block committees shall be under the guidance of village or settlement Soviets of Working People's Deputies and their executive committees.

The executive committees of village or settlement Soviets of Working People's Deputies shall give organizational and technical assistance to public village committees, street committees and block committees, publicize and disseminate the positive experience of their work, check regularly on the committees' work, hear reports on their activities and organize broad contacts between the committees and deputies, standing commissions of the Soviets, comrades' courts and other organs of collective public activity.

8. ACT OF 26 DECEMBER 1969 OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC CONCERNING THE STATE PLAN FOR THE DEVELOPMENT OF THE NATIONAL ECONOMY OF THE BYELORUSSIAN SSR IN 1970.

(EXTRACTS)

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

Article 1. To approve the State plan for the development of the national economy of the Byelorussian SSR in 1970 submitted by the Council of Ministers of the Byelorussian SSR, subject to the amendments of the plan-budget and sectoral commissions of the Supreme Soviet of the Byelorussian SSR.

Article 2. To achieve in 1970 the following increases over the figures for 1969:

	Percentage
Real *per capita* income	6
Volume of State and co-operative retail trade	8.1
Household services for the population	19.2
Dwellings brought into occupancy (total floor space) as a result of capital investment by the State	7.3
Enrolment in pre-school establishments financed from the State budget	8.1
Enrolment in extended-day schools and groups	6.4
Enrolment in higher educational establishments	3.9
Enrolment in specialized secondary educational establishments	1
Number of hospital beds	4.5

...

Article 4. To request the Council of Ministers of the Byelorussian SSR to consider the suggestions and comments on the State plan for the development of the national economy of the Byelorussian SSR in 1970 contained in the conclusions of the standing commissions of the Supreme Soviet of the Byelorussian SSR dealing with the plan-budget, industry, transport and communications, construction, agriculture, municipal services, public amenities and road construction, education, health services and social security, cultural and educational work, trade and public catering, household services for the population and nature conservation, and the suggestions and comments made by deputies at the session of the Supreme Soviet of the Byelorussian SSR, and to make appropriate decisions on the subject.

9. ACT OF 26 DECEMBER 1969 OF THE BYELORUSSIAN SOVIET SOCIALIST REPUBLIC CONCERNING THE STATE BUDGET OF THE BYELORUSSIAN SSR FOR 1970.

(EXTRACTS)

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

Article 1. To approve the State budget of the Byelorussian SSR for 1970 submitted by the Council of Ministers of the Byelorussian SSR, together with the amendments adopted on the report of the plan-budget and sectoral Commissions of the Supreme Soviet of the Byelorussian SSR, providing for revenue and expenditure of 2,743,739,000 roubles.

Article 2. To establish the revenue from State and co-operative undertakings and organizations—turnover tax, payments to production funds, fixed payments, free remainder of profits, deductions from profits, income tax and other revenue from the socialist economy—under the State budget of the Byelorussian SSR for 1970 at the sum of 2,535,170,000 roubles.

Article 3. To allocate a total of 1,405,146,000 roubles under the State budget of the

Byelorussian SSR for 1970 for the financing of the national economy: continued development of heavy industry, construction, light industry, the foodstuffs industry, agriculture, transport, housing and municipal services and other branches of the national economy.

Article 4. To allocate a total of 1,245,177,000 roubles under the State budget of the Byelorussian SSR for 1970, including 235,178,000 roubles under the State social insurance budget, for social and cultural activities: general education schools, *tekhnikums,* higher educational establishments, scientific research institutions, vocational-technical educational establishments, librairies, clubs, theatres, the press, broadcasting and other educational and cultural activities; hospitals, crèches, sanatoria and other health and physical culture establishments; pensions and allowances.

CAMEROON

DECREE NO. 69-DF-15 OF 17 JANUARY 1969, TO SET UP A JOINT COLLECTIVE BARGAINING AGREEMENTS AND WAGES BOARD

SUMMARY

Section 1 of the Decree sets up under the Minister of Labour and Social Legislation a National Joint Collective Bargaining Agreements and Wages Board consisting of delegates of the most representative employers' associations and workers' union organizations. Section 1 also provides that the Board shall consist of an equal number of employers' representatives and workers' representatives and that the number of representatives of each category may not be less than eight nor more than eleven.

As stated in section 3, the Board shall have the following terms of reference:

(1) Make, at the request of the Minister of Labour and Social Legislation, any suggestions and recommendations in the matter of collective bargaining agreements, and especially as regards the conclusion, extension or application of such agreements;

(2) Make any recommendations to the employers' associations and union organizations concerning any provisions that it is deemed advisable to introduce into the collective bargaining agreements, and the fixing of the general level of wages in the private sector and eventual wage increases; and

(3) Come to any decisions binding upon employers and workers of the private sector concerning the establishment of a standard classification of occupations valid for all sectors of activity, and the fixing of a minimum rate per category for the wage scales of the collective bargaining agreements and the establishment agreements, valid for all sectors of activity.

The text of the Decree in English and in French appears in the *Official Gazette* of the Federal Republic of Cameroon, No. 2, of 1 February 1969 and has been published by the International Labour Office as *Legislative Series* 1969—Cam. 1.

CANADA

NOTE [1]

INTRODUCTION

In 1969, both the Federal and Provincial Governments assented to a number of Acts which directly affect fundamental human freedoms. The year was characterized by extensive reappraisals and reforms which reflect the deep concern of Canadians for human rights and the measures necessary to bring about respect for them.

I. FEDERAL LEGISLATION

POVERTY

Expenditures for the Occupational Training of Adults Programme were differentially greater in geographic regions with the highest incidence of need as indicated by their unemployment and poverty rates. A survey taken last year of O.T.A. trainees, three months following graduation, showed that 80 per cent were employed. Only 40 per cent were employed prior to training. And the earning power of the average graduate was increased 15 per cent.

INTERNATIONAL RELATIONS

During 1969 Canada became a party to the following international human rights legal instruments:

(1) Convention Relating to the Status of Refugees, Geneva, 28 July 1951—acceded to by Canada on 4 June 1969, came into force for Canada on 2 September 1969;

(2) United Nations Protocol Relating to the Status of Refugees, 31 January 1967—acceded to and came into force for Canada on 4 June 1969;

(3) Convention Relating to Refugee Seamen, The Hague, 23 November 1957—acceded to by Canada on 15 April 1969 and came into force for Canada on 28 August 1969.

SAFETY

The first regulations to be made under the Federal safety legislation, the Canada Labour (Safety) Code, went into force during the year. [2]

SOCIAL SECURITY

A number of previously authorized changes in Federal Social Security came into effect. The pensionable age under the Old Age Security Act was lowered to 66 years, so that all persons aged 66 and over satisfying the residence requirements became eligible for the flat-rate old-age security pension and, subject to an income test, for the guaranteed income supplement. Effective 1 January 1969, both the flat-rate pension and the maximum monthly guaranteed income supplement were increased in accordance with changes in the Pension Index constructed especially for the Canada Pension Plan.

In January of 1969, retirement pensions under the Canada Pension Plan were payable to contributors who were 66 years and over, provided that they were retired from regular employment if under 70 years of age during 1969. This marked a further step in the phased reduction in the pensionable age. All monthly benefits (retirement pensions, widows' pensions, orphans' benefit) and the lump sum death benefit were increased in accordance with changes in the Pension Index.

WELFARE

As part of the Federal Government's programme to encourage greater citizen participation in the planning and implementation of welfare policies, the National Council of Welfare was reconstituted as a citizens' advisory council. [3] Previously, it had been a largely governmental body presided over by the Federal Deputy Minister of National Welfare with the Deputy Ministers of Welfare of each of the Provinces included among its members.

During the debate on the proposed changes in the composition of the Council, the Minister stated in the House of Commons that it was the Government's intention to select members from various organizations concerned with welfare problems. The Government carried out this intent when selecting the members of the newly constituted Council in January 1970. The new National Council of Welfare consists of 21 private citizens, and includes representatives of low income and welfare rights groups (four of whom are presently recipients of social assistance), spokesmen for

[1] Note furnished by the Government of Canada.

[2] SOR/69-31, gazetted 12 February 1969.

[3] The Government Organization Act, 1969, *Statutes of Canada*, 1968-69, c. 28.

organizations of economically disadvantaged minority groups, persons involved in the social service delivery system at both the staff and volunteer levels, and representatives of institutions of social work education.

The terms of reference of the Council have been broadened. Its role is to advise the Minister of National Health and Welfare on such matters related to welfare as it deems appropriate as well as to consider matters referred to it by the Minister.

Criminal code

Several amendments to the Criminal Code [4] have social as well as legal implications.

One amendment was designed to clarify the law with respect to therapeutic abortions. Under an amending act, a therapeutic abortion is not unlawful if a committee of physicians in an accredited hospital certifies that the continuation of the pregnancy would or would be likely to endanger the life or health of the mother. The therapeutic abortion committee of any hospital is composed of three or more qualified medical practitioners, appointed by the board of that hospital "for the purpose of considering and determining questions relating to terminations of pregnancy within that hospital".

Another amendment repealed the provisions prohibiting the dissemination of birth control information and the sale of contraceptives. One result is that in Canada family planning clinics, child and maternal health services and other agencies may now legally furnish women with information and supplies on request. In line with this change, the Food and Drug Act and the Narcotic Control Act [5] were amended to authorize the Food and Drug Directorate of the Department of National Health and Welfare to regulate the sale and advertising of contraceptive drugs and devices.

The Criminal Code was further amended so that homosexual relations between consenting adults were left within the realms of private morality.

II. PROVINCIAL LEGISLATION

Anti-discrimination measures

British Columbia introduced a provision in its Human Rights Act prohibiting discrimination in employment and trade union membership on grounds of sex. [6] In regard to employment discrimination, the exemption in British Columbia for employers of fewer than five employees was removed, and the Nova Scotia [7] and Ontario Human Rights Acts [8] were amended to cover charitable, philanthropic, educational, fraternal, religious and social organizations not operated for private profit.

The areas in which discrimination on any of the listed grounds is forbidden were expanded to encompass the renting of apartments (Alberta [9] and New Brunswick [10]), and the renting of any commercial premises or self-contained dwelling unit or the sale of property (British Columbia and Nova Scotia). In Nova Scotia, restrictive provisions in documents transferring an interest in property were declared void.

The Nova Scotia Human Rights Act was amended to forbid discrimination on the basis of race, religion, creed, colour, or ethnic or national origin in the membership of professional, business or trade associations, where such associations control admission to or the practice of any occupation or calling, or admission to any business or trade. Volunteer groups performing public services, such as fire protection or hospital services, are forbidden to discriminate against applicants. The provisions of any regulation made under the authority of an Act that appears to restrict the right of persons on any of the prohibited grounds were declared of no legal effect.

A provision was inserted in the British Columbia Human Rights Act authorizing the making of regulations requiring contracts let by the provincial Government, a municipality, board of school trustees or hospital board to contain anti-discrimination provisions.

The enforcement provisions of the Nova Scotia Human Rights Act were amended to permit an informal investigation to be made not only on complaint but also where the Human Rights Commission has reasonable grounds for believing that a complaint exists. Discrimination against a complainant or witness in proceedings under their respective Human Rights Act was prohibited in British Columbia, Newfoundland and Ontario. Nova Scotia and Ontario increased the fines payable for contravention of their human rights codes.

Ombudsman

Quebec's first public protector or *ombudsman* with the official title of "Citizen's Protector" was appointed under the Public Protector Act. [11] The public protector is empowered to investigate complaints of persons who believe that they have been wronged by administrative decisions of Quebec government employees. He is required to bring abuses to the attention of the authorities involved and to make recommendations to correct injustices. If the public protector is not satisfied with measures taken to remedy a situation, he may make a special report to the Quebec National Assembly.

Equal pay

Equal-pay legislation was enacted in Newfoundland, as a part of its Human Rights Code, requiring a female employee to be paid at the same rate of pay as a male employee for the same work done in the same establishment. British Columbia strengthened its equal pay clause by

[4] *Ibid.*, c. 38.

[5] *Ibid.*, c. 41.

[6] *Statutes of British Columbia*, 1969, c. 10.

[7] *Statutes of Nova Scotia*, 1969, c. 11.

[8] *Statutes of Ontario*, 1968-69, c. 83.

[9] *Statutes of Alberta*, 1969, c. 52.

[10] *Statutes of New Brunswick*, 1969, c. 40.

[11] *Statutes of Quebec*, 1968, c. 11.

the addition of the words "or substantially the same work" thus guaranteeing a woman worker the same rate of pay as a male worker when she does the same work or substantially the same work in the same establishment.

Ontario established a precedent for Canada by providing for the enforcement of its equal pay legislation, through regular inspection procedures. The legislation, now a part of the Employment Standards Act, went into force on 1 January 1969.[12] Previously, enforcement was dependent on the filing of a written complaint.

In Nova Scotia, although the Equal Pay Act [13] continues to operate through a complaint process, the Director of Human Rights appointed under the Act may also institute an inquiry on his own initiative, if he has reasonable grounds for believing that a complaint exists.

Labour relations

In Quebec, major changes were made in the Labour Code and a new Act was passed providing for a special system of collective bargaining for the construction industry.

The amendments to the Quebec Labour Code [14] established a new union certification apparatus, the final stage of which is a Labour Court. The Quebec Labour Relations Board, the agency formerly responsible for the certification of trade unions as exclusive bargaining agents with respect to units of employees, was abolished. The Labour Court also has jurisdiction to hear and render a decision in the first instance in a penal prosecution brought under the Code. The changes were designed to accelerate the certification process and to improve the administration of the Act. The Construction Industry Labour Relations Act [15] established a collective bargaining system adapted to the special characteristics of the construction industry.

The Act is based on the system of juridical extension of a collective agreement that has been in force in the province for many years. It also contains a number of new features. For trade unions in the construction industry, the certification process of the Quebec Labour Code has been eliminated. Associations of employers and employees recognized by the Act as representative for bargaining purposes are required to negotiate a collective agreement determining conditions of employment for all construction trades and occupations in a given territory, with a view to the adoption of a decree. The only collective agreements possible are those negotiated for the purpose of obtaining a decree, and only one agreement may be made for a given territory.

In New Brunswick, a new Public Service Labour Relations Act giving public servants full collective bargaining rights went into force on 1 December 1969.[16] The Act confers on employees, other than "designated employees" whose services are essential to the health, safety or security of the public, the right to strike.

The Act applies to virtually all public servants, including employees of government boards and commissions, and employees of regional library boards, school boards and hospitals. Responsibility for its administration is vested in the Public Service Labour Relations Board, a representative board whose duties and powers are similar to those of labour relations boards in the private sector. Except for some differences in the procedures laid down for the settlement of disputes, the Act follows the pattern of the Act governing collective bargaining in the federal public service.

In Nova Scotia, municipal policemen were brought within the scope of the Trade Union Act.[17] Policemen are allowed to strike, but, like employees of government boards and commissions, may not strike until 30 days have elapsed after the time limit prescribed in the Act for other employees.

The Saskatchewan Trade Union Act was amended [18] to make it an unfair labour practice for a trade union, an employee or group of employees to refuse to load or unload a carrier unless the Labour Relations Board is satisfied that the union, employee or group of employees has a valid trade dispute with the employer involved.

Under a further amendment, an additional strike vote on the employer's last offer may now be requested after a strike has continued for 30 days. Only one such vote may be conducted, and if the employees vote to accept the employer's final offer and to return to work, the employer must not withdraw the offer.

The Ontario Legislature made binding arbitration procedures governing hospital employees applicable to a wider range of institutions, including nursing homes.[19]

Industrial training and apprenticeship

A new Manpower Vocational Training and Qualification Act was passed in Quebec.[20] The Act requires employers to notify the Quebec Minister of Labour and Manpower in advance of any collective dismissals for technological reasons, in order that measures may be taken to assist the affected workers. The Act establishes periods of notice of two, three or four months, depending on the number of workers involved. The employer is required to co-operate with the Minister in establishing a committee on reclassification of employees, on which the certified trade union, or the employees, must have equal representation with the employers. The Act also provides for an expanded programme of apprenticeship and vocational training, with the active participation of the Manpower Branch of the Department.

---

[12] *Statutes of Ontario*, 1968, c. 35.

[13] *Statutes of Nova Scotia*, 1969, c. 8.

[14] *Statutes of Quebec*, 1969, cc. 45 and 48.

[15] *Ibid.*, 1968, c. 45.

[16] *Statutes of New Brunswick*, 1968, c. 88.

[17] *Statutes of Nova Scotia*, 1969, c. 79.

[18] *Statutes of Saskatchewan*, 1969, c. 66.

[19] *Statutes of Ontario*, 1968-69, c. 49.

[20] *Statutes of Quebec*, 1969, c. 51.

Discrimination based on race, sex, religion, national extraction or ethnic origin is prohibited in selecting candidates for, and in carrying out, the training programmes.

Employment standards

Minimum wage rates were increased in six provinces. In addition, Alberta made provision for a two-stage increase in the provincial minimum rate in 1970, and Quebec announced increases to take effect in four steps in 1970 and 1971, during which time the zoning system for fixing minimum rates will be abolished.

The Newfoundland Legislature enacted a number of new laws in the labour standards field: annual vacations legislation, providing for an annual vacation; [21] an Act providing for a weekly rest-day; [22] and an Act requiring employers and employees to give notice of termination of employment. [23]

In Quebec, the paid annual vacation to which workers are entitled after a year of employment was extended from one week to two weeks, effective 1 January 1969.

Industrial safety

Newfoundland passed its first Elevators Act, [24] requiring an annual inspection of all elevators and lifting devices in the province.

British Columbia revised its Coal Mines Regulation Act. [25] One of the significant changes made is that medical examinations are now required for persons in dust-exposure occupations in coal mines before employment begins and annually thereafter. A certificate of fitness is a prerequisite for employment. Construction safety regulations were thoroughly revised in Ontario.

Workmen's compensation

Nine of the provincial Workmen's Compensation Acts were amended. [26]

In Quebec, effective from 1 January 1970, death and disability benefits were tied to the cost of living, subject to a maximum increase of 2 per cent per year.

In a number of the provinces burial allowances and the benefits payable to dependent widows and children were increased. In Manitoba, monthly allowances for children between the ages of 10 and 16 were increased. The Nova Scotia Act was amended to permit payment of benefits in respect of a child who is continuing his education to the end of the school year in which he reaches the age of 21.

In four provinces the ceiling placed on the annual earnings of the workman as a basis for compensation and for the purpose of the employer's assessment was increased. Two provinces established a higher minimum pension for workers who are totally and permanently disabled, and the resulting minimum pension was made applicable to pensions already being paid as well as to those payable in the future. The minimum compensation payable for temporary total disability was also increased under several Acts. Three Acts were amended to provide for more favourable benefits in case of a recurrence of disability from a compensable accident. In Quebec, the waiting period was reduced from three days to one day.

Royal Commission on the Status of Women

A commission was established in February, 1967 to "inquire into and report upon the status of women in Canada and recommend what steps might be taken by the federal government to ensure for women equal opportunities with men in all aspects of Canadian society." The Commission, after extensive research and public hearings, was concluding in 1969 the writing of its report, which is to be presented to the Canadian Government in 1970.

Social assistance

During 1969, there were a number of important changes in provincial assistance programmes as a result of new legislation or amendments to existing Acts or Regulations. Several provinces made changes designed to improve the administration of assistance and welfare services. Rates of assistance were increased in a number of provinces and there was some extension of coverage. Other amendments reflected the growing recognition of the importance of preventive and rehabilitative services. Administrative changes in the other provinces included the establishment in Newfoundland [27] of a decentralized administrative structure intended to ensure more efficient delivery of assistance and services to the needy; the expansion of the board of review [28] established by Ontario to hear appeals against decisions of provincial and municipal welfare administrators to permit the board to sit in panels and thereby expedite appeals.

Rates of social assistance were raised in a number of provinces. Manitoba [29] increased food rates by 10 per cent and raised the amounts allowed for other items of basic need; Nova Scotia [30] raised the over-all monthly maximum for families

[21] *Statutes of Newfoundland*, 1969, c. 62.

[22] *Ibid.*, c. 41.

[23] *Ibid.*, c. 35.

[24] *Ibid.*, c. 63.

[25] *Statutes of British Columbia*, 1969, c. 3.

[26] *Statutes of Alberta*, 1969, c. 117; *Statutes of Manitoba*, 1969, (2nd Session), c. 41; *Statutes of New Brunswick*, 1969, c. 76; *Statutes of Newfoundland*, 1969, c. 59; *Statutes of Nova Scotia*, 1969, c. 85; *Statutes of Ontario*, 1968-69, c. 140; *Statutes of Prince Edward Island*, 1969, c. 53; *Statutes of Quebec*, 1969, c. 52; *Statutes of Saskatchewan*, 1969, c. 78.

[27] The Social Assistance (Amendment No. 2) Act, 1969, *Statutes of Newfoundland*, 1969, No. 9.

[28] Regulations under The Family Benefits Act, 1966, O. Reg. 19/69, gazetted 153, February 1969.

[29] Regulation under The Social Allowances Act, Manitoba Regulation 138/69, gazetted 18 October 1969.

[30] Regulations under The Social Assistance Act, Provincial Assistance Regulations, approved 24 June 1969.

receiving provincial assistance; and Alberta [31] adjusted food and clothing rates to accord with changes in the cost of living. Other changes in Saskatchewan [32] included higher board rates and increases in maintenance payments for persons in special-care homes (homes for the aged and infirm) and in British Columbia [33] an increase in the maximum supplementary social allowance payable to recipients of blind and disabled persons' allowances was made.

In several provinces, the coverage of assistance programmes was broadened by an extension to new categories or a modification of some of the eligibility requirements. In Nova Scotia, [34] needy widows and unmarried women 60 to 65 years became eligible for provincial assistance; in Prince Edward Island [35] the ceiling on allowable liquid assets was raised. Several other provinces also made changes regarding allowable income.

A number of provinces introduced changes in their social assistance programmes aimed at giving greater emphasis to prevention and rehabilitation. In Alberta, a new Act, The Department of Social Development Act, [36] was designed not only to change the name of the former Department of Public Welfare but to mark a change in philosophy and function from primarily that of maintenance and custody to the concept of the social development of the individual and the family. A Position Paper presented to the Alberta Legislature described the developmental approach as one that "stresses the creation of new opportunities, the rewarding of initiative and action, the integration, co-ordination and efficiency of government services, and a further emphasis on prevention and citizen participation". [37] In Ontario, provincial subsidies for homemaker and nurses services [38] were extended to Indian bands.

CHILDWELFARE

Newfoundland [39] made obligatory the reporting to the Director of Child Welfare or to a welfare officer instances of ill-treatment of children. The informant is protected from liability unless the giving of the information was done maliciously or without reasonable and probable cause. Failure to comply constitutes an offence.

[31] Regulations under the Public Welfare Act, Alberta Regulation 115/69, gazetted 15 May 1969.

[32] Regulations under The Saskatchewan Assistance Act, 1966, Saskatchewan Regulation 52/69, gazetted 21 March 1969 and Saskatchewan Regulation 295/69, gazetted 28 November 1969.

[33] Circular Letter to Municipalities and Officials of the Department of Social Welfare of British Columbia, dated 19 August 1969.

[34] Regulations under the Social Assistance Act, Provincial Assistance Regulations approved 24 June 1969.

[35] Regulations under the General Welfare Assistance Act, as amended by orders in council, gazetted 16 February 1969 and 1 March 1969.

[36] *Statutes of Alberta*, 1969, c. 101.

[37] *Ibid.*

[38] *Statutes of Ontario*, 1968-69, c. 46.

[39] The Child Welfare (Amendment) Act, 1969, *Statutes of Newfoundland*, 1969, No. 26.

III. JUDICIAL DECISIONS

The authority of a trade union as exclusive bargaining agent for a group of employees under labour relations legislation in the province of British Columbia carries with it the responsibility of representing the interests of all employees fairly and impartially, without hostility to any. In *Fisher* v. *Pemberton et al.* [40] a member of a union who was actively supporting a rival union had committed a breach of his employer's regulations. An official of his union reported this breach to the employer, resulting in the discharge of the member from his employment. The British Columbia Supreme Court found that, although the union official was not in breach of his duty to the member because he reported the breach of the employer's regulations, the union had a duty to fairly represent the member when he launched a grievance concerning his discharge. The union officials who appeared on the member's behalf were openly hostile to him, were anxious to see him out of the employer's plant and made no effort to obtain from the member or other witnesses an account of the events constituting the alleged breach of the employer's regulations, so that a defence of the member was not presented to the employer. The Court decided that the union had breached its duty of fair representation toward the member and that a legal action against the union for damages to the member could be taken.

In *Mendick* v. *The Queen* [41] a man who had been convicted of theft of an automobile appealed a sentence of preventive detention that had been substituted by a court for a sentence of three years. Under the Canadian Criminal Code, [42] a person who has been convicted of an indictable offence may be sentenced to preventive detention for an indeterminate period if he is found by a court to be an habitual criminal and the court is of the opinion that it is expedient for the protection of the public. A majority of the Supreme Court of Canada found that, while the man's record was formidable, only one of 46 previous convictions was for a crime of violence. His record did not indicate that he constituted so grave a menace that the protection of the public required that he be deprived of his freedom for the remainder of his life. The appeal was allowed and the three-year sentence imposed for the automobile theft was restored.

In *Calder et al.* v. *Attorney-General of British Columbia* [43] the Nishga Indian tribe sought a declaratory judgement that the aboriginal title to their ancient tribal territory had never been lawfully extinguished. A Supreme Court judge of the province of British Columbia reviewed the historical documents in this case. The judge found that, in the period between 1866 and 1871 when British Columbia became a province of Canada, any rights the Nishgas had in the lands in question were totally extinguished by the acts of the Crown.

[40] (1970) 8 *Dominion Law Reports* (3d), p. 521.

[41] (1969) 6 *Dominion Law Reports* (3d), p. 257.

[42] Section 660.

[43] (1970) 8 *Dominion Law Reports* (3d), p. 59.

CENTRAL AFRICAN REPUBLIC

ORDINANCE NO. 69/33 OF 1 JULY 1969 REGULATING CIVIL REGISTRATION IN THE CENTRAL AFRICAN REPUBLIC [1]

Legislation relating to civil registration

TITLE I

GENERAL PROVISIONS

Article 1. Births, deaths, recognitions of children and marriages shall be entered and registered in accordance with the provisions of this ordinance.

Chapter I

CIVIL REGISTRIES

Article 2. Entries in the civil register shall be made by civil registrars at the main registries and at sub-registries attached to a main registry.

Article 3. The main civil registries shall be located in the communes..

...

Article 4. Sub-registries shall be established by an order of the Minister of the Interior, at the request of the Municipal Council.

...

TITLE II

CIVIL REGISTER ENTRIES

Chapter I

RULES APPLICABLE TO ALL CIVIL REGISTER ENTRIES

Article 24. Civil register entries shall state the year, day and time when they were made, the full name of the civil registrar, and the full name, occupation and domicile of all persons mentioned therein.

...

Article 26. The witnesses chosen by the persons concerned must be at least eighteen years of age; they may be relatives or non-relatives, and of either sex.

...

Article 30. All entries in the civil register for nationals of the Central African Republic and aliens made in a foreign country shall be accepted as valid if they are drawn up in the manner customary in that country.

Article 31. All entries in the civil register for nationals of the Central African Republic in a foreign country shall be valid if they are made in the manner prescribed by the law of the Central African Republic, by diplomatic officials or consuls.

...

Article 32. Reports shall be received.

(*a*) In respect of births, by the civil registrar of the place where the birth occurred;

(*b*) In respect of deaths, by the civil registrar of the place where the death occurred;

(*c*) In respect of marriages, by the civil registrar of the place where the marriage was performed;

(*d*) In respect of recognitions of children by the civil registrar of the place of residence of the person recognizing the child.

Chapter II

REGISTRATION OF BIRTHS

Article 33. Births must be reported within one month of their occurrence.

If a birth is not reported within the period prescribed by law, the civil registrar may record it in his register only if authorized to do so by a decision of the court in whose area of jurisdiction the child is born. A brief marginal reference shall be made at the date of birth. If the place of birth is not known, the competent legal authority shall be the court in whose area of jurisdiction the applicant is domiciled.

In foreign countries, births shall be reported to diplomatic or consular officials within one month of their occurrence.

This period may, however, be extended in certain consular districts by a decree of the President of the Republic specifying the length and terms of such extension.

...

Article 39. Any person who finds a newly born child shall be bound to report the fact to the civil registrar of the place where the discovery was made. If that person is not willing to assume

[1] *Journal officiel de la République centrafricaine*, No. 17, of 15 August 1969.

responsibility for the child, he must deliver it to the civil registrar together with the clothes and other effects found with it and make a full statement regarding the time and place of discovery. A detailed report shall be drawn up stating the child's apparent age, its sex, the names given to it, and the authority or person to which it is entrusted.

...

Chapter III

REGISTRATION OF MARRIAGES

Article 40. Marriages shall be performed in the presence of a civil registrar.

Section I—Marriage procedure

Article 41. The civil registrar shall announce marriages by posting a notice for a fifteen-day period on the door of the community centre or, if the civil registrar has been authorized to perform marriages, on the door of the civil registry.

...

Article 48. Marriages shall be performed publicly in the commune in which one of the spouses is domiciled or has established residence by a minimum of one month's continuous habitation prior to the date of the announcement prescribed by law.

Article 49. The civil registrar shall call upon the parties to the marriage and if they are minors, their ascendants attending the ceremony and authorizing the marriage to state whether a marriage contract has been concluded and, if so, the date of the contract together with the name and place of residence of the person who received it.

Both parties shall state to the civil registrar in turn that they wish to take each other for man and wife....

Aricle 50. The entry recording the marriage shall state the following:

...

(3) The consent of the person qualified to give it, in the event that either party to the marriage is a minor;

...

(5) The parties' statement that they agree to take each other for man and wife and the pronouncement of their marriage by the civil registrar;

...

Section II—Miscellaneous provisions

Article 51. The marriage and the name of the spouse shall be noted in the margin of the entries recording the births of both spouses.

Chapter IV

REGISTRATION OF DEATHS

Article 52. No burial shall take place without a permit, issued on unstamped paper and without charge by the civil registrar. The registrar may issue such a permit only if he is shown a medical certificate of death or if he has visited the scene of the death.

If the death has occurred in a place where there is no civil registry, the permit shall be issued by the village headman.

Burial may not be effected until twenty-four hours after the death, except as provided by local regulations.

...

Chapter V

RECOGNITION OF CHILDREN BORN OUT OF WEDLOCK

Article 67. Recognition of children born out of wedlock shall be effected by means of an instrument drawn up by a public officer (*acte authentique*) or a report received by a civil registrar and shall be noted in the entry recording the birth, in a separate and distinct entry or in the entry recording the marriage of the parents.

...

Section II—Family record book

Article 77. When a marriage is performed or registered, the husband shall be given free of charge a family record book (*livret de famille*) stating the identity of the spouses and the date and place of the marriage.

Any subsequent marriages of the husband, births and deaths of children, adoptions, recognitions and legitimations of children born out of wedlock, death of one of the spouses or their divorce shall be entered in the book.

Any correction to a civil register must be entered in this book.

All entries must be made by the civil registrar and stamped with his seal.

...

Article 79. In the event of divorce, the wife may, on presentation of the book kept by the husband, obtain a copy.

Article 80. If a family record book is lost, the husband may request that a new book be prepared; the new book shall be marked "duplicate".

Article 81. The family record book shall be presented to the civil registrar whenever an event occurs which should be entered in it.

...

ORDINANCE NO. 69/34 OF 1 JULY 1969 INSTITUTING TEMPORARY MEASURES FOR THE REGISTRATION OF BIRTHS AND MARRIAGES NOT REPORTED WITHIN THE PERIODS PRESCRIBED BY LAW [2]

Article 1. The reporting of births, recognitions of children, marriages and deaths in accordance with the ordinances and regulations in force governing the civil register shall be compulsory throughout the territory.

Chapter I

BIRTHS NOT REPORTED WITHIN THE PERIOD PRESCRIBED BY LAW

Article 2. During a period, the expiry date of which shall be fixed by decree, the birth of any living national of the Central African Republic which has not been recorded in the civil register and in respect of which no court decision has been duly entered in the civil register in lieu of registration may, notwithstanding the expiry of the period prescribed by law, be reported in the following manner.

Article 3. The report shall be receivable, in accordance with the ordinances and regulations in force governing the civil register, in the presence of the village headman and two witnesses of either sex who are of full age and able to attest its veracity.

In the case of a minor, it shall be made in his presence by his father, mother, or an ascendant or, in their absence, by the person exercising parental authority over him.

In the case of a person of full age, it shall be made by him.

Article 4. By way of exception to the foregoing article the report may be made in the absence of the person to whom it refers if he is unable to appear or to be brought to appear.

In the case of a person of full age whose father, mother or ascendants are decreased or are themselves unable to do so, the report shall be made by the village headman or any person who knew of the birth and is able to provide the information required for the purpose of registration.

Article 5. If neither the village headman nor any other person knew of the birth, the date of birth may instead be determined by a physician's certificate stating the physiological age of the person who is the subject of the report.

The certificate shall be initialled by the registrar of Births, Deaths and Marriages and annexed to the copy, mentioned in articles 12 and 13, which is required to be deposited with the office of the clerk of the high court (*Tribunal de Grande Instance*).

Article 6. The provisions of article 5 notwithstanding, the report shall be receivable in the presence of two witnesses who are able to attest its veracity in so far as the identity of the subject of the report is concerned.

Article 7. If the day or month of the year of birth cannot be ascertained, the birth shall be deemed to have taken place on 1 January of the year in question.

If the month can be ascertained, the birth shall be deemed to have taken place on the first day of the month.

Chapter II

RECORDING OF MARRIAGES PERFORMED IN ACCORDANCE WITH CUSTOMARY LAWS AND NOT REPORTED WITHIN THE PERIOD PRESCRIBED BY LAW

Article 8. During a period the expiry date of which shall be fixed by decree, marriages performed in accordance with customary law which have not been reported or in respect of which no court decision has been entered in the civil register in lieu of such report may, notwithstanding the expiry of the period prescribed by law, be reported at the place where they were performed in the following manner.

Article 9. The report shall be made by both spouses jointly, and in the presence of the village headman and two witnesses of either sex who are of full age and able to attest its veracity.

The marriage shall be deemed to have taken place on the date stated by the spouses.

...

[2] *Ibid.*

CHILE

NOTE [1]

1. Act No. 17,266 of 22 December 1969, published in the *Diario Oficial*, No. 27,538, of 6 January 1970, amends the Penal and Military Justice Codes as regards the death sentence and modifies the transitory article of Act No. 17,155.
2. Act No. 17,284 of 29 December 1969, published in the *Diario Oficial*, No. 27,553, of 23 January 1970, amends the Political Constitution of the State [2] as follows:

Article 7. Article 7 shall be replaced by the following:

"Article 7. Chileans who have attained eighteen years of age and are inscribed in the electoral registers are citizens with the right of suffrage.

"These registers shall be public and inscriptions shall be carried out on a continuous basis.

"In popular elections, voting shall always be secret.

"The law shall regulate the system for the registration of voters, the period of validity of the registers, the time-limit for registration prior to an election, the manner of voting and the system to be applied for the conduct of elections."

Article 10. The second paragraph of paragraph 14 shall be deleted.

Article 27. In the first paragraph, after the phrase "citizenship with the right of suffrage", insert the following phrase: "to know how to read and write".

The second paragraph shall be replaced by the following:

"Furthermore, at the time of their election, deputies must have attained twenty-one years of age and senators thirty-five years of age".

---

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

[2] For extracts from the Political Constitution, see *Yearbook on Human Rights for 1946*, pp. 58-60.

COSTA RICA

NOTE [1]

LEGISLATION

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Articles 1 and 7

Act No. 4466 of 19 November 1969

Article 1. Articles 1 and 2 of Act No. 4230 of 21 November 1968 shall be amended to read as follows:

"*Article 1.* It shall be an offence to refuse any person admission to associations, places of entertainment, hotels and the like, clubs and private educational centres for reasons of racial discrimination.

"*Article 2.* The penalty for such offence shall be a fine of one thousand to three thousand (1,000 to 3,000) colones. The penalty for a second offence shall be the closing of the establishment for six months and for a third offence, permanent closure."

UNIVERSAL DECLARATION

Article 23 (3)

Act No. 4351 of 11 July 1969

Article 1. There shall be established a Popular Community Development Bank. . . .

Article 2. The Bank shall operate as an institution offering economic protection and well-being to workers by encouraging savings and meeting their credit requirements in the financing of projects of community development organizations.

The Bank shall act as a public institution having legal personality and its own assets, and having administrative and operational autonomy.

. . .

Article 5. The Labour Investment Fund shall be constituted by: (*a*) a monthly contribution of one-half of one per cent of all remuneration, whether wages or salaries, to be payable by individual employers, State authorities and all public institutions and (*b*) a monthly contribution of one per cent of remuneration, whether wages or salaries, payable by workers.

INTERNATIONAL CONVENTIONS

UNIVERSAL DECLARATION

Articles 3, 5 and 9

Act No. 4364 of 4 August 1969

Ratified all parts of the following Conventions signed at Geneva on 12 August 1949:

1. Convention for the Amelioration of the Conditions of the Wounded and Sick in Armed Forces in the Field.

2. Convention for the Amelioration of the Conditions of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

3. Convention relative to the Treatment of Prisoners of War.

4. Convention relative to the Protection of Civilian Persons in Time of War.

UNIVERSAL DECLARATION

Articles 2, 7 and 26

Act No. 4463 of 10 November 1969

Ratified all parts of the 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.

[1] Note furnished by the Government of Costa Rica.

CZECHOSLOVAKIA

NOTE [1]

1. *Act No. 39/1969 of the Czech National Council on the Acquisition and Loss of the Citizenship of the Czech Socialist Republic*

In connexion with the federative system, the Act regulates the citizenship of the Czech Socialist Republic.

Pursuant to this Act, a citizen of the Czech Socialist Republic is at the same time a citizen of the Czechoslovak Socialist Republic. The loss of citizenship of the Czech Socialist Republic entails the loss of citizenship of the Czechoslovak Socialist Republic.

A person is a citizen of the Czech Socialist Republic if as of 1 January 1969 he had the citizenship of the Czechoslovak Socialist Republic and was born in the territory of the Czech Socialist Republic, or was a citizen of the Czechoslovak Socialist Republic who was born abroad, but who was registered as of 1 January 1969 as permanently residing in the territory of the Czech Socialist Republic. If a person did not have his permanent residence in either the Czech Socialist Republic or the Slovak Socialist Republic as of that date, he becomes a citizen of the Czech Socialist Republic in case he himself or his parents had their last permanent residence there before leaving for abroad. Those Czechoslovak citizens whose citizenship cannot be ascertained in this way may choose the citizenship of either the Czech Socialist Republic or the Slovak Socialist Republic.

The citizenship of the Czech Socialist Republic may be acquired through birth if both parents are citizens of the Czech Socialist Republic; through marriage if a citizen of the Slovak Socialist Republic who concluded marriage with a citizen of the Czech Socialist Republic, chooses the nationality of the Czech Socialist Republic; by a female foreigner who may acquire the citizenship of the Czech Socialist Republic if she applies for it and a District National Committee approves her application; and through granting.

The citizenship of the Czech Socialist Republic ceases through the acquisition of the citizenship of the Slovak Socialist Republic or through a release. A citizen does not lose it through marriage. Pursuant to Legal Measure No. 124/1969 of the Czech National Council the citizenship of the Czech Socialist Republic may be also lost through deprivation. The Ministry of the Interior may deprive a citizen of his citizenship for reasons specified in the Legal Measure.

2. *Decision No. 52/1969 of the President of the Republic on Amnesty*

By this decision, the President of the Republic exercising the right provided for him in the Constitution of the Czechoslovak Socialist Republic and in the interest of facilitating the return home to Czechoslovak citizens who left the territory of the Czechoslovak Socialist Republic without permission or stayed abroad without the permission of Czechoslovak authorities, pardons punishments imposed for the crime of leaving the Republic and orders that criminal prosecution on the grounds of that criminal act should not be instituted and, if instituted, should be discontinued. As to the criminal guilty of such crime who resides abroad, the decision on amnesty shall apply to him only if he returns to the Republic by 15 September 1969 or if by that time he takes steps to harmonize his stay abroad with the Czechoslovak law.

3. *Act No. 58/1969 on the Liability for Damage Caused by a Decision of a State Body or by its Incorrect Official Procedure*

The Act provides for the liability of the State for damage caused by a decision of a state body contrary to law. The right for compensation for damage caused by such a decision made contrary to law is enjoyed by the parties to proceedings who are aggrieved by a decision made contrary to law in such proceedings.

The Act likewise provides for the conditions under which the person, who has been taken into custody and against whom criminal proceedings have been discontinued or the indictment was cancelled, has the right to claim compensation. The right to claim compensation for damage also is enjoyed by a person who has served either the whole or a part of sentence if, in later proceedings, the indictment against him has been cancelled or criminal proceedings against him have been discontinued or if, in later proceedings, a lesser punishment has been imposed on him than that he served on the basis of the cancelled sentence.

Under the Act, the State is liable also for the damage caused by incorrect official procedure by state authorities.

[1] Note furnished by the Government of the Czechoslovak Socialist Republic.

4. *Act No. 84/1969 on Serving the Sentence of Deprivation of Freedom*

The purpose of imposing the sentence of deprivation of freedom under this Act is to prevent the convict from future criminal activity and to educate him systematically to lead the life of a working person. The serving of the sentence of deprivation of freedom must not degrade human dignity.

In the course of serving the sentence, limitations may be imposed only on those civil rights of convicts whose exercise would contradict the serving of the sentence or those that cannot be asserted in respect of the serving of the sentence.

5. *Government Ordinance No. 114/1969 Specifying the Cases in which the Issuance of a Travel Document may be Refused*

The Government Ordinance enumerates the reasons for which citizens may be refused the issuance of a travel document.

6. *Act No. 147/1969 Amending and Completing Act No. 60/1966 on Prosecution*

The Act adjusts the system of bodies of the prosecution to be in harmony with the federative system of the Czechoslovak Socialist Republic.

7. *Act No. 148/1969 Amending and Completing Penal Act No. 140/1961*

Inter alia, the Act regulates the question of the non-applicability of statutory limitations to war crimes and crimes against humanity in accordance with the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

8. *Act No. 153/1969 Amending the Labour Code*

The Act newly regulates certain questions dealt with in the Labour Code, namely, questions connected with ending employment, regulation of working hours and holidays.

Further, the Act regulates social controls of the trade union organization, the question of raising the qualification of workers and some questions connected with the re-employment of persons after the termination of their official public functions or other activities performed for a social organization and after training or termination of the service in the army, and with the re-employment of women after the termination of the maternity leave and after the termination of temporary working disability or a quarantine. The organization is obliged to assign these persons to the work they originally performed at the same place of work. If this is not possible because the work was eliminated or the place or work was abolished in the meantime, the organization is obliged to assign such persons to the work corresponding to their working contract or at least to the qualification prescribed therein.

The regulation of the settlement of work disputes in the Act is quite new. Disputes arising between an employee and his organization on claims ensuing from employment are dealt with and decided exclusively by courts. If, however, either party to the dispute demands it, conciliatory proceedings may be undertaken by the commission for the settlement of work disputes. Some cases, however, enumerated specifically in the Act, must be discussed by the commission before the proposal for procedure is submitted to the court.

As the Act stipulates, the purpose of discussing the dispute in the commission is to achieve its settlement. The commission shall approve such a settlement unless it contradicts the regulations in force.

The Act also contains the obligations of an organization towards apprentices after the termination of apprenticeship. The organization is bound to conclude a working contract with each apprentice and make it possible for him to professionally advance in a collective of the other workers. The negotiated type of work must correspond to the qualification attained in the course of apprenticeship.

9. *Act No. 154/1969 on the Maternity Allowance*

The purpose of the Act is to grant a maternity allowance to employed women who care for their children and do not receive during that time any income from their employment.

The Act stipulates conditions under which the woman is eligible for such an allowance, stipulates the time for which such allowance is granted and its amount.

DAHOMEY

JUDICIAL DECISIONS

SUMMARY [1]

1. Written applications by Hubert Maga and nine others for annulment of the unconstitutional provisions of Ordinance No. 23/PR/MAIS/DAI-A of 8 April 1968 of the President of the Republic

   (Before the Constitutional Chamber of the Supreme Court at Cotonou; judgement of 13 April 1968)

The Supreme Court declared unconstitutional article 6 of Ordinance No. 23 PR/MAIS/DAI-A of 8 April 1968, which states that former holders of the offices of President of the Republic, Vice-President of the Republic, Head of Government and President of the National Assembly, and former Ministers who held office under previous constitutional forms of government, shall not be eligible for the office of President of the Republic. In its judgement, the Court referred *inter alia* to the preamble of the Constitution of the Republic of Dahomey of 31 March 1968, which proclaims the adherence of the people of Dahomey to the principles of democracy and human rights, as set out in the Universal Declaration of 1948 and the Charter of the United Nations, and as guaranteed by this Constitution, and to article 21 of the Universal Declaration of Human Rights, which states that everyone has the right to take part in the government of his country, directly or through freely chosen representatives, and the right of equal access to public service in his country.

2. *Ministère public v. Békoutey Oroutcha and five others*

   (Before the Court of First Instance of Natitingou; nature of offence: imposition of tribal scars on the human body; judgement of 28 June 1969)

The Court found the accused guilty of the offence with which they were charged by the *ministère public* and stated, *inter alia*, in its judgement that the imposition of tribal scars on the persons of children constituted a punishable offence under articles 1 and 2 of Ordinance No. 27 of 21 August 1967.

3. *Ministère public* v. *Gounoukpérou Dafia Pascal*

   (Before the Court of First Instance of Natitingou; nature of offence: acceptance of bribes by a public official and arbitrary detention; judgement of 27 November 1969)

The Court found the accused guilty of the offences with which he was charged. In its judgement, the Court held, *inter alia*, that the accused, being a government employee, had solicited or received gifts or presents in consideration of his performance or non-performance of an act, official or unofficial but in any event not remunerable, and had, without warrant from the duly constituted authorities and in circumstances not covered by the law requiring the apprehension of accused persons, arrested and falsely imprisoned one Yarou Tamou but had, as the Court noted, released him before the tenth day following the day of the arrest, and that the said acts constituted punishable offences under article 177, paragraph 2, and articles 341 and 343 of the Penal Code.

[1] This summary is based on the texts of the judicial decisions communicated by the Government of the Republic of Dahomey.

ORDINANCE NO. 69-9 OF THE OFFICE OF THE PRESIDENT OF THE REPUBLIC, OF 7 MAY 1969, ESTABLISHING A STATE SECURITY COURT [2]

Article 1. In time of peace, serious offences (*crimes*) and less serious offences (*délits*) against the security of the State specified in and punishable under articles 75 to 108 of the Penal Code shall be referred to a State Security Court, the jurisdiction of which shall extend throughout the whole territory of the Republic. The composition of the Court, the rules governing its functioning and its procedure are established below.

The Court shall have jurisdiction in cases involving:

[2] *Journal officiel de la République du Dahomey*, No. 25, of 17 October 1969.

(*a*) Offences related to serious offences (*crimes*) and less serious offences (*délits*) against the security of the State;

(*b*) Serious offences (*crimes*) and less serious offences (*délits*) specified in and punishable under existing legislation and listed below, aiding and abetting and related offences, when such serious offences (*crimes*) and less serious offences (*délits*) are connected with an individual or collective enterprise designed to substitute an illegal authority for the authority of the State:

. . .

Incitement to or participation in unlawful assembly;

. . .

Illegal arrests and illegal restraint of persons.

. . .

Article 2. Prosecution shall be instituted by the *ministère public* attached to the State Security Court on the written instructions of the Minister of Justice.

. . .

Article 4. In order to avoid the disclosure of a national defence secret, steps may be taken, even through administrative channels, for the preventive seizure of objects, documents, printed matter or other instruments of such disclosure.

. . .

Article 6. Preliminary investigation of cases referred to the State Security Court shall be undertaken by an examining judge with the rank of grade three, step four or above. The examining judge shall be assisted by a clerk of the court.

Article 7. The functions of the *ministère public* attached to the State Security Court shall be performed, under the authority of the Minister of Jusice, by a *procureur général* with the rank of grade three, step five or above.

. . .

Article 16. The examining judge shall invite the accused, at his first appearence, to inform him of the name of his counsel within two days.

If he fails to do so, a counsel shall be appointed for him *ex officio* by the *bâtonnier* or, if the *bâtonnier* fails to do so, by the President of the State Security Court.

The examining judge shall issue all warrants.

Article 17. The formalities provided for in article 146 of the Code of Penal Procedure shall be optional. For the purposes of information and within the limits of his mission, the expert may hear only the accused's, counsel having been duly summoned.

. . .

Article 19. A person against whom a charge has already been brought (*inculpé*) may be heard by the examining judge in separate proceedings concerning the same or related acts.

Statements made at the hearing shall not be on oath, counsel having been duly summoned.

. . .

Article 21. The examining judge shall consider whether there is evidence that the accused has committed an offence under Penal law which falls within the jurisdiction of the State Security Court.

Article 22. If the examining judge considers that a serious offence (*crime*) or less serious offence (*délit*) has not been committed, or if an offence has been committed by a person or persons unknown, or if there is not sufficient evidence against the accused, the examining judge shall dismiss the case.

An accused person held in custody pending trial shall then be released subject to the provisions of article 25, third paragraph, of this ordinance.

Article 23. If the examining judge considers that there is evidence that the accused has committed an offence falling within the jurisdiction of the State Security Court by virtue of article 1 of this ordinance, he shall order that the case be referred to that Court.

The accused shall be acquainted with the decision within twenty-four hours and counsel shall be informed of it within the same period.

The accused person shall remain in custody until the State Security Court has decided on the merits of the case.

The examining judge shall transmit the file with his decision to the *procureur général* attached to the State Security Court, who shall have the accused summoned to appear at one of the earliest sittings.

Appearance before the State Security Court may take place six days after the issue of the summons.

During this period the file shall be made available to the accused's counsel, who may examine it on the spot.

Article 24. If the examining judge considers that there is evidence that the accused has committed offences which are not within the jurisdiction of the State Security Court by virtue of article 1 of this Ordinance, he shall declare himself incompetent. The warrant for arrest or committal order issued against the accused shall remain in force; the *ministère public* shall, within eight days of the decision regarding the incompetence of the Court, refer the case to the *ministère public* of the court normally competent.

In the case covered by this article, the institution of proceedings and the investigation and any formal procedures that have been executed or decisions that have been given previously shall remain valid and need not be repeated.

Article 25. The ministère public may appeal to the State Security Court against any decision of the examining judge.

Such appeal shall be lodged by means of a statement from the office of the clerk of the court within twenty-four hours of receipt of notice of the decision.

The decision under appeal by the *ministère public* shall not take effect until the Court has reached a decision.

An accused person, too, has the right to appeal against decisions refusing release on bail. Such appeal shall be lodged within the same period of

time and in the same manner as an appeal by the *ministère public*.

The Court shall hand down its decision within three days after the case has been referred to it.

ORDINANCE NO. 69-33 OF THE OFFICE OF THE PRESIDENT OF THE REPUBLIC, OF 15 OCTOBER 1969, DEFINING THE NATURE OF AND ESTABLISHING THE PENALTIES FOR CERTAIN SERIOUS OFFENCES *(CRIMES)* AND LESS SERIOUS OFFENCES *(DÉLITS)* AGAINST THE SECURITY OF THE STATE [3]

ATTACKS, CONSPIRACIES AND OTHER OFFENCES AGAINST THE AUTHORITY OF THE STATE AND THE INTEGRITY OF THE NATIONAL TERRITORY

Article 1. An attack designed to overthrow or change the Government, or to incite citizens or inhabitants to take up arms against the authority of the State or against each other, or to violate the integrity of the national territory shall be punishable by death.

Only the commission of such an act or an attempt to commit such an act shall be regarded as constituting an attack.

...

SERIOUS OFFENCES (CRIMES) AIMED AT DISTURBING THE STATE THROUGH MASSACRE OR DEVASTATION

Article 8. Any person who commits an attack designed to result in a massacre or in devastation throughout the whole of, or in part of, the national territory shall be liable to the death penalty.

Only the commission of such an act or an attempt to commit such an act shall be regarded as constituting an attack.

...

SERIOUS OFFENCES (CRIMES) COMMITTED THROUGH PARTICIPATION IN AN INSURRECTIONARY MOVEMENT

Article 12. Any person who, in an insurrectionary movement:

(1) Constructs, or helps to construct, barricades, trenches or other obstacles designed to impede or halt the activities of the law enforcement services;

(2) Prevents, by violence or by threats, the convening or assembly of the law enforcement services, or, either by distributing orders or proclamations, or by carrying the flag or other rallying signs, or by any other means of appeal, provokes or facilitates rebel gatherings;

(3) Invades or occupies buildings, post offices or other public buildings, or occupied or unoccupied dwellings for the purpose of attacking or resisting the law-enforcement services shall be liable to imprisonment for a period of from ten to twenty years.

An owner or tenant who, knowing the rebels' intention and while not acting under duress, allows them to enter the said houses shall be liable to the same penalty.

...

MISCELLANEOUS PROVISIONS

Article 15. Any person who, being aware of plans to commit, or of the commission of, acts of treason or espionage or other activities of such a nature as to jeopardize national defence, does not inform the military, administrative or judicial authorities immediately upon learning of them, shall be liable to imprisonment for a period of from ten to twenty years.

...

[3] *Ibid.*, No. 25, of 17 October 1969.

ECUADOR

NOTE [1]

In the first place the Government of Ecuador wishes to point out that the constitutional norms established in the 1946 Political Constitution [2] provide ample guarantees for the full exercice of human rights, categorically prohibit discrimination of any kind and establish the full equality of all inhabitants of Ecuador. Aliens residing in Ecuador have the same rights as nationals except in the exercise of political rights.

The above-mentioned constitutional norms, the other legislation of the Republic, which is entirely consistent with the supreme norms and the daily life of the Ecuadorian people, who are aware of the validity of those principles, have prevented the commission of any acts contrary to the Universal Declaration of Human Rights; the national tribunals and judges have therefore not had the occasion to deal with such offences.

The Government of Ecuador designated 1968 as the "International Year for Human Rights" and organized a series of cultural events for its celebration. In order to implement the Government's decision, lectures, round-table conferences, seminars and symposia commemorating the Universal Declaration of Human Rights were held in all institutions of primary, secondary and higher education in the course of that year.

In connexion with the International Year, the National Committee for UNESCO, with the valuable co-operation of the UNDP Representative, held a commemorative meeting in Quito. The press reacted very favourably to the programme of speeches and praised this kind of cultural event, which helps to disseminate the principles and purposes of the United Nations, particularly in the field of human rights.

Lastly, it should be noted that Ecuador signed the American Convention on Human Rights which was drawn up at the meeting held at San José, Costa Rica, in mid-1969.

[1] Note furnished by the Government of Ecuador.

[2] For extracts from the Constitution of Ecuador, see *Yearbook on Human Rights for 1966*, pp. 92-96.

DECREE NO. 470 OF 20 MARCH 1969 [3]

Article 1. Colombian nationals holding valid passports or citizenship cards shall not require a visa issued by the Ecuadorian Consul in order to enter Ecuador and travel throughout the territory of the Republic as tourists for a period of up to sixty (60) days.

The vehicles in which persons holding valid passports or citizenship cards enter Ecuador shall be subject to the provisions of the Vehicular Traffic Agreement and the customs regulations in force.

Article 2. The competent officials of the Immigration and Aliens Service of Ecuador shall be responsible for controlling the entry of Colombian nationals referred to in this Decree; they shall keep a ledger in which they shall record the names of the persons entering Ecuador, the number and place of issue of the valid passport or citizenship card, the date of entry and departure and other information which may be considered useful.

The registration and control of the arrival of persons carrying a valid identity document shall be carried out in the immigration offices at the frontier and in airports, sea and river ports to be determined by the Government of Ecuador for that purpose.

Article 3. At the time of the registration referred to in the preceding article the competent authorities shall issue free of charge to the holders of citizenship cards a voucher giving the name of the recipient, the number of the citizenship card and the dates of arrival and departure. Passports shall be stamped only with the date of arrival and period of validity.

Article 4. Authorization to travel with a valid identity document or passport shall not entitle the bearer to engage in any commercial or professional activity or remunerated occupation in the territory of Ecuador or to establish his domicile in Ecuador or to obtain a work or residency permit or to change his status of a tourist while in the country.

Persons violating these rules shall immediately be expelled from Ecuador. Repeated offenders

[3] *Official Register*, No. 149, of 2 April 1969.

shall be subject to the other penalties provided in the relevant legislation.

Article 5. The Government of Ecuador reserves the right to deny entry to the national territory or to terminate the authorized visit of Colombians covered by this regulation when deemed appropriate, in the interest of public order or for any other reason, by the competent Ecuadorian authorities.

Article 6. Minors shall require, in addition to the identity document, an authorization signed by the father, or in his absence by the mother or the person exercising parental authority in the presence of the competent Colombian authorities authorizing them to travel to Ecuador.

Article 7. The Ecuadorian Immigration and Aliens Service and the Directorate General of National Security shall be required to exchange with the corresponding Colombian authorities information concerning persons who for any reason have been prohibited from leaving the country or are barred from entering Ecuador or Colombia. The relevant lists shall be kept up to date in due form in the immigration offices at the frontier and in airports, sea and river ports.

. . .

EL SALVADOR

DECREE NO. 5 OF 20 JANUARY 1969 [1]

BASIC PRINCIPLES

Article 1. The purpose of this Decree is to regulate the organization, operation and broadcasting service of the National Radio of El Salvador, which shall hereinafter be referred to as the "National Radio".

Article 2. The National Radio shall broadcast information concerning government activities and national and international events of general interest in the scientific, cultural and social fields.

It shall promote the artistic development of the nation by broadcasting its own programmes or programmes sponsored by other institutions, live or taped, in which Salvadorian artists participate.

It shall also promote the exchange of radio programmes with other countries in order to strengthen the bonds of friendship and mutual understanding with those countries.

In no circumstances may the National Radio broadcast commercial advertising of a private nature.

[1] *Official Journal*, vol. 222, No. 21, of 31 January 1969.

ACT CONCERNING THE TEACHING PROFESSION

Promulgated by Decree No. 410 of 20 June 1969 [2]

TITLE I

Chapter I

Article 1: The object of this Act is:

(*a*) To regulate the relations between the State and the teachers serving it in autonomous or semi-autonomous government establishments, municipal institutions and private establishments;

(*b*) To expand and protect the education and the interests of students and parents by selecting and promoting teaching staff on the basis of merit and ability;

(*c*) To regulate the rights and duties of teachers;

(*d*) To guarantee the protection of teachers by establishing an equitable and just disciplinary system.

...

[2] *Ibid.*, vol. 224, No. 155, of 25 August 1969.

TITLE II

THE TEACHING PROFESSION

Chapter VII

FACTORS DISQUALIFYING PERSONS FROM ENTERING THE TEACHING PROFESSION

Article 25. The following persons shall be disqualified from teaching:

(a) Persons suffering from an infectious, contagious or other disease which, in the opinion of the experts, constitutes a serious danger to the students or renders them incapable of teaching;

(*b*) Persons who are not in full possession of their mental faculties;

(*c*) Persons who have been prevented by law from teaching, pending their rehabilitation;

(*d*) Persons convicted of crimes for the duration of the sentence. They may, however, perform teaching duties inside prison.

...

TITLE III

RIGHTS AND DUTIES

Chapter I

THE RIGHTS OF TEACHERS

Article 27. Teachers shall have the following rights:

(1) The right to tenure of office or employment. Accordingly, teachers may not be disqualified, dismissed, transferred or suspended except in the cases and according to the regulations specified in this Act, with the exception of supervisors, who may be transferred for reasons of service;

(2) The right of free association in trade union organizations in order to defend their economic and social interests and to make their opinions known; they may therefore distribute all kinds of information circulars, notices of meetings and calls for action to teachers in educational establishments as long as they do not disrupt work;

(3) The right to participate in an advisory capacity, directly or through trade union organizations, in the formulation of the State's education policy, in the preparation of curricula and other questions of importance to education;

(4) The right to be represented on a basis of equality in the bargaining organs established by law;

. . .

(12) The right to social security in accordance with the relevant legislation. For this purpose, the period of service completed by the teacher shall be the time he has worked in that capacity in any State institution, autonomous or semi-autonomous government establishment or municipal institution, including the period prior to the entry into force of this Act.

. . .

Chapter II

DUTIES OF TEACHERS

Article 28. Teachers shall have the following duties:

(1) The duty to conduct themselves, in public and in private, in a manner befitting the great dignity of the teaching profession;

. . .

Chapter III

PROHIBITIONS AFFECTING TEACHERS

Article 29. Teachers shall be prohibited from:

. . .

(2) Engaging in any kind of partisan political propaganda in educational establishments or offices;

. . .

(4) Inflicting corporal or degrading punishment on their students;

(5) Influencing the political decisions of their students or subordinates and taking reprisals against them or penalizing them for their political or trade union affiliations or activities;

(6) Restricting the right of free association of other teachers;

(7) Making forced collections or demanding endorsements or allegiance of any nature;

(8) Using the premises of educational establishments for housing or activities unrelated to education without proper authorization.

FINLAND

NOTE [1]

I. LEGISLATION

1. Administration of criminal justice

(*a*) Act No. 1, of 10 January 1969, on the Abolishment of Certain Accessory Penalties (*Suomen Asetuskokoelma,* hereinafter referred to as *AsK*—Official Statute Gazette of Finland—No. 1/69).

In the penal system of the Criminal Code of Finland there used to be certain accessory penalties prescribed for crimes deemed to indicate a particular dishonesty or a lack of sense of honour or to disclose a depraved mind in the offender. One of these accessory penalties was the deprivation of civil rights for life or for a certain period of time from one to fifteen years after the ordinary penalty of imprisonment or hard labour was suffered. During that time the convicted person was deprived of the rights and advantages for which a good reputation was necessary.

A similar accessory penalty for persons in government service was the declaration to be unworthy of being employed by the State for a certain period of time from one to fifteen years after the ordinary penalty was suffered.

A further accessory penalty was the declaration to be unworthy to plead another person's cause before a court or other public authority.

These accessory penalties were criticized on the ground that they unreasonably hampered the possibilities of the convict to return to an ordinary life after suffering his ordinary penalty.

The first improvement to this situation took place by Act No. 149 of 11 April 1958, which gave the courts the power to decide, after taking into consideration the circumstances connected with the offence and other special reasons appearing in the case, that the offender be not deprived of his civil rights although proved guilty of a crime for which such an accessory penalty was prescribed by law.

However, this improvement was not considered to be sufficient in the light of modern thinking and the views and ideas prevailing in the criminal policy of today.

By Act No. 1/69 mentioned above all these accessory penalties were abolished from the penal system. At the same time, all the restraints put to persons as a consequence of any of these accessory penalties ceased to be in force.

(*b*) Act No. 28, of 17 January 1969, to amend the Criminal Code (*AsK* No. 28/69).

Among the penalties prescribed by the Criminal Code of Finland, fines are most commonly used. About 90 per cent of all sentences in criminal cases are fines. A fine is always measured in terms of so-called "day-fines" of fixed amount per day. This amount is assessed on the basis of the means of the defendant. Offenders who are not able to pay their fines have to serve the alternative sentence in the form of imprisonment.

However, the maximum term of the alternative sentence was before the amendment 180 days' imprisonment.

In order to reduce the number of cases where the offender, because of lack of means, had to serve the alternative sentence in prison, the law concerning the penalty of fines was amended in 1963 so that the executive authorities were given the power to grant a postponement in the payment of a fine and that it was allowed to pay the fine in instalments. Even while serving an alternative sentence, the offender was entitled to pay the fine and be released immediately.

Even after these amendments, the number of cases where offenders served the alternative sentence in prison remained relatively high. The purpose of Act No. 28/69 mentioned above is to diminish this number considerably. First, the maximum fine, which used to be 300-day fines, was lowered to 120-day fines. Secondly, the maximum term of alternative imprisonment which used to be 180 days was lowered to 90 days. Finally, the courts were given the power, in the case of non-payment, to postpone the payment of fine or determine that the fine or the alternative sentence be dropped.

(*c*) Act No. 30, of 17 January 1969, to amend the Act on the Enforcement of Criminal Sentences (*AsK* No. 30/69).

This Act is closely linked to the preceding Act and contains detailed provisions concerning the procedure to be followed in cases where a fine is not paid.

When there is reason to assume that the offender will correct his ways without serving the alternative sentence and there is no reason to suspect that he has neglected the payment of fine out of contumacy or obvious carelessness, the

[1] Note prepared by Mr. Voitto Saario, Justice of the Supreme Court of Finland, government-appointed correspondent of the *Yearbook on Human Rights.*

court may order that the execution of the alternative sentence be postponed for two years. If the offender is not convicted of another offense during the postponement, the alternative sentence is dropped.

2. Right to freedom of thought, conscience and religion

Act No. 132, of 21 February 1969, on Unarmed Military Service and Civil Service (*AsK* No. 132/69).

The principle of the right of conscientious objectors to refuse to enter armed military service has been recognized in Finland as long as there has been general conscription. The relevant provisions have been amended several times along with the changes of circumstances and public opinion.

Act No. 132/69 mentioned above replaces the previous Act on the same subject of 15 May 1959. According to the new Act, a person who is prevented from performing his military service in the ordinary way because of serious reasons of conscience based on religious or ethical conviction may be exempted from armed service during peacetime. Such a person shall perform unarmed or civil service in accordance with the provisions of this Act.

3. Right to freedom of peaceful assembly and association

Act No. 10, of 10 January 1969, on Political Parties (*AsK* No. 10/69) intends to regulate the establishment and legal status of political parties in Finland. Previously, these matters were based on a practice of long duration without any direct mention by laws concerning electoral rights of citizens.

According to this Act, a special Party Register shall be kept by the Ministry of Justice. Any association the purpose of which is to influence upon political matters can be registered as a political party, provided that it has at least five thousand supporters who are entitled to vote, that its statutes ensure the observance of democratic principles in the decision making and function of the association and that it has a general programme indicating its principles and goals.

If none of the candidates of a party is elected at the two latest elections, the party shall be removed from the register. It can also be removed upon its own request.

In the framework of the State budget, political parties represented in Parliament may be granted a subsidy in order to support their public function as defined in their statutes and general programme. The subsidies shall be allotted in proportion to the number of their elected representatives at the latest election. The parties have to render an account of the use of their subsidies.

All political parties shall be treated equally by the State and its organs and institutions, and equal grounds shall be applied to them in all respects.

When this Act came into force on 1 February 1969, eight political parties already in existence were *ex officio* registered.

4. Right to take part in the Government

(*a*) Act No. 341, of 30 May 1969, amending the Parliament Act which is one of the laws of fundamental character in Finland, lowered the age when a person becomes entitled to vote from 21 to 20 years. (*AsK* No. 341/69).

(*a*) Act No. 341, of 30 May 1969, amending the Act on Parliamentary Election, lowered the age when a person is enrolled in the register of voters from 21 to 20 years. (*AsK* No. 342/69).

(*c*) Act No. 343, of the same date, amending the Guardianship Act, lowered the age when a person reaches his majority from 21 to 20 years. This change of the full legal age brought about a number of other amendments to various Acts where the enjoyment of a certain right or power is made dependent upon majority. (*AsK* No. 343/69).

5. Right to social security

(*a*) Act No. 38, of 17 January 1969, on the Family Pension (*AsK* No. 38/69) establishes a general right to a pension for the family of a deceased person.

According to this Act, a family pension and education support shall be paid after the death of any person who was residing in Finland. However, if the deceased was not a Finnish citizen, family pension or education support is paid only if the deceased had been residing in Finland for the last five years before his death, and if the beneficiary had moved to Finland before the death.

In this pension system, the beneficiaries are the children and the widow of the deceased. In the same position as a child born in wedlock is an adoptive child and a child born out of wedlock, provided that the deceased had legally recognized the child or was obliged to support him either by an agreement or by a court decision, as well as any other child whose maintenance the deceased had taken care of.

A child is entitled to a family pension until he has reached the age of sixteen years. However, if the child because of his study or training cannot earn his living earlier, his right to a family pension shall continue until he reaches the age of twenty-one years.

A widow is entitled to a family pension for six months after the death of her husband, provided that she had entered into marriage before having reached the age of sixty years. If, at the moment of the death of her husband, she has reached the age of forty but not sixty years, her right to a family pension shall continue until she reaches the age of sixty-five when she will receive the ordinary old age pension, provided that her marriage had lasted at least for three years. A widow is entitled to a family pension, regardless of her age at the moment of her wedding or the death of her husband, if she has in her custody one or more children under the age of sixteen years who are entitled to a family pension. If the widow has reached the age of forty but not sixty years when the youngest child becomes sixteen years old, her right to a family pension shall continue until she reaches the age of sixty-five

years. The widow may also, upon her application, be granted support for her study or training in order to enable her to obtain qualifications for a trade or profession. This support may be granted in the form of a subsidy or loan.

(*b*) Act No. 467, of 14 July 1969, on the Pension of Farming Entrepreneurs (*AsK* No. 467/69).

By this Act a special pension system is established for persons who are engaged in farming or fishing as their source of livelihood. The system is based on compulsory insurance administered by a special insurance institution under the supervision of the Ministry for Social Affairs and Public Health. Half of the pensions paid annually are to be covered by State funds. If the State subsidy and insurance premiums are insufficient to cover all the costs of the system, the excess amount shall be paid from State funds.

(*c*) Act No. 469, of 14 July 1969, on the Pension of Business Entrepreneurs (*AsK* No. 468/69).

The purpose of this Act is to establish a special pension system for independent entrepreneurs in other fields than farming and fishing. This system also is based on compulsory insurance administered by certain insurance and pension institutions under the supervision of the Ministry for Social Affairs and Public Health. If the funds constituted by the insurance and pension institutions from insurance premiums do not suffice for the payment of pensions and other costs, the exceeding amount shall be paid from State funds.

II. INTERNATIONAL AGREEMENTS

1. Decree No. 89, of 31 January 1969, brings into force in Finland the Agreement between Finland, Denmark, Norway and Sweden on the Enforcement of Certain Provisions Concerning Nationality (*AsK* No. 89/69).

The purpose of this Agreement is to facilitate the procedure for the nationals of any of the Contracting States in obtaining the nationality of another Contracting State.

2. Decree No. 90, of 31 January 1969, brings into force in Finland the Convention on the Organization for Economic Co-operation and Development and Supplementary Protocols Nos. 1 and 2 to the Convention, done in Paris on 14 December 1960 (*AsK* No. 90/69).

3. Decree No. 660, of 3 October 1969, brings into force in Finland the Agreement between Finland, Denmark, Iceland, Norway and Sweden Concerning Population Registration (*AsK* No. 660/69).

The purpose of this Agreement is to facilitate the migration from one of the Contracting States to another by simplifying the formalities required for the establishment of a new domicile.

4. Decree No. 661, of 24 October 1969, brings into force in Finland the Convention Concerning the Guarding of Machinery, adopted by the General Conference of the International Labour Organisation on 25 June 1963 (*Ask* No. 661/69).

5. Decree No. 662, of 24 October 1969, brings into force in Finland the Convention concerning Equality of Treatment of Nationals and Non-nationals in Social Security, adopted by the General Conference of the International Labour Organisation on 28 June 1962 (*AsK* No. 662/69).

6. Decree No. 701, of 3 October 1969, brings into force in Finland the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague on 15 November 1965 (*AsK* No. 701/69).

FRANCE

DEVELOPMENT OF HUMAN RIGHTS IN 1967, 1968 AND 1969 [1]

A further page in the revision of the major provisions of the Civil Code has been written by the reshaping of the former Persons of Unsound Mind Act (*Loi sur les aliénés*). This has been replaced by provisions to protect adults who are physically or mentally more or less incapable of looking after their own affairs.

It has also appeared relevant to mention the Higher Education Guidance Act, 1968 (*Loi d'orientation de l'enseignement supérieure*), because of the social and ethical principles it embodies.

In social welfare, concern for social security, for stability of employment and for safeguards against partial or lasting unemployment has been the motive of several legislative enactments and has led to some major developments in the law of social contract.

CIVIL AND INDIVIDUAL RIGHTS

Amnesty

An Act of 31 July 1968 [2] granted amnesty for all offences committed, particularly by members of the Armed Forces, in connexion with the events in Algeria, and also by members of the Resistance during the period 1940-1946, and enables persons sentenced for acts of collaboration with the enemy during the same period to benefit from amnesty in virtue of a personal decree.

The Act also contains special provisions amnestying certain categories of persons.

The Act of 30 June 1969 [3] granted amnesty for various offences committed before 20 June 1969; petty offences, misdemeanours, offences connected with exercise of the right of assembly or with political activities (demonstrations), or committed in public places or on school or university premises, and certain infractions of the law governing compulsory military service.

The movement which agitated the universities in the spring of 1968 had hardly moderated when, in a spirit of conciliation, Parliament passed on 23 May 1968 an Act [4] granting amnesty for "offences committed between 1 February 1968 and 15 May 1968 in connexion with the events within the universities and the demonstrations to which they gave rise".

Moreover, the courts insist on scrupulous respect for the rights arising from amnesty laws, for instance, the obligation to remove from all official documents any reference to a conviction for which an amnesty has been granted. An administrative tribunal rightly set aside a decision by the Minister for War Veterans withholding the title of "political deportee", on the ground that the reason for his refusal was a mention in the applicant's record of a conviction for which amnesty had been granted. [5]

Protection of the person—persons of unsound mind

A new page in the reform of the Civil Code was written by the Act of 3 January 1968, [6] which re-shaped Book I, Title XI of the Civil Code.

Title XI, supplemented by the Persons of Unsound Mind Act of 30 June 1838, dealt with the interdiction and guardianship of adults incapable of performing the acts of civil life owing to a "usual state of imbecility, insanity or madness". It also provided for the appointment of "judicial counsel" over "spendthrifts".

These provisions, which had become obsolete, expressed far more concern to protect the material and financial interests of families against irrational acts by incapable persons than to protect sick persons.

The recent reform, on the contrary, was designed to ensure that persons unable to manage their own affairs shall be socially and legally protected. The Act defines such a person as follows:

> "A person of full age whom an impairment of his personal faculties has rendered incapable of providing without assistance for his own interests".

Three systems for protecting civil interests have been provided and apply "where mental faculties have been impaired by a disease, an infirmity or

---

[1] Note prepared by Mr. E. Dufour, Master of Requests in the Conseil d'Etat, Paris, appointed by the French Government as Correspondent of the *Yearbook on Human Rights*.

[2] Act 68-697, *Journal officiel*, August 1968, p. 7521.

[3] Act 69-700, *Journal officiel*, July 1969, p. 6675.

[4] Act 68-457, *Journal officiel*, May 1968, p. 5178.

[5] Decision No. 72886 of the Conseil d'Etat, 22 November 1968, *Recueil des arrêts du Conseil d'Etat 1968*, p. 859

[6] Act 68-5, *Journal officiel*, January 1968, p. 114.

enfeeblement due to age". They are also applicable where there is an "impairment of corporeal faculties" hindering expression of the will".

These protective systems are independent of the form of medical treatment or hospitalization applied to the person.

In virtue of a simple declaration made, for example by the physician who has diagnosed mental incapacity, the patient can be placed "under the protection of justice" (Art. 491). This is a purely conservatory measure which does not deprive the person of the exercise of his rights but makes it easier to start proceedings for deprivation or reduction.

A person of full age whose mental faculties have been medically certified as impaired can be placed "under guardianship" by a court order (Art. 492 *et seq.*).

Two important provisions should make the exercise of such guardianship somewhat easier: an individual guardian who is neither the spouse nor an ascendant of the protected adult need not fulfil that sometimes arduous office for more than five years. The guardianship can also be entrusted to a body corporate: this provision opens a fruitful field of activity to specialized charitable institutions or societies.

The "curator" system is designed for a person who, though not completely incapable of acting for himself, requires "to be supervised and counselled in the acts of civil life" (Art. 508).

The Code of Civil Procedure (Arts. 890-897) was also amended by a Decree of 2 October 1968 [7] to enable these provisions to be applied.

They have also been supplemented by two decrees of 15 February 1969 [8, 9] relating to the appointment of persons qualified to exercise guardianship, and to the management of the property of incapable persons admitted to hospital.

Education—University

After the spring disturbances of 1968, what has been called the university disease required legislation. This was given when Parliament passed almost unanimously the Higher Education Guidance Act of 12 November 1968. [10]

This law, which is designed to initiate a profound change in University structures and habits, would require a lengthy analysis. Its Article 1, which defines the purposes for which universities are to train men and women for the service of the nation and the cultural development of society, is annexed hereto.

Intellectual property

An Act of 2 January 1968 [11] has entirely recast French patent legislation, and in particular regulates the co-ownership of patents.

SOCIAL LEGISLATION

Protection of young workers and women

The provisions of Book II of the Labour Code relating to the work of children and young workers were amended by an Ordinance of 27 September 1967 (Title II). [12] Work by young persons under 18 years of age is strictly limited to eight hours a day and forty hours a week. Night work is in general prohibited.

An Act of 31 December 1966 [13] has amended the provisions of the Labour Code (Book I, art. 29) to improve the guarantees given to women in the event of maternity with respect to the duration of leave, suspension of the contract of employment and the guarantee of employment.

Protection of workers—security of employment

Four Ordinances issued on 13 July 1967 [14] are designed to mitigate the adverse effects on individuals of the necessary economic changes brought about by the rapid development of technology, changes in consumer needs, and international competition. They have reorganized the services receiving and placing unemployed workers.

The first Ordinance establishes a National Employment Agency, to reorganize the workers' placement services and at State expense administer prospection as to available employment, the placement of workers, the functioning of the national employment exchange, the reception of workers, and their provision with information and other guidance with respect to vocational training and retraining.

The second Ordinance supplements the Acts of 18 December 1963 and 3 December 1966 concerning the National Employment Fund and vocational training by the establishment of a "retraining allowance" to encourage changes in vocational training.

The third Ordinance generally entitles unemployed workers to a "substitute income" consisting partly of a public assistance allowance (which in future will be paid entirely by the State and not at all by the communes) and partly of a system of compulsory insurance. In practice this means that the system "of insurance against temporary loss of employment" established by the national inter-occupational convention concluded on 31 December 1958 between the major occupational and trade-union associations in trade and industry has been extended to all wage-earners.

A Decree of 25 September 1967 [15] prescribes the conditions for granting public assistance allowances to unemployed workers.

---

[7] Decree 68-855, *Journal officiel*, October 1968, p. 9388.

[8] Decree 69-195, *Journal officiel*, March 1969, p. 2261.

[9] Decree 69-196, *Journal officiel*, March 1969, p. 2263.

[10] Act 68-978, *Journal officiel*, November 1968 p. 10579.

[11] Act 68-1, *Journal officiel*, January 1968, p. 13.

[12] Ordinance 67-830, *Journal officiel*, September 1967, p. 9557.

[13] Act 66-1044, *Journal officiel*, December 1967, p. 11753.

[14] Ordinances 67-578, 67-579, 67-580 and 67-581, *Journal officiel*, July 1967, pp. 7238-7241.

[15] Decree 67-806, *Journal officiel*, September 1967, p. 9474.

The fourth Ordinance increases the right to compensation for dismissal of wage-earners who have been employed in the same undertaking for more than two years, and lays down that collective agreements must include provisions governing compensation for dismissal.

The movements which shook the universities in the spring of 1968 were accompanied by a wave of strikes and social demands which led to the tripartite talks (Government, trade unions and employers) known as the Grenelle Agreements. Of the various causes for concern expressed by the workers, the problem of security of employment was one of the most strongly emphasized. Among the later developments of these agreements, therefore, mention should be made of the signature on 1 February 1969 of the National Inter-Occupational Agreement on Security of Employment, which reinforced the advantages or guarantees resulting from the existing law by measures to be adopted within undertakings or occupations.

Even before the events of May 1968 a National Inter-Occupational Agreement on compensation for partial unemployment, dated 21 February 1968, [16] had also been concluded between the National Confederation of French Employers and the three large trade unions. These provisions are complementary to the statutory compensation system and govern partial compensation for loss of wages attributable especially to short-time working, whether accidental or general. Certain occupations are, however, excluded from the scope of this Agreement.

Vocational training and social advancement

To encourage and improve the adaptation of persons to the changing requirements of an evolving economy, and to anticipate redundancies, the Act of 31 December 1968 [17] provided that attendance at vocational training courses open to wage-earners would henceforth be remunerated in various ways.

According to the situation of the persons for whom they are intended, these courses are entitled retraining, adaptation or occupational advancement courses, preparatory courses for occupational employment, or refresher courses.

Holidays with pay

An Act of 16 May 1969 [18] increased to four weeks the minimum duration of annual holidays with pay due to all wage-earners. This sets the seal on a process which to a considerable extent has already been made standard practice by clauses in collective agreements.

Profit-sharing

Over the last few years a trend has emerged in favour of giving wage-earners a financial interest in the expansion or productivity of undertakings. An Ordinance of 17 August 1969 [19] sought to satisfy this desire in practice by obliging undertakings employing more than 100 persons to set up a special reserve fund to enable employees to share in the benefits resulting from expansion, and to recognize the collective and in certain cases personal right of their employees to the sums thus reserved.

The reserve is calculated in proportion to the taxable profits and the ratio of the wages to the value added by the undertaking.

Employee participation proper can take one of several forms to be laid down by contract: distribution of ordinary shares, allocation to an investment trust or collective investment agency, or payment into personal savings accounts.

The individual rights of each employee are not negotiable until after five years.

Tax concessions encourage this form of profit-sharing, which must always be governed by a collective or house agreement. These provisions were amplified by article 62 of the Finance Act of 27 December 1968. [20]

The procedure for applying the Ordinance, and particularly of calculating, distributing and managing the special reserve, is laid down in a Decree of 19 December 1967, [21] which also imposes minimum requirements for notifying the procedure to the staff of each undertaking.

Other decrees have been issued applying those provisions to workers' co-operative societies (Decree of 1 February 1969), [22] and to public undertakings and nationalized companies (Decree of 21 March 1969). [23]

Collective agreements

An Ordinance of 27 September 1967 [24] widened the Minister's discretionary powers to extend the application of existing collective agreements to non-signatory undertakings or branches.

Social security

On social security, a number of instruments have appeared which reveal the Government's concern, in an unfavourable demographic situation, to reconcile the need for balanced economic growth and the desire for adequate social welfare.

These ordinances, [25] the principle and procedure of which have both proved rather controversial, have as their chief objectives:

(*a*) To popularize voluntary social insurance against sickness and maternity risks. The text was

[16] *Journal officiel*, June 1968, p. 5443.

[17] Act 68-1249, *Journal officiel*, January 1969, p. 74.

[18] Act 69-434, *Journal officiel*, May 1969, p. 4926.

[19] Ordinance 67-693, *Journal officiel*, August 1967, p. 8288.

[20] Act 68-1172, *Journal officiel*, December 1968, p. 12339.

[21] Decree 67-1112, *Journal officiel*, December 1967, p. 12436.

[22] Decree 69-107, *Journal officiel*, February 1969, p. 1301.

[23] Decree 69-255, *Journal officiel*, March 1969, p. 2944.

[24] Ordinance 67-830, *Journal officiel*, September 1967, p. 9557.

[25] Ordinances 67-706, 67-707, 67-708 and 67-709, *Journal officiel*, August 1967, p. 8403, *et seq.*

amplified and amended by an Ordinance of 23 September 1967. [26]

(*b*) To reorganize social-welfare management bodies: this administrative and financial reorganization separates the management of each branch —sickness, old age and family allowances— sharply from those of the others;

(*c*) To review the conditions for payment of sickness insurance benefit;

(*d*) To make provision for the prices of pharmaceutical products.

A further ordinance of 23 September 1967 [27] amended some of the articles of the Public Health and Pharmacy Code to adapt them to the situation resulting from the application of the Treaty establishing the European Economic Community.

The following have been published:

(*a*) The Convention of 15 April 1958 concerning Recognition and Enforcement of Decisions relating to Maintenance Obligations towards Children—by Decree of 21 April 1967; [28]

(*b*) The Agreement between France, the Netherlands and Poland concerning the Social Security Status of Employed Persons or Persons Treated as Such who have been Employed in the Netherlands, France and Poland—by Decree of 20 June 1967; [29]

(*c*) The European Convention of 20 April 1969 on Mutual Assistance in Criminal Matters—by Decree of 23 July 1967;[30]

(*d*) The Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States—by Decree of 18 December 1967; [31]

(*e*) The European Convention on International Commercial Arbitration and its annex of 21 April 1961, together with the Arrangement of 17 December 1962 concerning its application—by Decree of 26 January 1968; [32]

(*f*) The Arrangement of Lisbon concerning the Protection of Appellations of Origin, their International Registration and their Regulation, of 31 October 1958; by Decree of 26 March 1968; [33]

(*g*) The Convention of 6 May 1963 on Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality—by Decree of 21 May 1968; [34]

(*h*) The Convention of 29 July 1960 on Third Party Liability on the Field of Nuclear Energy and the Additional Protocol of 28 January 1964, to the said Convention—by Decree of 6 February 1969; [35]

(*i*) The Single Convention on Narcotic Drugs of 30 March 1961; by Decree of 2 May 1969. [36]

An Act of 4 July 1967 [37] authorized the ratification of an amendment to article 109, paragraph 1 of the United Nations Charter concerning the conditions in which a General Conference of the Members of the United Nations for the purpose of reviewing the Charter may be held (amendment adopted by the General Assembly on 20 December 1965).

An Act of 21 November 1969 [38] authorized approval of the Abolition of Forced Labour Convention (Geneva International Convention No. 105 of 25 June 1957).

An Act of 21 May 1968 [39] authorized approval of the European Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders.

An Act of 21 May 1968 [40] authorized ratification of the Convention between the French Republic and the Polish People's Republic Concerning Applicable Law, Competent Authorities and Authorization of Enforcement in the Matter of Personal and Family Status, signed at Warsaw on 5 April 1967.

ANNEX

Act 68-978 of 12 November 1968 on higher education guidance

Article 1. The fundamental duties of the universities and establishments to which the provisions of the present Act will apply are the advancement and transmission of knowledge, the development of research and the training of men and women.

The universities shall endeavour to raise the level of the higher forms of culture and research and improve their rate of progress as much as possible, and shall procure access to them for all persons with the required vocation and capacity.

The universities shall serve the needs of the nation by supplying it with key personnel of all kinds and participating in the social and economic development of every region. In so doing they shall conform to the democratic evolution demanded by the revolution in industry and technology.

They shall enable their teaching staff and research scholars to perform their work of teaching and research in those conditions of independence and tranquillity which are vital to thought and to intellectual creation.

They shall endeavour to give their students the guidance and the means to improve their choice of professional careers, and shall for that purpose supply them not only

[26] Ordinance 67-828, *Journal officiel*, September 1967, p. 9554.

[27] Ordinance 67-827, *Journal officiel*, September 1967, p. 9553.

[28] Decree 67-374, *Journal officiel*, April 1967, p. 4374.

[29] Decree 67-505, *Journal officiel*, June 1967, p. 6485.

[30] Decree 67-636, *Journal officiel*, August 1967, p. 7809.

[31] Decree 67-1245, *Journal officiel*, December 1967, p. 13066.

[32] Decree 68-117, *Journal officiel*, February 1968, p. 1484.

[33] Decree 68-309, *Journal officiel*, April 1968, p. 3552.

[34] Decree 68-459, *Journal officiel*, May 1968, p. 5219.

[35] Decree 69-154, *Journal officiel*, February 1969, p. 1583.

[36] Decree 69-446, *Journal officiel*, May 1969, p. 5094.

[37] Act 67-535, *Journal officiel*, July 1967, p. 6756.

[38] Act 69-1045; *Journal officiel*, November 1969, p. 11372.

[39] Act 68-452, *Journal officiel*, May 1968, p. 5091.

[40] Act 68-453, *Journal officiel*, May 1968, p. 5091.

with the necessary knowledge but also with the requisites of their training.

They shall provide facilities for their students' cultural, sporting and social activities, which are essential for balanced and complete training.

They shall train teachers for the national education system and ensure the general uniformity of their training, without prejudice to the adaptation of teachers of the various categories to their respective tasks; and shall permit the continuous improvement of teaching and the renewal of knowledge and methods.

Higher education shall be open not only to former pupils but also to persons who have not had the opportunity to continue their studies, so as to enable them, according to their capacities, to improve their chances of promotion or to change their occupations.

The universities shall contribute to lifelong education, particularly by making use of the new media for the dissemination of knowledge, for all categories of the population and for all the purposes which it can embrace.

Higher education, meaning all the various forms of education which follow secondary studies, shall in general contribute to the cultural advancement of society and hence to its evolution towards a greater responsibility of every man for his own destiny.

GABON

ACT NO. 1/69 OF 1 JUNE 1969 AMENDING CERTAIN ARTICLES OF THE CONSTITUTION [1]

Article 1. The first paragraph of article 20 and of article 23 and the first paragraph of article 61 of the Constitution shall be amended as follows:

...

"*Article 61, new first paragraph.* The Supreme Court shall act in an advisory capacity in the cases stipulated by the Constitution or by law. It shall give an opinion on any legal or administrative question submitted to it by the Government."

[1] *Journal officiel de la République gabonaise*, No. 15, of 1 July 1969. For excerpts from the Constitution of the Republic of Gabon, see the *Yearbook on Human Rights for 1961*, pp. 136 and 137.

ACT NO. 3/69 OF 1 JUNE 1969 CONCERNING THE PROTECTION OF FEMALE INFANTS [2]

Article 1. Any person who seduces and makes pregnant a female student under twenty years of age shall be obliged to marry her.

Article 2. The student who has been seduced or her parents may, if necessary, bring an action before the courts of main instance. The parties shall have the right to submit evidence by all appropriate means.

The action must be brought during the year following the birth of the child.

Article 3. Any person who resorts to fraudulent manoeuvres in an attempt to evade the obligation incurred under article 1 of this Act shall be liable to imprisonment for one to five years and to a fine of 24,000 to 500,000 francs, or to one of these penalties only, without prejudice to immediate dismissal from his office, duties or employment.

...

[2] *Ibid.*

ACT NO. 2/69 OF 1 JUNE 1969 AMENDING ACT NO. 13/63 OF 8 MAY 1963 CONCERNING PUBLIC HEALTH PROTECTION AGAINST ENDEMIC AND EPIDEMIC DISEASES [3]

...

TITLE I

GENERAL PROVISIONS

"*New Article 2.* The whole population of the Republic shall undergo periodic examinations in accordance with a schedule to be established by the Minister of Public Health and Population."

...

[3] *Journal officiel de la République gabonaise*, No. 16, of 15 July 1969.

TITLE IV

VACCINATIONS

"*New Article 11.* Vaccination against smallpox and vaccination against yellow fever shall be mandatory for everyone throughout the Republic. Vaccination against measles shall be mandatory for all children between the ages of six months and six years. BCG vaccination against tuberculosis shall be mandatory for all persons under twenty years of age, except in cases where there is an officially established medical contra-indication . . ."

. . .

TITLE VI

HEALTH PROTECTION AT THE FRONTIERS

"*New Article 18.* Any foreign traveller must carry an international vaccination certificate stating that he has been vaccinated against smallpox within the previous three years, and against yellow fever within the previous ten years.

Children under one year of age and persons coming from a non-infected territory and staying in Gabon for less than fifteen days shall be exempt from the requirement relating to yellow fever."

. . .

ACT NO. 4/69 OF 1 JUNE 1969 AMENDING THE PROVISIONS OF ARTICLE 21, PARAGRAPH 1, OF ACT NO. 61/63 ESTABLISHING AN OLD-AGE INSURANCE SCHEME IN THE GABONESE REPUBLIC [4]

Article 1. Article 21, paragraph 1, of Act No. 61/63 of 28 December 1963, mentioned above, shall be amended as follows:

"*Article 21 (new paragraph 1).* An alien worker who is a member of the old-age insurance scheme provided for in this Act, who definitely leaves the territory of the Gabonese Republic before reaching the qualifying age for an old-age pension or superannuation grant, may apply for repayment of the old-age insurance contributions paid:

"(1) By himself and by his employer or employers, for the period prior to 1 January 1969;

"(2) By himself alone, for the period subsequent to 1 January 1969."

. . .

[4] *Ibid.*

GHANA

NOTE [1]

In furtherance of the objectives of the principles laid down in the Universal Declaration of Human Rights and other declarations and instruments of the United Nations relating to human rights, the Government of Ghana has enacted, over the years, a number of laws and decrees which are in conformity with the said principles.

There have been enacted:

(1) The Representation of the People Decree 1968 which confirms every individual's fundamental right to participate in the government of his country directly or through freely chosen representatives in free elections on the basis of universal and equal suffrage.

(2) The Industrial Relations Act and Labour Decree which allow the formation of trade unions for the protection of the interests of their members; and regulate the conditions between employer and employee with special regard to basic human rights and needs.

(3) The Social Security and Workmen's Compensation Acts which give the individual the right to security in the event of sickness, disability, widowhood and old age.

(4) The Textile Design (Registration) Act which gives the right to protection of moral and material interests resulting from any scientific, literary or artistic work of which one is the author.

(5) The Maintenance of Children Act which brings within the ambit of the law, the proper care of, and aid to, mothers and children.

There is no discrimination whatsoever in the field of Education in Ghana. The policy of the Government of Ghana has been to eradicate illiteracy, to increase the facilities for primary, secondary and technical education, and to ensure that university education is available to all on the basis of merit.

There is total academic freedom and in the higher institutions lectures and symposia are regularly organised and, often, the topics chosen have some connection to the principles of human rights, and fundamental freedoms.

The most important enactment in Ghana in 1969 is the new Constitution of Ghana which ushered in the Second Republic.

To promote further the principles contained in the Universal Declaration of Human Rights, a whole chapter of the Constitution is devoted to fundamental human rights.

The chapter of the Constitution develops and guarantees the political, civil, economic and social rights of the individual and it attempts to end all discrimination and denial of human rights and fundamental freedoms in the country.

To enable the individual to enforce the fundamental freedoms guaranteed by the Constitution, article 106 of the Ghana Constitution 1969 makes provision for the Supreme Court to hear cases which relate to the Constitution or to any enactment which appears to be excessive with a view to determine and declare the true and proper interpretation of the Constitution and any such enactment. Article 106 reads as follows:

> "(1) The Supreme Court shall, save as otherwise provided in article 28 of this Constitution, have original jurisdiction, to the exclusion of all other Courts:
>
> "(*a*) In all matters relating to the enforcement or interpretation of any provision of this Constitution; and
>
> "(*b*) Where any question arises whether an enactment was made in excess of the powers conferred upon Parliament or any other authority or person by law or under this Constitution.
>
> "(2) Where any question relating to any matter or question as is referred to in the preceding clause arises in any proceedings in any Court, other than the Supreme Court, that Court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court."

There has been a review of existing laws to bring legislation into conformity with the spirit of the Constitution and with the principles of fundamental human rights. This review has led to the draft bills for the repeal in the present Parliament of Ghana of:

(*a*) The Prohibited Organisations Decree, 1969, which seeks to exclude, on political grounds, certain persons and certain organisations from participating in elections and political activities.

(*b*) The Newspaper Licensing Act, 1963, which curtails the right of the press to freedom of expression.

For the greater recognition and full enjoyment of the fundamental freedoms and individual human rights, there has been set up a Centre

[1] Note furnished by the Government of Ghana.

for Civic Education, which is a voluntary organisation, established with the support of the erstwhile National Liberation Council, as an instrument of active democratic citizenship. It has no religious bias. It is non-tribalistic and non-party political. The main objectives of the Centre are to provide education in:

(*a*) Democratic rights and responsibilities;

(*b*) Ideals of public service, integrity, tolerance of differences; and

(*c*) Belief in those values which constitute the foundation of a free society.

The Centre organizes public lectures, discussion and study groups and calls conferences to discuss matters of public interest.

The Centre aims at reaching every citizen, man or woman, literate or illiterate, rich or poor.

THE CONSTITUTION OF GHANA OF 1969

CHAPTER FOUR

LIBERTY OF THE INDIVIDUAL

Fundamental Human Rights

12. Every person in Ghana shall be entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others for the public interest, to each and all of the following, that is to say:

(*a*) Life, liberty, security of the person, the protection of the law and unimpeded access to the Courts of law; and

(*b*) Freedom of conscience, of expression and of assembly and association; and

(*c*) Protection for the privacy of his home, correspondence and other property, and from deprivation of property without compensation; and, accordingly, the provisions of this Chapter shall have effect for the purposes of affording protection to those rights and freedoms, subject to the provisions of article 3 of this Constitution and 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 shall not prejudice the rights and freedoms of others or the public interest.

13. The family being the unit of society, Parliament shall enact such laws as will ensure:

(*a*) The right of women and children to such special care and assistance as are necessary for the maintenance of their health, safety, development and well-being;

(*b*) That all children shall have a right to the enjoyment of the same measure of special care and assistance;

(*c*) That parents undertake their natural right and supreme sacred duty in the upbringing of children in co-operation with such institutions or organisations as Parliament may by law prescribe; and generally enact such laws as are necessary for the protection, advancement and welfare of the family.

14. (1) No person shall be deprived of his life intentionally save in the execution of the sentence of a Court in respect of a criminal offence under the law of Ghana of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this article if he dies as the result of the use of force to such an extent as is reasonably justifiable in the circumstances of the case, that is to say:

(*a*) For the defence of any person from violence or for the defence of property; or

(*b*) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(*c*) For the purposes of suppressing a riot, insurrection or mutiny, or

(*d*) In order to prevent the commission by that person of a criminal offence;

or if he dies as the result of a lawful act of war.

15. (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say:

(*a*) In execution of the sentence or order of a Court in respect of a criminal offence of which he has been convicted; or

(*b*) In execution of the order of a Court punishing him for contempt of Court; or

(*c*) In execution of the order of a Court made to secure the fulfilment of any obligations imposed on him by law; or

(*d*) For the purposes of bringing him before a Court in execution of the order of a Court; or

(*e*) Upon reasonable suspicion of having committed, or being about to commit, a criminal offence under the law of Ghana; or

(*f*) For the purposes of the education or welfare of a person who has not attained the age of majority; or

(*g*) For the purposes of preventing the spread of an infectious or contagious disease; or

(*h*) For the purpose of the care or treatment or the protection of the community, where a person is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant; or

(*i*) For the purposes of preventing the unlawful entry of that person into Ghana, or for the purposes of effecting the expulsion, extradition or other lawful removal of that person from Ghana for the purposes of restricting that person while he is being lawfully conveyed through Ghana in the course of his extradition or removal from one country to another.

(2) Any person who is arrested, restricted or detained shall be informed immediately, in a language that he understands, of the reasons for his arrest, restriction or detention and of his right to consult Counsel of his own choice.

(3) Any person who is arrested, restricted or detained:

(*a*) For the purposes of bringing him before a Court in execution of the order of a Court, or

(*b*) Upon reasonable suspicion of his having commited, or being about to commit, a criminal offence under the law of Ghana,

and who is not released, shall be brought before a Court within twenty-four hours.

(4) Where a person arrested, restricted or detained in any circumstance as is mentioned in paragraph (*b*) of the immediately preceding clause 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.

(5) Any person who is unlawfully arrested, restricted or detained by any other person shall be entitled to compensation therefor from that other person.

(6) Where a person who has served the whole or part of his sentence is acquitted on appeal:

(*a*) By a Court, other than the Supreme Court, the Court may certify to the Supreme Court that the person so acquitted be paid compensation; and the Supreme Court may, upon examination of all the facts and the certificate of the Court concerned, award such compensation as it may deem fit;

(*b*) By the Supreme Court, it may order compensation to be paid to the person so acquitted.

16. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this article, the expression "forced labour" shall not include:

(*a*) Any labour required in consequence of the sentence or order of a Court; or

(*b*) Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service; or

(*c*) Any labour required during any period when Ghana is at war or in the event of any emergency or calamity that threatens the life and well-being of the community to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purposes of dealing with that situation; or

(*d*) Any labour reasonably required as part of reasonable and normal communal or other civic obligations.

17. (1) No person shall be subjected to:

(*a*) Torture or inhuman or degrading punishment; or

(*b*) Any other condition that detracts or is likely to detract from his dignity and worth as a human being.

(2) A person who has not been convicted of a criminal offence if kept or confined in a prison, shall not be treated as a convicted person, and shall be kept away from convicted persons.

18. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired by the State, except where the following conditions are satisfied, that is to say,

(*a*) The taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit; and

(*b*) The necessity therefor is such as to afford reasonable justification for causing any hardship that may result to any person having an interest in, or right over, the property; and

(*c*) Provision is made by a law applicable to that taking of possession or acquisition

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in, or right over, the property a right of access to the High Court of Justice, whether direct or on appeal from any other authority, for the determination of his interest or right, and the amount of any compensation to which he is entitled;

and for the purposes of obtaining prompt payment of that compensation.

(2) Nothing in this article shall be construed as affecting the operation of any general law so far as it provides for the taking of possession or acquisition of property

(*a*) By way of vesting or administration of trust property, enemy property or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, unincorporate in the course of being wound up; or

(*b*) In the execution of judgments or orders of Courts; or

(*c*) By reason of its being in a dangerous state or injurious to the health of human beings, animals or plants; or

(*d*) In consequence of any law with respect of the limitation of actions; or

(*e*) For so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry.

(3) Nothing in this article shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property or the compulsory acquisition in the public interest of any interest in, or right over, property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys had been invested other than moneys provided by Parliament.

(4) Any such property of whatever description compulsorily taken possession of, and any interest in or right over property of any description compulsorily acquired in the public interest or for public purposes, shall be used only in the public interest or for public purposes.

(5) Where any such property as is referred to in the immediately preceding clause is not used in the public interest or for public purposes the person who was the owner immediately before the compulsory possession or acquisition, as the case may be, shall be given the first option of acquiring the said property, in which the first shall be required to refund the whole or such part of the compensation paid to him as may be agreed upon between the parties thereto; and in the absence of any such agreement such amount as shall be determined by the High Court of Justice.

19. (1) No person shall be subjected to the search of his person or his property nor shall his property or premises be entered into or intruded upon by others.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, this article to the extent that the law in question makes provision

(*a*) That is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit; or

(*b*) That is reasonably required for the purposes of promoting the rights or freedoms of other persons; or

(*c*) That authorises an officer or agent of the Government of Ghana, a local government authority or a body corporate established by law for a public purpose to enter on the premises of any person in order to carry out work connected with anything thereon for the purposes of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises that belongs to the Government, that authority or body corporate, as the case may be; or

(*d*) For the purposes of enforcing the judgment or order of a Court in any civil proceedings;

and except so far as that provision or, as the case may be, anything done under the authority thereof is shown not to be reasonably justifiable in terms of the spirit of this Constitution.

20. (1) Whenever 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 a Court.

(2) Every person who is charged with a criminal offence

(*a*) Shall, in the case of an offence, other than treason, the punishment for which is death or imprisonment for life, be tried by a Judge and jury whose verdict shall

(i) in the case of death, be unanimous; and

(ii) in the case of an imprisonment for life be unanimous or by a majority; and

(*b*) Shall be presumed to be innocent until he is proved or has pleaded guilty; and

(*c*) Shall be informed immediately in a language that he understands, and in detail, of the nature of the offence charged; and

(*d*) Shall be given adequate time and facilities for the preparation of his defence; and

(*e*) Shall be permitted to defend himself before the Court in person or by Counsel of his own choice; and

(*f*) Shall be afforded facilities to examine in person or by his Counsel the witnesses called by the prosecution before the Court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the Court on the same conditions as those applying to witnesses called by the prosecution; and

(*g*) Shall be permitted to have, without payment by him, the assistance of an interpreter if he cannot understand the language used at the trial of the charge; and

(*h*) Shall, in the case of the offence of treason, be tried by the High Court of Justice duly constituted by three Justices thereof;

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) Whenever 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 the 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 emission that did not at the time it took place constitute such an offence.

(5) 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.

(6) 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 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.

(7) Notwithstanding the provisions of the immediately preceding clause, an acquittal of any person on a trial for treason shall not be a bar to the institution of any proceedings for any other offence against that person.

(8) The provisions of paragraph (*a*) of clause (2) of this article shall not apply in the case of trials by courts-martial or other military tribunals.

(9) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(10) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(11) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law:

Provided that nothing in this clause shall prevent a Court of record from punishing any person for contempt of itself notwithstanding that the act or emission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

(12) An adjudicating authority for the determination of the existence or extent of any civil right or obligation shall, subject to the provisions of this Constitution, be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before any such adjudicating authority the case shall be given a fair hearing within a reasonable time.

(13) Save as may be otherwise ordered by the adjudicating authority in the interests of public morality, public safety, or public order the proceedings of any such adjudicating authority shall be in public.

(14) Nothing contained in this article shall prevent an adjudicating authority from excluding from the proceedings persons, other than the parties thereto and their Counsel, to such an extent as that authority

(*a*) May consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or any interlocutory proceedings; or

(*b*) May be empowered by law so to do in the interests of defence, public safety, public order, public morality, the welfare of persons under the age of majority or the protection of the private lives of persons concerned in the proceedings.

(15) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the provisions

(*a*) Of paragraph (*b*) of clause (2) of this article, to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts; or

(*b*) Of paragraph (*f*) of clause (2) of this article, to the extent that the law in question imposes conditions that shall be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(*c*) Of clause (6) of this article, 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; or

(*d*) Of paragraph (a) of article 12 of the Constitution, to the extent that the law in question makes provision to guard against frivolous or vexatious proceedings in Court and any other abuse of legal process.

(16) For the purposes of this article and subject to the provisions of clause (17) of this article, treason shall consist only

(*a*) In levying war against Ghana or assisting any state or person or inciting or conspiring with any person to levy war against Ghana; or

(*b*) In attempting by force of arms or other violent means to overthrow the organs of government established by or under this Constitution; or

(*c*) In taking part or being concerned in, or inciting or conspiring with any person to make or take part or be concerned in, any such attempt.

(17) Any act which aims at procuring by constitutional means an alteration of the law or of the policies of the Government shall not be considered as an act calculated to overthrow the organs of government.

(18) Notwithstanding any other provision of this article, but subject to the provisions of the next succeeding clause, Parliament may by or under an Act of Parliament establish military courts or tribunals for the trial of offences against military law committed by persons subject to military law.

(19) A person subject to military law, who, not being on active service, commits an offence cognisable by a civil Court, shall not be tried by a court-martial or military tribunal for any such offence unless the offence so committed is cognisable by the court-martial or other military tribunal under any law for the enforcement of military discipline.

(20) For the purposes of this article, the expression "criminal offence" means a criminal offence under the law of Ghana.

21. (1) No person shall be hindered in the enjoyment of his freedom of conscience; and for the purposes of this article the said freedom shall include 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 to propagate his religion or belief in worship, teaching, practice and observance.

(2) No person who, by reason of tender years, minority, sickness or any other sufficient cause, is unable to give his consent shall be deprived by any other person of his right to medical treatment or education or to any other social or economic benefit by reason only of any religious or philosophical doctrine or belief.

(3) No person attending any place of education shall, except with his own consent, or, if he is a minor, the consent of his parents or guardian, be required to receive religious instruction or take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion or denominational practice other than his own.

(4) No religious community or denomination shall be prevented from providing religious instruction for persons of that community or denomination in any educational institution.

(5) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, this article to the extent that the law in question makes provision which is reasonably required

(*a*) In the interests of defence, public safety, public order, public morality or public health; or

(*b*) For the purposes of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion;

and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in terms of the spirit of this Constitution.

22. (1) 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) Any person responsible for any national medium for the dissemination of any kind of information to the public shall afford equal opportunities and facilities for the representation of opposing or differing views.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, this article to the extent that the law in question makes provision

(*a*) That is reasonably required

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purposes of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the Courts or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or

(*b*) That imposes restrictions upon public officers;

and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in terms of the spirit of this Constitution.

23. (1) 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 article to the extent that the law in question makes provision

(*a*) That is reasonably required in the interests of defence, public safety, public order, public morality, public health or the running of essential services; or

(*b*) That is reasonably required for the purposes of protecting the rights or freedoms of other persons; or

(*c*) That imposes restrictions upon public officers;

and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in terms of the spirit of this Constitution.

24. (1) No person shall be deprived of his freedom of movement; and for the purposes of this article the said freedom means the right to move freely throughout Ghana, the right to reside in any part of Ghana, the right to leave and to enter Ghana and immunity from expulsion from Ghana.

(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 article.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, this article to the extent that the law in question makes provision

(*a*) For the imposition of restrictions, by order of a Court, that are reasonably required in the interests of defence, public safety or public order on the movement or residence within Ghana of any person; or

(*b*) For the imposition of restrictions, by order of a Court, on the movement or residence within Ghana of any person either in consequence of his having been found guilty of a criminal offence under the law of Ghana or for the purposes of ensuring that he appears before a Court at a later date for trial of such criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Ghana; or

(*c*) For the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality, public health or the running of essential services, on the movement or residence within Ghana of any person or persons generally, or any class of persons, and except so far as that provision or, as the case may be, the thing done under the

authority thereof, is shown not to be reasonably justifiable in terms of the spirit of this Constitution; or

(*d*) For the imposition of restrictions on the freedom of entry into Ghana or of movement in Ghana of any person who is not a citizen of Ghana; or

(*e*) For the removal of a person who is not a citizen of Ghana from Ghana in accordance with the law governing extradition for the time being in force; or

(*f*) For any of the purposes specified in paragraph (*i*) of clause (1) of article 15 of this Constitution.

(4) Whenever any person whose freedom of movement has been restricted by the order of a Court by virtue of such a provision as is referred to in paragraph (*a*) of clause (3) of this article so requests at any time during the period of that restriction not earlier than fourteen days after the order was made or three months after he last made such request, as the case may be, his case shall be reviewed by that Court.

(5) On any review by a Court in pursuance of the provisions of clause (4) of this article of the case of any person whose freedom of movement has been restricted, the Court may, subject to the right to appeal therefrom, make such order for the continuation or termination of the restriction as it may consider necessary or expedient.

25. (1) Subject to the provisions of clauses (4) and (6) of this article, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of clauses (5), (6) and (7) of this article, no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(3) For the purposes of this article, the expression "discriminatory" means affording different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions, colour, sex, occupation 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) The provisions of clause (1) of this article shall not apply to any law, so far as that law makes provision

(*a*) For the appropriation of public revenues or other public funds; or

(*b*) With respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; or

(*c*) For the application in the case of members of a particular race or community of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons; or

(*d*) Whereby persons of such description as is mentioned in clause (3) of this article 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 terms of the spirit of this Constitution.

(5) The provisions of clause (1) of this article shall not apply to any law, so far as that law makes provision,

(*a*) With respect to persons who are not citizens of Ghana; or

(*b*) For the imposition of restrictions on the acquisition of land by, or on the economic and political activities of, any persons who are not citizens of Ghana.

(6) The provisions of clause (2) of this article 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 clauses (4) and (5) of this article.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, this article to the extent that the law in question makes provision whereby persons of any such question makes provision whereby persons of any such description as is mentioned in clause (3) of this article may be subjected to any restriction on the rights and freedoms guaranteed by articles 19, 21, 22, 23 and 24 of this Constitution, being such a restriction as is authorised by clause (2) of article 19, clause (6) of article 21, clause (3) of article 22, clause (2) of article 23, or clause (3) of article 24, as the case may be.

(8) Nothing contained in clause (2) of this article 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 or under this Constitution or any other law.

Emergency Powers

26. (1) The President may, acting in accordance with the advice of the Cabinet, by Proclamation published in the Gazette, declare that a state of public emergency exists in Ghana or in any part of Ghana for the purposes of the provisions of this chapter.

(2) Notwithstanding any other provision of this article, where a Proclamation is published pursuant to the provisions of the preceding clause, the President shall place immediately before the Council of State the facts and circumstances leading to the declaration of the state of public emergency and the Council of State shall, within seventy-two hours thereof, decide whether the Proclamation shall remain in force or shall be revoked; and the President shall act in accordance with the decisions of the Council of State made in that behalf.

(3) A declaration of a state of public emergency under the provisions of this article, if not sooner revoked, shall cease to have effect at the expiration of a period of seven days beginning with the date of publication of the declaration unless, before the expiration of that period, it is approved by a resolution passed in that behalf by a majority of all the members of the National Assembly.

(4) Subject to the provisions of clause (5) of this article, a declaration of a state of public emergency approved by a resolution of the National Assembly under the provisions of clause (3) of this article shall continue in force until the expiration of a period of three months beginning with the date of its being so approved or until such earlier date as may be specified in the resolution:

Provided that the National Assembly may, by resolution, extend its approval of the declaration for periods of not more than one month at a time.

(5) The National Assembly may, by a resolution passed in that behalf by a majority of all the members of the Assembly, at any time revoke a declaration of a state of public emergency approved by the Assembly under the provisions of this article.

(6) For the avoidance of doubts, it is hereby declared that the provisions of any enactment, other than an Act of Parliament, dealing with a state of public emergency declared pursuant to the provisions of clause (1) of this article shall apply only to that part of Ghana where any such emergency exists.

(7) For the purposes of this article, a state of public emergency includes any action that has been taken or is immediately threatened by any person or body of persons

(*a*) Which is calculated to deprive the community of the essentials of life, or

(*b*) Which renders necessary the taking of measures which are requisite for securing the public safety, the defence of Ghana and the maintenance of public order and of supplies and services essential to the life of the community.

(8) Nothing contained in or done under the authority of an Act of Parliament shall be held to be inconsistent with, or in contravention of, articles 12 or 25 inclusive of this Constitution, to the extent that the Act in question authorises the taking during any period when a declaration of a state of public emergency under the provisions of this article is in force, of measures that are reasonably justifiable for the purposes of dealing with the situation that exists during that period.

27. (1) Where a person is restricted or detained by virtue of such a law as is referred to in clause (8) of article 26 of this Constitution, the following provisions shall apply, that is to say,

(*a*) He shall, as soon as reasonably practicable and in any case not more than twenty-four hours after the commencement of this restriction or detention, be furnished with a statement in writing in English which shall, in the case of a person who does not understand English, be interpreted to him in a language that he understands, specifying in detail the grounds upon which he is restricted or detained; and his next of kin shall also be informed within seventy-two hours of such commencement; and

(*b*) Not more than ten days after the commencement of his restriction, or detention, a notification shall be published in the Gazette stating that he has been restricted or detained and giving particulars of the provisions of law under which his restriction or detention is authorised and the grounds of his restriction or detention; and

(*c*) Not more than fourteen days after the commencement of his restriction or detention and thereafter during his restriction or detention at intervals of not more than three months, his case shall be reviewed by a tribunal composed of not less than three Justices of the Supreme Court appointed by the Chief Justice and presided over by the Chief Justice or a Justice of the Supreme Court appointed by the Chief Justice; so however that the same tribunal shall not review more than once, the case of a person restricted or detained;

(*d*) He shall be afforded every possible facility to consult Counsel of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the restricted or detained person; and

(*e*) At the hearing of his case he shall be permitted to appear in person or by Counsel of his own choice.

(2) On any review by a tribunal in pursuance of this article of the case of a restricted or detained person, the tribunal shall have power to order the release of the person and the payment to him of adequate compensation or uphold the grounds of his restriction or detention and the authority by which the restriction or detention was ordered shall act accordingly.

(3) In every month in which there is a sitting of the National Assembly a Minister of State authorised by the Prime Minister shall make a report to the National Assembly of the number of persons restricted or detained by virtue of such a law as is referred to in clause (8) of article 26 of this Constitution and the number of cases in which the authority that ordered the restriction or detention has acted in accordance with the decisions of the tribunal appointed in pursuance of this article.

(4) Notwithstanding the provisions of the immediately preceding clause, the Minister referred to therein shall publish every month in the *Gazette*

(*a*) The number and the names and addresses of persons restricted or detained;

(*b*) The number of cases reviewed by the tribunal; and

(*c*) The number of cases in which the authority which ordered the restriction or detention has acted in accordance with the decisions of the tribunal appointed pursuant to the provisions of this article.

(5) For the avoidance of doubts, it is hereby declared that at the end of any emergency declared pursuant to the provisions of clause (1) of article 26 of this Constitution, any person in restriction or detention or in custody who has been detained, restricted or arrested as a result of the declaration or the emergency shall forthwith be released.

28. (1) Where any person alleges that any provision of articles 12 to 27 inclusive of this Constitution has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available that person may apply to the High Court of Justice for redress.

(2) Pursuant to the provisions of the immediately preceding clause, the High Court of Justice

shall have power to issue such directions or orders or writs including writs or orders in the nature of *habeas corpus, certiorari, mandamus*, prohibition, and *quo warranto* as it may consider appropriate for the purposes of enforcing, or securing the enforcement of any of the provisions of the articles 12 to 27 inclusive to the protection of which the person concerned is entitled.

(3) Any person aggrieved by any determination of the High Court of Justice under the provisions of this article may appeal therefrom to the Court of Appeal with the right of a further appeal to the Supreme Court.

(4) The Rules of Court Committee may, by constitutional instrument, make Rules of Court with respect to the practice and procedure of the Superior Court of Judicature for the purposes of this article.

(5) The rights, duties, declarations and guarantees relating to the fundamental human rights specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in democracy and intended to secure the freedom and dignity of man.

. . .

GREECE

ACT NO. 2 OF 9 APRIL 1969 OF THE NATIONAL REVOLUTIONARY GOVERNMENT [1]

The National Revolutionary Government, taking into account article 138 of the Constitution,[2] decides by the present Act No. 2 that the following articles of the Constitution shall enter into force: article 13, paragraph 1 relevant to the inviolability of residence, article 18 on the right of assembly, and article 19 regarding the right of association.

The present Act No. 2 shall be published in the *Government Gazette.*

---

[1] Text of Act furnished by the Government of Greece.

[2] For extracts from the Constitution, see *Yearbook on Human Rights for 1968*, pp. 156-163.

GUATEMALA

REGULATIONS RESPECTING DISABILITY, OLD-AGE AND SURVIVORS' INSURANCE CONTAINED IN DECISION NO. 481 OF THE BOARD OF GOVERNORS OF THE GUATEMALAN SOCIAL SECURITY INSTITUTION AND APPROVED BY GOVERNMENT ORDER NO. 13-69 OF THE MINISTRY OF LABOUR AND SOCIAL WELFARE

SUMMARY

Section 1 of the Regulations establishes and governs coverage, which shall be provided by means of the Guatemalan Social Security Institution, with respect to disability, old-age, death (funeral expenses), orphanhood, widowhood and other survivors.

Section 2 provides that all persons affiliated to the social security scheme shall be covered with respect to disability, old-age and survivors' insurance in accordance with the rules laid down in these Regulations.

Other provisions of the Regulations deal with disability pension, old-age pension, funeral grant, survivors' pension and voluntary continuation of insurance.

The text of the Regulations appears in *El Guatemalteco*, No. 11, of 22 March 1969. Translations thereof into English and French have been published by the International Labour Office as *Legislative Series* 1969—Gua. 1A.

GOVERNMENT ORDER NO. 15-69 OF 30 APRIL 1969 OF THE COUNCIL OF MINISTERS

SUMMARY

Section 1 of the Government Order reads as follows:

"Every public servant not covered by the sickness scheme administered by the Guatemalan Social Security Institution shall be entitled, in the event of duly proven sickness preventing him from reporting to work, to leave on full pay for a maximum of two months.

If the sickness resulting in incapacity for work lasts for more than two months, leave of absence without pay shall be granted for a maximum of six months."

Under section 2, every public servant covered by the sickness scheme shall be entitled, in the case of duly proven sickness preventing him from reporting for work, to receive from the State, in addition to the benefit paid under the social security scheme, the necessary amount to make up his full remuneration for a period not exceeding two months.

Section 4 provides that vacancies occurring in the public service through the sickness of public servants shall be filled only by the appointment, of *interim* replacements if it is necessary on account of the nature of the service concerned, on condition that *prima facie* proof of the facts is submitted to the Minister concerned.

The text of the Government Order appears in *El Guatemalteco*, No. 42, of 2 May 1969. Translations thereof into English and French have been published by the International Labour Office as *Legislative Series* 1969—Gua. 1B.

GUYANA

NATIONAL INSURANCE AND SOCIAL SECURITY ACT, 1969

Act No. 15 of 1969, assented to on 15 August 1969 [1]

PART II

THE NATIONAL INSURANCE BOARD

...

3. (1) There shall be established for the purposes of this Act a body to be called "The Insurance Board" ...

...

PART III

INSURED PERSONS AND CONTRIBUTIONS

11. (1) Subject to the provisions of this Act, every person who on or after the appointed day is:

(*a*) Sixteen years of age or over and under sixty-five years of age; and

(*b*) Gainfully occupied in insurable employment, shall be insured under this Act and shall remain so insured for life.

(2) Regulations may provide:

(*a*) For treating as employment as an employed person any employment outside Guyana in continuation of any insurable employment;

(*b*) For treating as not being employment as an employed person or for disregarding:

(i) employment which in the opinion of the Minister is of a casual or subsidiary nature or in which the person concerned is engaged only to an inconsiderable extent;

(ii) employment in the service, or for the purpose of the trade or business, or as a partner, of a relative of the person concerned;

(iii) employment by a relative in the common home of the person concerned and the employer;

(iv) such employment in the service of, or in the service of a person employed with, such international organisations or countries other than Guyana as may be prescribed;

(*c*) For treating for the purposes of this Act or of such provisions thereof as may be prescribed the employment of any person as:

(i) continuing during periods of holiday, incapacity for work or such other circumstances as may be prescribed;

(ii) ceasing in such circumstances as may be prescribed.

12. The Minister may by regulations provide for the insurance under this Act of self-employed persons, of persons under sixteen years of age and of persons sixty-five years or upwards in respect of any of the several contingencies in relation to which benefits are provided under this Act and any such regulations may provide for such modifications of the provisions of this Act or may make such other provision as may be necessary for the purpose of giving effect to this section.

13. (1) For the purposes of this Act, contributions shall, subject to the provisions of this Act, be payable by insured persons and by employers.

(2) Regulations shall provide for fixing, from time to time, the rates of contribution to be paid by such different categories of insured persons and employers as may be prescribed.

...

[1] *The Official Gazette*, No. 16, of 16 August 1969.

THE LOCAL AUTHORITIES (ELECTIONS) ACT, 1969

Act No. 23 of 1969, assented to on 4 November 1969 [2]

PART II

REGISTRATION OF VOTERS

PREPARATION OF REGISTER OF VOTERS

...

10. (1) A person shall be qualified to be registered as a voter for a local authority area if, and shall not be so qualified unless, on the qualifying date he is qualified to be registered as an elector for elections to the National Assembly and he is ordinarily resident within the local authority area.

...

PART III

ELECTIONS

DAY FOR HOLDING OF ELECTION AND ELECTORAL SYSTEM

...

36. (1) If the Minister is satisfied that the holding of an election on election day would be attended by danger or serious hardship he may by order postpone the election to a day specified in such order, which day shall then, for the purposes of this Part, be election day.

(2) An order made under this section shall be published in the *Gazette* and a copy thereof published by the local authority to which it relates.

37. An election shall be conducted by secret ballot.

...

QUALIFICATIONS OF COUNCILLORS

40. (1) Subject to the provisions of subsection (2) a person shall be qualified to be elected as a councillor if, and shall not be so qualified unless, he is a registered voter for the local authority area to which he seeks election.

(2) No person shall be qualified to be elected as a councillor, or if so elected to hold or continue in office as a councillor if he:

(*a*) Is the holder of or is acting in an office specified in Schedule 1; [3]

(*b*) Has been adjudged insolvent or has made a composition or arrangement with his creditors;

(*c*) Has within twelve months before election day or since his election received any assistance under the Poor Relief Ordinance;

(*d*) Has within five years before election day or since his election been surcharged to an amount exceeding one thousand dollars;

(*e*) Is, on the qualifying date or at the time when he is elected a councillor, serving a sentence of imprisonment of not less than three months for any offence or has since the election been convicted of any offence and sentenced to any such term of imprisonment;

(*f*) Has been disqualified from holding office as a councillor pursuant to any law;

(*g*) Has within five years before election day or since the election been convicted of, or reported in the certificate of the Court in connection with, a corrupt or illegal practice;

(*h*) Is unable to read or write the English Language;

(*i*) Is a councillor of another local authority or consents to the inclusion of his name in a list of candidates at an election to another local authority;

...

ENTITLEMENT TO VOTE

59. (1) A registered voter for the local authority area shall be entitled to vote at an election if he complies with the provisions of this Part and with requirements made and directions given thereunder and if the presiding officer of the polling place at which he applies for a ballot paper is satisfied as to the matters specified in subsection (1) of section 79. [4]

(2) No person shall be entitled to vote at an election unless he is entitled to do so under subsection (1).

(3) Every registered voter who votes at an election shall, subject to the provisions of this Part relating to voting by proxy, and to the marking of ballot papers on behalf of blind and incapacitated voters, vote in person.

...

[2] *The Official Gazette (Extraordinary)* of 5 November 1969.

[3] Listed in Schedule 1 are 12 offices, including that of the *ombudsman*.

[4] The matters specified in subsection (1) of section 79 deal with the question whether the applicant has not already voted in the local authority area; the identity of the applicant and his entitlement to vote at the polling place; and the authority of the applicant to vote as a proxy on behalf of another registered voter (if he applies so to vote).

PART IV

ELECTION AND MEMBERSHIP CONTROVERSIES

DISPUTED ELECTIONS

146. (1) Any question whether any person has been validly elected as a councillor shall be referred to and determined by the Court.

(2) Every such reference shall be by a petition (hereinafter referred to as an election petition) presented to the Court.

...

156. (1) An election petition shall be tried by the Court in open court, without a jury, and notice of the time and place of trial shall be given in the prescribed manner not less than fourteen days before the day of trial.

...

157. Witnesses shall be summoned and sworn in the same manner as in an ordinary action within the jurisdiction of the Court and shall be subject to the same penalties for perjury.

158. (1) On the trial of an election petition the Court may by order require any person who appears to it to have been concerned in the election to attend as a witness and any person refusing to obey this order shall be guilty of contempt of court.

(2) The Court may examine any person so required to attend or who is in court, although he is not called or examined by any party to the petition.

(3) A witness may, after his examination by the Court under subsection (2), be cross-examined by or on behalf of the petitioner and respondent, or either of them.

...

159. (1) A person called before the Court as a witness respecting an election shall not be excused from answering any question relating to any offence at or connected with the election on the ground that the answer thereto may criminate or tend to criminate him or on the ground of privilege:

Provided that:

(*a*) A witness who answers truly all questions which he is required by the Court to answer shall be entitled to receive a certificate of indemnity from the Court stating that the witness has so answered; and

(*b*) An answer by a person to a question put by or before the Court when trying an election petition shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be in any proceedings, civil or criminal, admissible in evidence against him.

...

160. No person who has voted at any election shall, in any proceeding on an election petition, be required to state for which list of candidates he has voted.

...

THE NATIONAL INSURANCE AND SOCIAL SECURITY (BENEFIT) REGULATIONS, 1969 [5]

...

PART I

BENEFITS

OLD AGE BENEFIT

3. Subject to the provisions of these Regulations, old age pension shall be payable for life to an insured person who has attained the age of sixty-five years and:

(*a*) Has paid not less than one hundred and fifty contributions, and

(*b*) Has paid or been credited with, or has paid and been credited with, not less than seven hundred and fifty contributions.

...

INVALIDITY BENEFIT

7. Subject to the provisions of these Regulations, an insured person who:

(*a*) Is an invalid;

(*b*) Has paid not less than one hundred and fifty contributions;

(*c*) Has paid or been credited with, or has paid and been credited with, not less than seven hundred and fifty contributions;

(d) Has attained the age of fifty-five years and is under sixty-five years of age; and

(*e*) Is not in receipt of sickness benefit;

shall be entitled to invalidity pension for so long as the invalidity continues.

...

SURVIVOR'S BENEFIT

14. (1) Subject to the provisions of these Regulations, survivor's grant shall be payable to or for the benefit of the dependants of a deceased insured person other than those excluded by paragraph (3) of this regulation if at the time of his death such insured person:

(*a*) Was in receipt of old age pension or invalidity pension; or

[5] Regulations No. 33 of 1969, published as Notice No. 707 A in the *Supplement to The Official Gazette (Extraordinary)* of 22 December 1969.

(*b*) Would have been entitled to invalidity benefit had he been deemed to be an invalid at the time of his death; or

(*c*) Was sixty-five years of age or over and would have been entitled to old age benefit had he made a claim for such benefit.

(2) Survivor's grant shall not be payable in respect of a marriage contracted after the insured person has been granted invalidity pension or old age pension.

(3) The dependants of a person entitled to claim survivor's grant under paragraph (1) of this regulation shall not include an adult dependant who:

(*a*) Had died before an award of such survivor's grant in respect of the deceased has been made; or

(*b*) Is the widow of the deceased unless at the time of his death:

(i) she is over fifty-five years of age or incapable of work and this incapacity is likely to be permanent; or

(ii) she is pregnant by her late husband; or

(iii) she has the care of a child of his or of their marriage under eighteen years of age, and was either residing with him or receiving, or entitled to receive, from him periodical payments for her maintenance of herself or the children or both of not less than five dollars weekly; or

(*c*) Is the widower of the deceased unless at the time of her death:

(i) he is over fifty-five years of age and incapable of work and this incapacity is likely to be permanent; and

(ii) he has no income from any source whether by way of pension or otherwise, other than public assistance under the Poor Relief Ordinance or non-contributory pension under the Old Age Pensions Ordinance; or

(*d*) was married to the insured person less than six months before his death if it appears to the Director that the marriage was contracted in anticipation of that death.

...

16. A widow or a widower qualifying as a dependant under regulation 14 shall be entitled to survivor's grant in preference to all other claimants.

17. Every unmarried dependant child who becomes an orphan shall, in preference to all other claimants, be entitled to survivor's grant if at the death of his surviving parent he:

(*a*) Is left with no parent;

(*b*) Is under the age of eighteen years and had been wholly or partially maintained by a deceased insured parent in his lifetime; and

(*c*) Has no stepmother or stepfather with a prior claim:

Provided that where there is more than one child entitled, such grant shall be divided equally among them.

...

TRANSITIONAL PROVISIONS

Old Age benefit, invalidity benefit and survivor's benefit

19. A person who is over thirty-five years of age on the appointed day shall be credited with twenty-five contributions for each year of age in excess of thirty-five, subject to a maximum such credit of six hundred contributions:

Provided that such credits:

(*a*) Shall be credited for the purposes of old age benefit, invalidity benefit or survivor's benefit only;

(*b*) Shall be credited only where such person has paid not less than ninety contributions during the three years commencing on the appointed day;

(*c*) Shall not be taken into account in assessing the relevant wage of such person.

SICKNESS BENEFIT

20. Subject to the provisions of these Regulations, sickness benefit shall be payable to an insured person who is rendered temporarily incapable of work otherwise than as a result of employment injury and for this purpose:

(*a*) An insured person shall be treated as incapable of work for any day during which he is required to abstain from work because he is under observation by reason of being a carrier or his having been in contact with a case of infectious disease;

(*b*) Shall be credited only where such person may be determined by the Director in any particular case or class of case shall not be treated as a day of incapacity for work and shall be disregarded in computing any period of consecutive days.

...

MATERNITY BENEFIT

27. Subject to the provisions of these Regulations, maternity benefit shall be granted in the case of the pregnancy and confinement of a woman who is an insured person.

...

FUNERAL BENEFIT

34. Subject to the provisions of these Regulations, funeral benefit shall be payable on the death of:

(*a*) A person who is or has been an insured person and who at the time of his death had paid not less than fifty contributions; or

(*b*) The spouse of a person in respect of whom, if it had been such a person who had died, funeral benefit would have been payable under paragraph (*a*) of this regulation.

...

THE NATIONAL INSURANCE AND SOCIAL SECURITY (INDUSTRIAL BENEFIT) REGULATIONS, 1969 [6]

...

PART I

INDUSTRIAL BENEFIT FOR ACCIDENTS

INJURY BENEFIT

3. Subject to the provisions of these Regulations, injury benefit shall be payable to an insured person who at the time of the relevant accident was in insurable employment and who as a result of the relevant injury is incapable of work and for this purpose:

(*a*) A person shall be treated as incapable of work for any day on which he is required to abstain from work as a result of the employment injury;

(*b*) Sunday or such other day in each week as may be determined by the Director in any particular case or class of case shall not be treated as a day of incapacity for work, and shall be disregarded in computing any period of consecutive days:

Provided that a person in insurable employment shall not be deprived of his entitlement to injury benefit by reason only that under the National Insurance and Social Security (Classification) Regulations, 1969, he is deemed to be other than an employed person.

...

DISABLEMENT BENEFIT

9. (1) An insured person who at the time of the relevant accident was in insurable employment shall not be entitled to disablement benefit for the first three days (excluding Sunday or such other day in each week as shall have been determined under regulation 3) beginning with the day of the relevant accident.

(2) Subject to the provisions of these Regulations, an insured person who at the time of the relevant accident was in insurable employment shall be entitled to disablement benefit for any day (excluding Sunday or such other day in each week as shall have been determined under regulation 3) after the period mentioned in paragraph (1) of this regulation if as a result of the relevant accident he is suffering from loss of faculty and is not entitled to injury benefit for that day:

Provided that a person in insurable employment shall not be deprived of his entitlement to disablement benefit by reason only that under the National Insurance and Social Security (Classification) Regulations, 1969, he is deemed to be other than an employed person.

...

DEATH BENEFIT

12. (1) Subject to the provisions of these Regulations, where an insured person in insurable employment dies as a result of the relevant injury, death benefit shall be payable:

(*a*) To or for the benefit of the dependants of the deceased, other than those specifically excluded by paragraph (2) of this regulation; and

(*b*) Either as a periodical payment or as a lump sum, calculated in accordance with these Regulations:

Provided that the dependants of the deceased shall not be deprived of death benefit under these Regulations by reason only that under the National Insurance and Social Security (Classification) Regulations, 1969, the deceased, though in insurable employment, was deemed to be other than an employed person.

(2) The dependants of a person entitled to claim death benefit under paragraph (1) of this regulation shall not include an adult dependant who:

(*a*) Had died before an award of such benefit in respect of the deceased has been made; or

(*b*) Is the widow of the deceased unless at the time of his death:

(i) she is over fifty-five years of age or incapable of work and this incapacity is likely to be permanent; or

(ii) she is pregnant by her late husband; or

(iii) she has the care of a child of his or of their marriage under eighteen years of age;

and was either residing with him or receiving, or entitled to receive, from him periodical payments for the maintenance of herself or the children or both of not less than five dollars weekly; or

(*c*) Is the widower of the deceased unless at the time of her death:

(i) he is over fifty-five years of age and incapable of work and this incapacity is likely to be permanent; and

(ii) he has no income from any source whether by way of pension or otherwise, other than public assistance under the Poor Relief Ordinance or non-contributory pension under the Old Age Pensions Ordinance; or

(*d*) Was married to the insured person less than six months before his death if it appears to the Director that the marriage was contracted in anticipation of that death.

...

[6] Regulations No. 34 of 1969, published as Notice No. 707 B in the *Supplement to The Official Gazette (Extraordinary)* of 22 December 1969.

HONDURAS

TEACHERS' REGISTER ACT

Promulgated by Decree No. 127 of 22 October 1968 [1]

TITLE I

Chapter I

NATURE AND PURPOSE

Article 1. This Teachers' Register Act shall guarantee the security of tenure of teachers in service....

...

Chapter III

PERSONNEL IN PRE-SCHOOL, PRIMARY, AND INTERMEDIATE EDUCATION AND TEACHER-TRAINING PERSONNEL

...

Article 4. In order to be included in the Teachers' Register, a person must fulfil the following requirements:

(*a*) Be Honduran by birth or naturalization;

(*b*) Be over eighteen years of age;

(*c*) Possess a teacher's certificate, training diploma or degree, as appropriate; and

(*d*) Any other requirements laid down in the regulations to this Act.

...

TITLE V

PROVISION OF POSTS

...

Chapter III

OBLIGATIONS AND RIGHTS OF THE TEACHING PROFESSION

Article 59. The obligations of the members of the teaching profession shall be:

(*a*) To discharge the duties of their posts with dignity and efficiency;

(*b*) To observe a standard of moral conduct which is consonant with the aims of the teacher's task;

...

(*d*) To take part in out-of-school activities which further the development of the community;

...

Article 60. The rights of the members of the teaching profession shall be:

(*a*) Security of tenure, so long as they are of good conduct and perform their duties efficiently;

...

(*d*) Any other rights laid down in the Constitution of Honduras, the Organic Law on Education and the regulations, and any other social and professional guarantees which may be granted in future through the adoption of new laws and regulations.

...

Article 90. This Act shall enter into force on the date of its publication in the Official Gazette *La Gaceta* with the exception of the provisions relating to salaries, which shall come into operation on 1 February 1969....

[1] *La Gaceta*, Nos. 19,692, 19,693, 19,694, 19,695 and 19,696 of 8, 10, 11, 12 and 13 February 1969.

HUNGARY [1]

ACT II OF 1969 ON PATENT RIGHTS

PART I

INVENTIONS AND PATENTS

Chapter I

SUBJECT OF PROTECTION BY PATENT

Patentable inventions

Article 1. A new contrivance that constitutes a technical advancement and is capable of practical application shall be deemed to be a patentable invention.

Novelty

Article 2. A contrivance shall be deemed to possess the incident of novelty if it has not been publicly known to an extent as to enable a specialist to carry it into effect.

Advancement

Article 3. A contrivance shall be deemed to represent technical advancement in comparison to a given level of technical development if it serves to satisfy a formerly unmet need or to meet a demand to greater advantage than before.

Technical nature

Article 4. A contrivance shall be deemed to be of a technical nature if it constitutes a change in a product or a process of manufacture.

Practical application

Article 5. A contrivance shall be deemed to be applicable to a practical end if it can be realized repeatedly with the same result.

Protection by patent

Article 6. (1) The applicant may obtain a patent for his invention, if:

(*a*) The invention fulfils the requirements set forth in Articles 1 to 5 at the priority date (article 43) and is not excluded from protection by paragraph (3);

(*b*) The application complies with the physical requirements prescribed by this Act.

(2) A species of plant or animal and a process of producing it may be patented if the species of plant or animal is new, congeneric and relatively constant (article 67).

(3) No patent shall be granted for an invention, if:

(*a*) Its subject is a medicine or a substance produced by chemical process or, except for paragraph (2), a product intended for human or animal consumption; however, the process of manufacturing any such product may be patented;

(*b*) Its utilization would be contrary to the law or the accepted moral code of society, except when the law restricts only the sale of such products;

(*c*) Its subject is identical with that of an anticipated patent; where identity is partial, a patent may be granted only with a corresponding limitation.

Chapter II

RIGHTS AND OBLIGATIONS DERIVING FROM INVENTIONS AND PATENTS

Moral rights of the inventor

Article 7. (1) The inventor shall be deemed to be the person who has made the invention. Until another person is named in a final court order, the inventor shall be deemed to be the person so named in an anticipated application filed with the National Patent Office.

(2) The inventor shall have the right to be mentioned as such in the letters patent.

(3) The inventor may, under the Civil Code, take action against a person who contests his capacity as such or infringes his other moral rights in the invention.

(4) Prior to publication under the procedure for application the invention shall not be published without the consent of the inventor or his successor in title.

Claim for a patent

Article 8. (1) A patent shall be granted to the inventor or his successor in title.

(2) Until another person is named in a final judicial or administrative decision, the legitimate claimant shall be deemed to be the person who has obtained a priority of date of application filed with the National Patent Office.

(3) If the invention is the joint production of more persons than one, a joint patent shall be granted to all inventors or their successors in

[1] Extracts from texts of laws furnished by the Government of Hungary.

title. If the invention is an independent production of more persons than one, a patent shall be granted to that inventor or his successor in title who has obtained a priority of date of application filed with the National Patent Office.

Service invention

Article 9. (1) A service invention shall be deemed to be the invention of a person who is under a duty ensuing from his employment or other legal relationship to produce contrivances of a nature similar to the subject of the invention claimed.

(2) A patent for a service invention shall be granted to the employer or to the person entitled to it under another legal relationship (hereinafter referred to as employer). If the employer has no claim for either the patent or the invention, the invention may, with his consent, be disposed of by the inventor or his successor in title.

(3) Disputes concerning the service character of an invention shall be decided by the court.

(4) The maker of a service invention shall be entitled to remuneration as regulated by separate provisions of law.

Commencement of protection

Article 10. (1) The protection of inventions by patent shall commence with the publication of the application but shall be retroactive to the day of filing the application.

(2) The protection commencing with the publication shall be provisional but shall become final upon the grant of a patent for the invention to the applicant.

Effect of protection

Article 11. (1) On the basis of a patent, the patentee shall have exclusive right to use the invention within the limits defined by law or to grant a permit (licence) to another person for its utilization. The exclusive right of utilization shall extend to the regular manufacture, use and sale of the subject of invention in the sphere of economic activity.

(2) A patent granted for a process shall also extend to the product directly manufactured by such process.

(3) The patentee shall be under an obligation to use the invention in a manner and to an extent required by the needs of the national economy or to grant a licence for its utilization to another person. In case of non-compliance with such obligation a compulsory licence (article 21) may be granted on the patent.

Term of patent

Article 12. (1) The term of a final patent shall be 20 years from the date of application.

(2) A yearly renewal fee fixed by separate provisions of law shall be payable during the whole term of the patent. Such fee shall be due on the calendar day of application.

(3) The renewal fee, with an extra charge fixed by separate provisions of law, may also be paid within a six-month period of grace from due-date.

Extent of patent

Article 13. The extent of a patent shall be determined by the claims (paragraph (2) of article 41). The claims shall be interpreted on the basis of description and drawings only.

Limitations on patent

Article 14. (1) A right of pre-utilization may be granted to a person or entity who in the sphere of his/its economic activity has in good faith regularly manufactured or used the subject of invention or has made serious preparations to that end within the country in advance of priority date. The patent shall be ineffective in respect of such beneficiary to the extent of manufacture, utilization or preparations. The right of pre-utilization shall only be transferable together with an enterprise or an appropriate unit thereof.

(2) On the basis of reciprocity, a patent shall have no effect in respect of means of transport or communication which are in transit within the country and of imported goods which are not for sale on the domestic market.

Succession in title

Article 15. (1) The rights deriving from an invention and a patent, with the exception of the moral rights of the inventor, may be transferred, assigned and encumbered.

(2) Succession in title under a contract may be invoked in relation to a third party acquiring a right in good faith and for valuable consideration only if it has been recorded in the register of patents.

Joint claim and joint patent

Article 16. (1) If there are two or more patentees of an invention, each co-patentee shall be free to dispose of his own interest only. In case of alienation the other co-patentee(s) shall enjoy a right of preemption.

(2) Each co-patentee shall be entitled to use the invention independently but shall pay to the other co-patentee(s) a compensation proportionate to his/their interest(s) therein.

(3) The co-patentees may grant a licence to a third party only jointly. Denial of consent may, under the general rules of the Civil Code, be substituted for by a court decision (article 5 (3) of the Civil Code).

(4) In case of doubt, the co-patentees shall have an equal interest in the invention. If one of the co-patentees waives his interest (article 31), the right of the other co-patentee(s) shall extend to his interest in proportion to his/their respective interest(s).

(5) Each co-patentee shall be entitled to take independent action to maintain and protect the patent right. In their relations *inter se*, the co-patentees shall bear the expenses connected with the patent in proportion to their respective interests therein. If, despite notice, one of the co-patentees fails to pay his share of the expenses, the co-patentee who has paid such expenses may claim transfer to himself of the interest of the co-patentee in default.

(6) The rules governing joint patents shall apply accordingly to joint claims for patent.

ACT III OF 1969 ON AUTHORS' RIGHTS

PART I

GENERAL PROVISIONS

Chapter I

INTRODUCTORY PROVISIONS

Applicability

Article 1. (1) The protection of this Act shall apply to literary, scientific and artistic works. The Hungarian People's Republic supports the institutions concerned to encourage creative activity and to promote social utilization of authors' works.

(2) The protection of this Act shall also apply to works of performing artists and other activities allied to authors' creative work (article 51).

(3) The protection of this Act shall not apply to legislative texts, official decisions, public notifications official documents, standards and other regulations of binding force.

Article 2. Works which are not first published in Hungary shall enjoy protection under this Act only if the author is a Hungarian National or is granted protection under an international agreement or on the basis of reciprocity.

Article 3. The questions not regulated by this Act and those concerning labour relations (article 14) shall be governed by the provisions of the Civil Code and the Labour Code respectively.

Authors' rights

Article 4. (1) The author's right shall vest in the person who created the work (author).

(2) Adaptations, transformations or translations of an author's work, provided that they represent independent creations of original talent, shall be granted the same protection as an original work, without prejudice to the rights of the author of the original work.

Article 5. (1) If a work created through the collaboration of two or more persons forms an indivisible whole, each collaborator in the said work shall be entitled to a joint author's right and, in case of doubt, to an equal share thereof; however, any of the collaborators may take independent action against infringement of the author's right.

(2) If a work created through the collaboration of two or more persons does not form an indivisible whole, each collaborator shall retain an author's right in his contribution.

(3) The author's right in a collection of works as such shall vest in the editor thereof without prejudice to the copyright in each of the individual works forming part of such collection.

Article 6. (1) The copyright in anonymous or pseudonymous works shall be exercised by the first publisher of such works until the author discloses his identity.

(2) In the case of an unpublished work whose author is unknown, the copyright in such work shall be exercisable by the organs called to represent the interests of authors, provided that it is reasonable to presume that the unknown author is a Hungarian national.

Article 7. The authors shall enjoy moral and economic rights in their works.

Chapter II

MORAL RIGHTS

Article 8. (1) The author shall have the right to authorize publication of his work.

(2) Before publication of the work, the essential content thereof shall not be made publicly known without the consent of the author.

Article 9. (1) The author shall have the right to indication of his name on the work; his name shall be mentioned or indicated in the case of adaptations, quotations or communication of fragments of his work. The author shall be entitled to make his work available to the public without indication of his name or under a pseudonym.

(2) The author shall have the right to claim uncontested authorship of his work.

Article 10. The moral rights of the author shall be deemed to be prejudiced by any unauthorized alteration or utilization of the work.

Article 11. The author may, for good cause, withdraw his authorization of the publication of his work and may prohibit the continued utilization of an already published work; however, he shall be liable to pay any damages incurred until the date of such a declaration on his part. This right shall not affect that of the employer to the utilization of the work.

Article 12. (1) The moral rights shall not be subject to any limitation in time and shall not be transferred nor waived by the author.

(2) After the death of the author the moral rights regulated by this Act shall, during the term of protection (article 15), be exercised by the person whom the author has entrusted with the administration of his literary, scientific or artistic property or, in the absence of such a person or if he fails to act, by one who has acquired such right in consequence of succession.

(3) Upon expiry of the term of protection the moral rights of the author shall be protected by the organs called to represent the interests of authors or by any other organ so designated by the Minister of Culture and Education, provided that the utilization of the work results in its distortion or in prejudice to the author's reputation.

Chapter III

ECONOMIC RIGHTS

Article 13. (1) Except as otherwise provided by law, the consent of the author shall be required to any utilization of the work. The consent of the author shall likewise be required to the utilization of the special title of the work.

(2) After the death of the author during the term of protection the right of consent shall vest in his successor in title.

(3) Except as otherwise provided by law, the author or his successor in title shall be entitled to obtain remuneration for the utilization of the work. Remuneration shall not be waived in the absence of an express declaration to that effect.

Article 14. (1) Where the work is created in the course of employment and the employer is entitled to the use of such work on the strength of the content of employment relationship, the transfer of the work shall be deemed to constitute consent to publication and the right of utilization shall devolve to the employer. Such right shall be acquired by the employer to the extent determined by the content of employment relationship and shall only be exercised within the scope of his activities. The author's use of such work beyond that scope shall be subject to the consent of the employer; however, the employer shall not refuse consent except on reasonable grounds.

(2) If the longest term of exercise of the right to utilization is compulsorily determined by law, the right of utilization shall vest in the author after expiry of such term. This right shall also vest in the author if it is not exercised by the employer during the period specified by law.

Article 15. (1) The economic rights shall be protected in the life of the author and for fifty years after his death.

(2) The fifty-year term of protection shall run from the first of January of the year following the author's death and, in the case of joint authorship (paragraph (1) of article 5), from the first of January of the year following the death of the last surviving author.

(3) If the identity of the author cannot be established, the term of protection shall be fifty years following the year in which the work was first published. If, however, the author reveals his identity during this period, the term of protection shall be measured in accordance with paragraph (2).

(4) The term of protection of cinematographic works shall be fifty years from the first of January of the year following the first presentation.

Chapter IV

LIMITATIONS ON AUTHOR'S RIGHTS

Free utilization

Article 16. The utilization of the work within the established scope (articles 17 to 21) shall not be subject to payment of compensation and to the consent of the author.

Article 17. (1) Fragments of a published work may be freely and faithfully quoted to the extent justified by the nature and purpose of the work adapted, subject to indication of the source and the author's name.

(2) Fragments of published works or entire works of a smaller size may be reproduced for the purpose of school instruction, including the school programmes of the radio and television, as well as for the propagation of scientific knowledge, with indication of the source and the name of the author appearing thereon.

(3) Creation of a new, independent work may be based on another work; however, such right shall not extend to the adaptation of the original work for theatrical or cinematographic purposes or for communication to the public by radio or television, or into a production in the same artistic form.

Article 18. (1) Any person may make duplication of an already published work if it does not aim at circulation or profit and is not otherwise prejudicial to the legitimate interests of the author. This provision shall not apply to works of architecture and technology.

(2) Borrowing copies of a work shall be within the scope of free utilization.

Article 19. (1) News and items of factual information may be freely reprinted but the source shall be indicated. The content of public discussions and speeches may be freely reproduced but the publication of collected speeches shall remain subject to the authorization of the author.

(2) Current articles on topics of economic and political interest may be freely reproduced in newspapers and periodical publications with the indication of the source and the name of the author except where such reproduction has been prohibited at the time of first publication.

(3) Sculptures, paintings, works of architecture and of applied arts as well as photographs may be freely used by television on specific occasions or for stage scenery without indication of the name of the author.

Article 20. (1) To the extent justified by the occasion, works may be presented, demonstrated or communicated in newsreels or current radio and television programmes in connection with daily events, without indication of the name of the author.

(2) Works of fine arts, architecture and applied arts as well as photographs in public display may be communicated to the public by the press, newsreels, and other topical programmes of the television for the purpose of reporting current events.

Article 21. (1) A published work may be presented at school events and for purposes of other school activities.

(2) A published work may be presented at occasional gatherings in private and at mass celebrations (festive demonstrations, etc.), if such presentation is not even indirectly aimed to secure or increase profit nor do the collaborators receive a remuneration.

(3) A work may be presented or performed for private purposes if it is not even indirectly aimed to secure or increase profit.

Utilization without the consent of the author but with payment of compensation

Article 22. (1) Without the special consent of the author but for fair compensation, the radio and television shall be entitled:

(*a*) To broadcast an already published work without alteration;

(*b*) To transmit a public presentation or performance and to broadcast events from a public place; the time of broadcasting or transmission shall be fixed in concurrence with the theatre or the organizing agency. The radio and television shall not enjoy this right if transmission has been excluded or restricted under a contract of utilization.

(2) If the author alters his work already published and gives the radio and television such notice accompanied by the new version, the aforesaid right of the radio and television shall extend to the use of the new version only.

Article 23. (1) The radio and television shall be entitled to record sounds and images of any work which they are authorized to broadcast under paragraph (1) of article 22 and to subtitle and present such recordings in their own broadcasts. Such recordings may also be re-transmitted for payment of compensation.

(2) The consent of the radio and television shall be required for the broadcast of the whole or parts of their programmes by other radio and television broadcasting institutions and for their recording thereof for the purpose of circulation or public presentation.

Authorization of utilization, in the interest of society

Article 24. (1) If the author's successor in title refuses, without good cause, the authorization of the continued utilization of a published work, his consent may, unless at variance with an international agreement, be substituted for by a court order in the interest of society.

(2) Such utilization shall be with payment of compensation.

Chapter V

CONTRACTS OF UTILIZATION

General rules

Article 25. In the cases specified by law, the author or his successor in title shall not make a contract for the utilization of the work except with or through the competent organization.

Article 26. (1) The conditions of contract for utilization shall be determined by the parties within the limits established by law.

(2) It shall not be permissible to depart, to the detriment of the author, from the provisions of law designed to protect the interests of the author. In like manner, exceptions shall not be made to such provisions of law which, issued pursuant to an Act, prohibit exceptions. The stipulations of a contract which are contrary to such provisions shall be null and void and shall be substituted for by the relevant provisions of law.

Article 27. Unless otherwise provided by law, the contract of utilization shall be made in writing.

Article 28. (1) Unless otherwise provided by law, the user shall not acquire the exclusive right of utilization except if expressly so stipulated in the contract.

(2) Unless otherwise provided by law, the user shall not transfer his rights except with the consent of the author.

(3) The transfer of ownership of a work shall not mean assignment of the author's rights, while the work delivered under a contract of utilization shall, unless otherwise stipulated by the contract, remain in the ownership of the author.

Article 29. (1) The user shall, within the period determined by law, make a declaration concerning his acceptance of the work delivered under a contract for a future work.

(2) If the contract is for a future work, the user shall be entitled to return in justified cases, the work even on repeated occasions for improvement within an appropriate time-limit.

(3) If, without good reason, the author refuses to carry out the improvement or fails to effect it within the set time-limit, the user may cancel the contract without payment of compensation.

(4) If the work is not suitable for use even after the improvement, the author shall be entitled to a reduced compensation.

Article 30. Once the author has authorized the use of the work, he shall effect such alterations as are indispensable or obviously necessary for utilization without changing the substance of the work; if he fails to, or cannot, fulfil such obligation, the user shall be entitled to have such alterations carried out without the consent of the author.

Publisher's contract

Article 31. (1) Under a publisher's contract the author shall make the work available to the publisher, and the publisher shall be entitled to publish and circulate it against payment of compensation to the author.

(2) The right of publication shall, in case of doubt, apply to publication of the work in the Hungarian language. The right of publication exercised under contract shall be exclusive except in respect of collections and of works made for newspapers and periodicals.

Article 32. A publisher's contract may only be for a definite period or for a definite number of copies. The provisions of law may allow the conclusion of contracts for an indefinite period and may determine the longest duration thereof.

Article 33. If the publisher fails to publish the work made under contract within the period fixed by law or contract or, failing such provision, within a reasonable time-limit, the author may cancel the contract and may claim payment of compensation.

Contract of transmission

Article 34. (1) Under a contract of transmission, the author shall make the work available to the radio and television, which shall acquire, for the

period stipulated in the contract, the right of transmission of the work and of recording sounds and images thereof against payment of compensation for such use to the author.

(2) If the work made for the purpose of transmission is not used during the period determined by contract or, failing such provision, within a reasonable time-limit, the author may cancel the contract and may claim payment of compensation.

...

DECREE NO. 6/1969 (VIII.30.) OF THE MINISTER OF CULTURE AND EDUCATION ON PROCEEDINGS BEFORE THE GUARDIANSHIP AUTHORITY

Chapter VI

MATTERS RELATED TO LEAVING THE PARENTAL HOME

Article 61. The guardianship authority shall hear the minor and his parents (guardian) and, where necessary, the nearest relatives before granting a permit for the minor to leave the parental home without parental consent or such other residence as may be designated by the parents (article 76 (3) of the Family Law).

Article 62. (1) The application of a minor shall be refused if leaving the parental home does not serve an important interest of his (e.g. continuation of studies, extension training, taking an employment) and then only if his legal representation, maintenance, education, custody and supervision is not ensured. The minor shall be summoned in the decision of refusal to return to the parental home if he has already left it.

(2) The guardianship authority may order a minor to return to the parental home if it serves his best interest in view of the provision of paragraph (1).

...

Chapter VIII

MATTERS RELATED TO PROTECTIVE AND PRECAUTIONARY MEASURES AND TO PROTECTIVE CARE

Protective and precautionary measures

Article 67. (1) In the interest of a minor, the guardianship authority shall be entitled to order protective and precautionary measures to be taken outside criminal procedure if the moral development, education and care of the minor is not ensured in the environment of the parent or other person having custody of the child (hereinafter referred to as custodian) (article 31) (1) of Law-Decree No. 10 of 1962).

(2) The guardianship authority shall take proceedings to order protective and precautionary measures whenever:

(*a*) It is summoned to do so by the police, the prosecutor, the court or a social organization;

(*b*) Such measures are warranted by a well-grounded notice;

(*c*) It comes to know of a circumstance making such steps necessary.

(3) In the course of proceedings the guardianship authority shall, where necessary, summon the custodian and minor to appear, it shall make the facts known to them jointly or separately and hear them on the matter.

Article 68. (1) Depending on circumstances, the guardianship authority may take the following protective and precautionary measures:

(*a*) Talk with the minor and give him information and advice, and warn him of his improper conduct; such warning shall be placed on record in which compulsory rules of conduct may also be prescribed;

(*b*) In the absence of the minor, warn the custodian of the consequences of his improper conduct; admonish the custodian to change his improper conduct; oblige him to seek advice from an institute for child neuropathology or an education counselling agency and to follow such advice in the upbringing of the child; such warning and admonishment, which may be repeated if necessary, shall be placed on record;

(*c*) Request the school headmaster, the permanent commission, the employer or the appropriate trade union organ to prevail on the custodian to change his improper conduct prejudicial to the minor's upbringing;

(*d*) Oblige the custodian, by a decision warning him of the measures referred to in paragraph (4) or of a fine, to comply with the duties specified in the admonishment if the measures taken under the preceding subparagraphs prove to be of no avail;

(*e*) In cooperation with the competent special administrative agencies, help the minor over 14 years of age in obtaining appropriate employment, with due regard to the provisions relating to compulsory school attendance (article 7 of Law-Decree No. 13 of 1967) and to labour relations (article 18 (2) of Act II of 1967—hereinafter called the Labour Code, and section 9 of Government Decree No. 34/1967 (X.8.)—hereinafter called the Enforcement Decree of the Labour Code);

(*f*) Use its influence, where necessary, with a view to improving the custodian's conditions of work.

(2) To remove some environmental harm threatening the health of a minor, the guardianship authority shall take measures in concert with the competent sanitary bodies (head physician of the district, panel doctor, medical officer of the school, etc.). In case of violation of the provisions of the Labour Code (articles 20 (2), 30 (2), 38 (4) and 42 (2) as well as sections 12 (2) and 50 (1) of the Enforcement Decree of the Labour Code), the guardianship authority may request the competent

trade union organ to conduct the appropriate proceedings (articles 11 to 17 of the Labour Code).

(3) The guardianship authority may grant a relief (article 78), if the development of a minor is impeded by lack of material means.

(4) Within the scope of protective and precautionary measures the guardianship authority may initiate the termination of parental supervision, enforcement of the payment of alimony, change in the custody of the minor, the calling to account of the custodian before a social bench (Law-Decree No. 24 of 1962) or by criminal procedure, and his subjection to a tapering-off cure (article 2 (2) of Law-Decree No. 27 of 1966).

Article 69. (1) If the measures taken by the special administrative agency of the executive committee of the competent local council in discharging the tasks mentioned in paragraphs (1) to (3) of Article 68 prove to be of no avail, the file shall be referred to the guardianship authority except when the said administrative agency orders the minor to be delivered into state care (article 71).

(2) The town district (municipal) guardianship authorities may request the permanent commission, the competent institute for child neuropathology, the education counselling agency and the officials in charge of youth protection to attend to the tasks referred to in the preceding paragraph.

Article 70. (1) If necessary, the guardianship authority may, at any stage of the procedure, appoint by decision a protector to the minor to ensure and control his development continuously.

(2) There may be appointed as protector a person whose abilities and conditions are suitable for promoting the education of the minor. The decision of appointment shall inform the protector of his tasks and of the rules of conduct prescribed for the minor.

(3) The protector shall have the task to look constantly after the conduct of the minor under his care, to promote his moral development in the right direction and, where necessary, to assist the custodian in the upbringing of the child.

(4) When required, but at least once every three months, the protector shall report to the guardianship authority on the results of his efforts and on his experiences. He may propose the guardianship authority to terminate protective care if no longer warranted by the changes occurred in the circumstances of the minor.

Article 71. If the protective and precautionary measures have proved to be of no avail or if no success can be expected of them, the guardianship authority shall order the minor to be committed to state care.

Article 72. If required by the interest of the minor, the guardianship authority may appoint a protector when terminating state care. In such a case, a protector may be designated in the village by the special administrative agency of the executive committee of the local council, with due regard to the provisions of article 70.

Article 73. (1) The court shall, by sending a copy of its decision, immediately notify the district, town or town district (municipal) guardianship authority of competence in the place of residence of the custodian if it has confined the minor to a reformatory institute or has sentenced him to imprisonment.

(2) Upon receipt of such notification, the guardianship authority shall take steps to see that the minor is, if released on parole or on probation, placed into an appropriate environment. To this end, it may request the permanent commission to assist in the creation of appropriate circumstances.

(3) Where necessary, the guardianship authority may take any of the measures referred to in articles 68, 70 (1) and 77 in the interest of a minor released from the penitentiary without the benefit of probation.

After-care

Article 74. (1) Upon notification from the court or the director of the reformatory institute respectively the guardianship authority shall, after making a background study, immediately summon to appear a minor let out on parole, sentenced to correctional-educational labour, given a suspended sentence, placed on probation or provisionally released from the reformatory institute, give him instructions concerning his proper manner of living and inform him that he may change residence and employment only with the prior consent of the guardianship authority. All this shall be placed on record.

(2) Making use of the existing possibilities, the guardianship authority shall see to it that the minor gets into an environment which has a favourable influence upon his moral development.

Article 75. (1) The guardianship authority shall designate a protector for the minor taken into after-care. The decision of designation shall contain the rules of conduct prescribed by the court or the council of the reformatory institute as well as the date of expiry of the term of designation. The guardianship authority shall send a copy of this decision to the court or the director of the reformatory institute and to the competent police authority.

(2) The tasks of the protector shall be governed by the provisions of paragraph (3) of article 70.

(3) The protector may look into the files of the criminal proceedings; he shall report to the guardianship authority on the results of his efforts and on his experiences every three months. The guardianship authority shall send a copy of the protector's report to the court or the director of the reformatory institute.

Aricle 76. (1) Upon expiry of the period mentioned in paragraph (1) of article 77, the guardianship authority shall give information to the court or the director of the reformatory institute if the minor's behaviour during after-care has been beyond reproach or if he has completed his 18th year.

(2) The protector shall inform the guardianship authority if the minor's behaviour during after-care has been objectionable and his own efforts have proved to be of no avail. The guardianship authority shall promptly make this

known to the court or the director of the reformatory institute.

Article 77. (1) After-care shall last until expiry of the period of parole, execution of correctional-educational labour, expiry of the period of suspended sentence of imprisonment, of the period of probation or of provisional release from the reformatory institute but not later than the minor's completion of his 18th year.

(2) If the minor under protective care comes of age during after-care, the guardianship authority may not henceforward take direct measures for the minor's supervision but shall promote his development in the right direction by appealing to the welfare officer of the competent sanitary department and letting him know the full facts of the case. Paying due regard to this Decree, the welfare officer shall act according to the provisions governing the after-care of ex-prisoners and, if necessary, shall request the permanent commission on health and social welfare, the trade union organ or the committee of the Young Communist League to watch over the habits and living conditions of the person of age under protective care and to give him the help and assistance he may need.

(3) The provisions of the preceding paragraph shall apply to the action to be taken by the guardianship authority in connection with a person released from the reformatory institute on account of his coming of age if the director of the reformatory institute appeals to the guardianship authority to this end.

Chapter IX

MATTERS RELATED TO GRANT OF RELIEF TO MINORS

Article 78. (1) The guardianship authority may, also on request, grant relief to minors.

(2) Before making a decision the guardianship authority shall be satisfied that such application is justified; to this end it shall request a statement of earnings or average income and, if necessary, a medical certificate issued by the panel doctor or specialist, and shall make a background inquiry.

Article 79. The decision of grant shall, in its operative part, contain:

(*a*) The name of the minor, and the amount and purpose of relief;

(*b*) A notice to the financial agency of the executive committee of the local council to pay out the relief, indicating the name and address of the person entitled to collect the money;

(*c*) A notice to the person entitled to collect the amount of relief to render an account thereof.

. . .

Article 81. (1) The guardianship authority shall make a relief payable to the hands of the legal representative, the minor's custodian or protector or the minor under after-care.

(2) The persons referred to in the preceding paragraph shall account for the use of the relief, within 15 days of the receipt thereof, with the production of vouchers (bill, invoice of purchase).

(3) The amount of relief granted to cover the cost of provisions in a day-time home or an institute (meals, etc.) shall be transferred by the guardianship authority to the day-time home or institute.

. . .

Chapter X

MATTERS RELATED TO STATE CARE

Order of committal to State care

Article 83. Committal to state care in the interest of a minor may be ordered by the guardianship authority *ex officio* or on request.

. . .

Article 85. (1) Before an order of committal to state care, the guardianship authority shall:

(*a*) Make a background inquiry;

(*b*) Acquire a copy of the minor's birth certificate;

(*c*) Establish, if possible, the financial situation or earnings of the person who may be obliged to maintenance, the legal title to maintenance (family relation, court order, etc.), and eligibility for a family allowance or an orphan's allowance;

(*d*) Request, if necessary, assistance from the institute for child neuropathology or the education counselling agency.

(2) A medical certificate shall be obtained from the panel doctor or specialist prior to committal for reasons of the illness of a person living in the minor's environment or of neglect of the minor's medical treatment.

. . .

GOVERNMENT DECREE NO. 20/1969 (V.13.) ON THE STATE CARE OF MINORS AND THE ADOPTION OF MINORS UNDER STATE CARE

Article 1. (1) It shall be the duty of parents to care for, bring up and support the minors, to promote their physical, mental and moral growth, and to protect their personal and property interests.

(2) The guardianship authority shall take immediate action in the interest of a minor whose care, upbringing and support or protection of physical, mental or moral growth is, for whatever reason, not ensured.

Article 2. In attending to these tasks the guardianship authority may:

(*a*) Take protective or precautionary measures;

(*b*) Take or initiate, in cases specified by separate provisions, proceedings in the interests of minors;

(*c*) Order minors to be committed to state care.

Article 3. The purpose of state care is to provide for the care, education and support of minors and to direct their physical, mental and moral growth if it is not ensured in their own environment.

Article 4. (1) If there is a ground for ordering a minor to be delivered into state care and immediate action is necessary for his accommodation, the minor may be transferred to the nearest county (municipal) child-and-youth welfare institute on a provisional basis. The child may similarly be admitted by the director of such institute on a provisional basis.

(2) The provisional admission of a minor may be ordered by the guardianship authority, the court, the penitentiary authority, the police and, in the village, the head of the executive committee of the local council.

(3) The delivery of a provisionally admitted minor to the child-and-youth welfare institute shall be the concern of the organ ordering his transfer thereto. The fact of delivery and admission shall be immediately notified to the competent guardianship authority.

Article 5. The guardianship authority shall decide promptly on committal to state care and shall declare its decision to take immediate effect.

Article 6. (1) Unless otherwise provided by law, the expenses of state care shall be shared by the person who may be obliged to maintenance of the minor under family law or who has undertaken a special responsibility for his support.

(2) The guardianship authority may establish a contribution payable by the parents, the adoptive parents, the grandparents or brothers and sisters of full age or on any person who has obliged himself to maintenance in a notarial document or in a private document having full probative force or whose obligation to maintenance has been established by a court order (settlement in court).

(3) If each of the persons having an equal obligation of maintenance has an earning (income) of his own, the guardianship authority shall oblige them to pay a contribution each in proportion to their respective earning (income).

Article 7. (1) The guardianship authority shall fix the contribution in an amount equal in general to 20 per cent of the monthly average income of the person obliged to maintenance, provided that

(*a*) The minor completes his 18th year of age or contracts a marriage;

(*b*) The guardianship authority grants a permit to adopt the minor;

(*c*) The guardianship authority orders the termination of committal to state care.

(2) The obligation to pay a contribution shall subsist so long as the child-and-youth welfare institute provides for the continued education of the child who has completed his 18th year of age and was in state care.

Article 13. The guardianship authority shall terminate state care if the reasons for it no longer exist and termination is otherwise not contrary to the interests of the minor.

Article 14. (1) The guardianship authority shall promote adoption of a minor under state care if it is in the interest of the child.

(2) The consent of parents shall not be required for the adoption of a minor under state care but the guardianship authority shall hear the parents before the grant of an adoption permit.

(3) The parents shall not be heard if at the time of committal to state care or prior to adoption they have made a declaration concerning the adoption, provided that the period between such declaration and the application for adoption is no longer than one year or they have expressly requested not to be heard.

(4) The parents whose parental supervision has been terminated or who have no disposing capacity or are of unknown whereabouts shall not be heard.

(5) The director of the child-and-youth welfare institute as *ex officio* guardian shall not be heard if he has already made a declaration concerning the adoption.

Article 15. The names and other particulars of the adoptants shall not, either during or after the proceedings, be communicated to the blood relatives of the minor except if the adoptants have applied for an adoption permit with the knowledge and consent of the natural parents.

Article 16. (1) The present Decree shall enter into force on 1 October 1969 and its enforcement shall be attended to by the Minister of Culture and Education in concurrence with the minister (heads of the national high authorities) concerned. At the same time, Government Decree No. 51/1954 (VIII.6.) on the Maintenance and Upbringing of Minors and the Conditions for their Committal to State Care shall lose effect.

...

GOVERNMENT DECREE NO. 5/1969 (I.28.) AMENDING GOVERNMENT DECREE NO. 3/1967 (I.29.) ON CHILD-CARE ALLOWANCE

Article 1. Article 1 of Government Decree No. 3/1967 (I.29.) on Child-Care Allowance (hereinafter called the Decree) shall be replaced and supplemented by the following provisions:

"Article 1. (1) After expiry of maternity leave a child-care allowance may be granted, until completion of the third year of the child, to a working woman who:

"(*a*) Has spent altogether 12 months in service within one and a half years immediately prior to child-birth; and

"(*b*) Has worked at least 6 hours a day; and

"(*c*) Takes an unpaid leave for the purpose of attending to her child (section 57 (2) of the Enforcement Decree of the Labour Code).

"(2) The term of one and a half years mentioned in paragraph (1) shall not include:

"(*a*) The period of earning incapacity;

"(*b*) The duration of disability pension or injury allowance;

"(*c*) The period between 1 December and 31 March in the case of insured persons in agriculture;

"(*d*) The duration of child-care allowance under Article 1 (*a*).

"(3) A child-care allowance may also be payable to a working woman who, within 90 days from completion of studies in the day-time course of any school (educational institution):

"(*a*) Enters into employment or becomes a member of an artisan co-operative and fulfils the conditions laid down in paragraph 1 (*b*) and (*c*); or

"(*b*) Becomes a member of an agricultural (fishing) co-operative.

"(4) The period of illness involving earning incapacity and the duration of disability pension or injury allowance shall not be included in the computation of 90 days under paragraph (3).

"Article 1 (*a*) (1) When the conditions set forth in paragraph 1 (*a*) and (*b*) of article 1 otherwise prevail, a working mother shall also be eligible for a child-care allowance if her employment established for a probationary or a definite period is terminated during maternity leave.

"(2) The child-care allowance shall continue to be payable even if the employment established for a probationary or a definite period is terminated during the unpaid leave taken for the purpose of attending to the child.

"(3) A working woman shall be entitled to a child-care allowance also for an adopted, step- or foster-child."

. . .

Article 3. Article 4 of the Decree shall be replaced by the following provisions:

"Article 4. (1) The period of unpaid leave taken during employment for the purpose of attending to the child (section 57 (2) of the Enforcement Decree of the Labour Code) shall be taken into account in the calculation of the length of service. The duration of child-care allowance enjoyed after termination of the employment established for a probationary or a definite period shall not be counted towards the length of service.

"(2) Subject to notification to the workplace with 30 days in advance, a working woman may, before completion of the third year of the child, interrupt her unpaid leave taken for the purpose of attending to her child."

Article 4. Article 4 (*a*) shall be added to the Decree:

"Article 4 (*a*) (1) The amount of child-care allowance shall not be taken into account in the calculation of income in establishing the mother's eligibility as a member of family for the enjoyment of sickness insurance benefits (article 5 (4) of Government Decree No. 71/1955 (XII.1.3) as amended by Government Decree No. 23/1968 (VI.30.)

"(2) A single mother receiving a child-care allowance under article 1 (*a*) and members of her family shall be entitled to sickness insurance benefits under the same conditions and to the same extent as any person in employment and members of his family, but shall not be eligible for a sick-pay and a maternity-and-confinement allowance.

"(3) With the conditions otherwise prevailing, Government Decree No. 16/1966 (VI.1.) on Family Allowance shall be applicable to a mother receiving a child-care allowance on the understanding that a family allowance shall also be due for the period during which a mother is receiving a child-care allowance following termination of her employment."

Article 5. (1) A child-care allowance enjoyed under this Decree shall be payable from 1 April 1969 for children born on or after 1 January 1967.

. . .

INDONESIA [1]

LAW NO. 15 OF 1969 ON GENERAL ELECTIONS TO ELECT MEMBERS OF THE PEOPLE'S DELIBERATIVE/REPRESENTATIVE INSTITUTIONS

CHAPTER I

GENERAL PROVISIONS

Article 1

(1) The general elections to elect members of the Dewan Perwakilan Rakjat to be further called DPR, Dewan Perwakilan Rakjat Daerah Tingkat I to be further called DPRD-I and Dewan Perwakilan Rakjat Daerah Tingkat II to be further called DPRD-II are direct, general, free and secret.

(2) The general elections provided for in this Law are also meant to fill the seats in the Madjelis Permusjawaratan Rakjat. [2]

Article 2

(1) Citizens of the Republic of Indonesia who are ex-members of the prohibited Indonesian Communist Party and its mass organizations or those who have been directly or indirectly involved in the "Counter-revolutionary 30 September Movement/Indonesian Communist Party" or any other prohibited organization are denied the right to elect and to be elected;

(2) Organizations are prohibited from nominating a person who has been denied the right to elect and to be elected as provided in paragraph (1).

(3) Violation of the stipulation in paragraph (2) shall result in the annulment of the candidacy concerned.

Article 3

The planning, preparation and implementation of the general elections are based on the principles of democracy which is imbued by the spirit of Pantja Sila [3] and the 1945 Constitution. [4]

[1] Texts furnished by the Government of Indonesia.

[2] Dewan Perwakilan Rakjat = House of Representatives; Dewan Perwakilan Rakjat Daerah Tingkat I = First Level Regional Council; Dewan Perwakilan Rakjat Daerah Tingkat II = Second Level Regional Council; and Madjelis Permusjawaratan Rakjat = People's Consultative Congress.

[3] Pantja Sila = the Five Principles of the Indonesian State Philosophy.

[4] For extracts from the Constitution of 1945, see *Yearbook on Human Rights for 1959*, p. 156.

CHAPTER II

ELECTORAL DISTRICTS AND NUMBER OF SEATS

Article 4

(1) *a.* For the election of the members of the DPR, an electoral district is a First Level Region;

b. For the election of the members of a DPRD-I, a First Level Region constitutes 1 (one) electoral district;

(2) Citizens of the Republic of Indonesia residing outside the country are considered residents of the electoral district in which the Department of Foreign Affairs of the Republic of Indonesia is situated.

Article 5

(1) The number of members of the DPR elected for each electoral district is fixed in proportion to the number of the population of the electoral district concerned.

(2) The provision in paragraph (1) does not diminish the stipulations that:

(*a*) The number of representatives in one electoral district shall be at least equal to the number of Second Level Regions in the electoral district concerned;

(*b*) Each Second Level Region shall have at least one representative.

(3) For the purpose of general elections, the Minister of Home Affairs may decide to divide First Level Regions, which are not yet devided into Second Level Regions, into administrative units of equal rank as Second Level Regions.

(4) The number of members of an electoral district, which is divided into administrative units as provided in paragraph (3), is fixed at 8 (eight) without diminishing the spirit of the stipulations in paragraph (1) and paragraph (2), sub-paragraph (*b*).

(5) The number of elected members of a DPRD is decided on the basis of provisions in the Law on the Composition of the Madjelis Permusjawaratan Rakjat, Dewan Perwakilan Rakjat and Dewan Perwakilan Rakjat Daerah.

Article 6

The number of members of the DPR elected in the general elections in Java is fixed in proportion to the number of members elected outside Java.

CHAPTER III

IMPLEMENTATION/PREPARATION AND ORGANIZATION

Article 7

(1) Each voting in the general elections, successively for the DPR, DPRD-I and DPRD-II, is simultaneous and held on one day.

Article 8

(1) The general elections are implemented by the Government under the leadership of the President.

(2) The President may appoint an official to be in charge of the day-to-day management of the general elections.

(3) For the implementation of the general elections, the President establishes an Institute of General Elections....

...

CHAPTER IV

VOTING RIGHT AND REGISTRATION OF VOTERS

Article 9

Citizens of the Republic of Indonesia, who at the time of registration of voters are 17 years old or already married, are qualified to vote.

Article 10

(1) To use the voting right, a citizen of the Republic of Indonesia must be registered in the list of voters.

(2) In order to be registered as a voter, a person must meet the following requirements:

(*a*) He must not be a member of the prohibited Indonesian Communist Party and its affiliated mass organizations, or be involved directly or indirectly in the "Counter-revolutionary 30 September Movement/Indonesian Communist Party" or other prohibited organizations;

(*b*) He must not give evidence of being mentally disturbed or insane;

(*c*) He must not be serving a sentence in jail or confinement by irrevocable verdict of a Court of Justice because of a criminal act punishable by five years or more of imprisonment.

(*d*) He must not have been denied the right to vote by irrevocable verdict of a Court of Justice.

Article 11

Members of the Armed Forces of the Republic of Indonesia do not exercise their right to vote.

Article 12

(1) The Government shall notify the Institute of General Elections of the names of persons who are ex-members of the prohibited Indonesian Communist Party and its mass organizations, or who directly or indirectly were involved in the "Counter-revolutionary 30 September Movement/ Indonesian Communist Party" or other prohibited organizations.

(2) The Minister of Justice shall notify the Institute of General Elections of each verdict of a Court of Justice resulting in the revocation of the right to vote of a person.

...

CHAPTER V

THE RIGHT OF ELECTION AND CANDIDACY

Article 14

The members of the Armed Forces of the Republic of Indonesia do not exercise their right to be elected.

Article 15

(1) The right to nominate a candidate for the general elections is given to any organization that meets the requirements laid down in article 17.

(2) A person can be nominated a candidate for various kinds of representative bodies in one general election season.

Article 16

A candidate must meet the following requirements:

(*a*) He must be a citizen of the Republic of Indonesia, 21 years of age and devoted to God the Almighty;

(*b*) He must be able to speak the Indonesian language and to write and read in Latin characters;

(*c*) He must be loyal to *Pantja Sila,* the basis and ideology of the State, to the 1945 Constitution and to the Independence Revolution of the Indonesian People proclaimed on 17 August 1945 in order to fulfil the message of the sufferings of the People;

(*d*) He must not be an ex-member of the prohibited Indonesian Communist Party and its mass organizations and not be a person who has been directly or indirectly involved in the "Counter-revolutionary 30 September Movement/Indonesian Communist Party" or other prohibited organizations;

(*e*) He must not have been deprived of his voting-right by an irrevocable verdict of a Court of Justice;

(*f*) He must not be serving a sentence in jail or confinement by irrevocable sentence of a Court of Justice because of a criminal act punishable with at least five years imprisonment;

(*g*) He must not give evidence of being mentally disturbed or insane;

(*h*) He must be listed in the Register of Voters;

(*i*) He must be nominated as a candidate in accordance with article 15.

Article 17

(1) To become a candidate in the general elections one must be nominated by an organization.

(2) An organization entitled to nominate a candidate in the general elections must meet the following requirements:

(*a*) It must not be a prohibited organization;

(*b*) With regard to political parties, they must be legalized on the basis of the Law on Political Parties, Mass Organizations and Functional Organizations;

(*c*) With regard to functional organizations, they must be legalized on the basis of the Law referred to under letter (*b*).

(3) In nominating a candidate, the organization concerned shall submit statements declaring that the requirements meant in articles 15 and 16 have been met.

...

CHAPTER VI

ELECTION CAMPAIGNS

Article 20

(1) For the implementation of the general elections, election campaigns may be held.

(2) All matters pertaining to the holding of election campaigns, including the ethics and rules of campaigning and the time limit for the campaigns, are regulated by Government Regulation.

CHAPTER VII

VOTING AND COUNTING OF VOTES

Article 21

(1) The voting in the electoral districts all over Indonesia for the three kinds of representative institutions takes place simultaneously.

(2) The voting outside Indonesia takes place at the Mission of the Republic of Indonesia and is done simultaneously and in accordance with the voting in Indonesia.

...

CHAPTER XI

PENAL PROVISIONS

Article 26

(1) Whosoever deliberately provides wrong information about himself or another person on a certain matter needed to complete the list of voters, shall be punished by imprisonment for at most one year.

(2) Whosoever imitates or forges documents which according to this Law are needed to carry out a certain act in the general elections with the purpose of using them as real and unforged documents for himself or for other persons shall be punished with imprisonment for at most five years.

Article 27

(1) Whosoever deliberately confuses, obstructs or disturbs the course of the general elections conducted according to this Law shall be punished with imprisonment for at most five years.

(2) Whosoever at the time of poling according to this law deliberately and with the use of force or threath of force obstructs a person to exercise his right to vote freely and unhindered shall be punished with imprisonment for at most five years.

(3) Whosoever at the time of polling according to this Law bribes a person by giving a present or promise in order not to use his right to vote in a certain way shall be punished with imprisonment for at most three years. The punishment also applies to the voter who by accepting bribery in the form of a present or promise commits a certain act.

(4) Whosoever at the time of polling according to this Law by some deceitful trick causes someone's vote to become invalid or another person than meant by the voter to become elected shall be punished with imprisonment for at most three years.

(5) Whosoever deliberately participates in the general elections according to this Law while assuming to be another person shall be punished with imprisonment for at most five years.

(6) Whosoever deliberately violates article 2 paragraph (1) shall be punished with imprisonment for at most five years.

(7) Whosoever votes more often than is laid down in this Law in one election shall be punished ment for at most five years.

(8) Whosoever during the general elections according to this Law deliberately frustrates the polling that has been carried out or carries out a deceitful trick which makes the results of the voting quite different from what they should have been according to the valid votes cast shall be punished with imprisonment for at most five years.

(9) An employer who, without giving a reason, does not allow an employee to leave his work in order to go to the polls shall be punished with imprisonment for at most three months.

(10) An executor of the general elections who neglects his task shall be punished with a fine of at most one thousand rupiah.

Article 28

The penal actions specified under article 26 and article 27, paragraph (1) up to and including (8) are crimes.

The penal actions specified under article 27, paragraph (9) and paragraph (10) are transgressions.

...

CONCLUSION OF THE SECOND NATIONAL LAW SEMINAR ON CRIMINAL LAW PROCEDURE AND HUMAN RIGHTS

Adopted at Semarang on 30 December 1968

The Second National Law Seminar....

...

Takes into consideration:

(*a*) That the human rights and obligations of human beings as members of society as a whole are clearly embraced in the doctrine of *Pantja sila*, the philosophy of life of the Indonesian people;

(*b*) That in the effort to fulfil these human rights as an implementation of democracy based on *Pantja sila*, in its connexion with Criminal Procedure, it is necessary to perfect the law and the practice of criminal procedure.

Concludes:

A. GENERAL

The following are broadly outlined prerequisites for maintaining legal security in the practice of criminal procedure:

1. *Principle of legality*

Criminal law must be of fixed character so that it would not allow accusation and punishment to be based upon analogy with other criminal provisions.

2. *Presumption of innocence*

Every suspected person must be considered innocent until proven guilty.

3. *Arrest and accusation*

(*a*) The right to arrest must be regulated by law, and is only allowed if the suspicion against a suspect is well-founded;

(*b*) Every arrested and detained person must be informed of the legal basis (e.g. the reasons and circumstances) of his arrest.

4. *Detention pending trial*

(*a*) Detention pending trial shall be defined by law;

(*b*) Detention may not be prolonged for business or other reasons.

5. *Minimum rights of the suspected person for the preparation of his defence*

(*a*) At the beginning of his detention, an accused person must be given the opportunity to contact a lawyer chosen by himself, except in certain circumstances when it is not allowed in the interest of the examination or inquiry.

(*b*) An accused person must be given the right and opportunity to call his own witnesses in the preliminary proceedings and during the trial.

6. *Examination of the accused person before and during the preliminary proceedings and during the trial*

(*a*) The examiner is forbidden to use threats, violence or mental pressure, or to persuade with promises for the purpose of obtaining confession or information.

(*b*) Letters and phone communications may not be intercepted except in special cases defined by law.

7. *The necessity for an independent tribunal and a public trial*

(*a*) An independent tribunal is an unconditional requirement for a free society under the rule of law;

(*b*) An independent lawyers' corps under the supervision of the tribunal is very essential;

(*c*) All trial proceedings must be open to public, except in cases defined by law.

8. *Appeals*

The verdict of the tribunal may be appealed, except in cases defined by law.

B. PARTICULAR

The problems to be studied include the following:

1. There must be a way for a suspected person to submit within 24 hours a protest against the illegality of his arrest to a body which is entirely independent of the institute in charge of the investigation.

2. In this connexion, every accused person has the right to know as soon as possible the nature of the accusation, and to consult his lawyer. The suspect must be informed immediately of his rights during the detention.

3. To prepare his defence, the accused person must be informed of not only the accusation but also of the evidence.

4. No one can be forced to give testimony that is self-incriminatory.

5. The possibility of releasing or changing the status of the detainee under remand shall be regulated by law.

6. Detention pending trial: bail must be allowed, except in cases where the accusation is of a serious nature; or if it is expected that the accused person will not be able to attend the trial; or if it is expected that he will hamper the trial either by threatening or by putting pressure on the witnesses. In these cases, bail can be refused.

7. The defendant has the right to appear with his lawyer when the witnesses for the prosecution are examined or cross-examined.

8. Remedies for abuse of "fair trial" procedure: the accused must be provided with remedies for forwarding a claim, civil or criminal, to everyone responsible for his illegal detention or ill-treatment during the detention.

9. The prosecutor has the right to appeal in the event of acquittal.

10. The prosecutor has the right to appeal the verdict of the Court of Appeals to the Supreme Court.

11. The examining body may, in the absence of the accused, order an examination and verdict by default.

12. Further study is recommended on the possibility of confinement to one's home or town.

13. Every accused person must be reminded of his right not to give information.

14. House search of the accused, without his consent, may only be done by court order.

15. The lawyer shall be accorded immunity at the trial.

16. The question of activity and passivity of a judge at a trial shall be a matter of concern.

17. There shall be a code of ethics governing the various representatives of the law.

18. The right shall be acknowledged to change or drop charges already drawn up against a defendant.

19. In criminal cases, the judgement on claims for indemnification must be rendered simultaneously (with the judgement of the accused).

20. Regulations for reviewing cases shall be drawn up.

21. In connexion with the guarantee of human rights, the competence and responsibility of those conducting the investigation are of utmost importance.

IRAN

NOTE [1]

During 1969, the following laws relating to human rights were promulgated:

1. Act of 15 Dey 1347 (5 January 1969) concerning the withdrawal of transferred land from farmers who are addicted to narcotics;

2. Act on compulsory insurance of motor vehicles against third parties;

3. Act of 14 Bahman 1347 (3 February 1969) increasing the penalty for employing children under 12 years of age in carpet-weaving factories;

4. Act on the division and sale of lands to tenant farmers;

5. Regulation on the division and sale of lands to tenant farmers;

6. Act of 15 Esfand 1347 (6 March 1969) authorizing the limited cultivation of the opium-poppy and the export of opium;

7. Act of 21 Esfand 1347 (12 March 1969) amending certain articles of the Act establishing houses of equity;

8. Act amending the Act on the employment and training of judges;

9. Act of 26 Farvardin 1348 (15 April 1969) amending certain articles of the Act establishing arbitration councils;

10. Act amending the Act on the preservation and utilization of forests and pastures;

11. Act on the prevention and combating of danger of floods;

12. Act of 29 Ordibehesht 1348 (19 May 1969) concerning social insurance for farmers.

13. Act on the purchase of agricultural lands for the fulfilment of industrial and mining demands;

14. Act of 23 Azar 1348 (14 December 1969) supplementing the Act concerning the participation of workers in the profits of industrial and production undertakings;

15. Regulations of 17 Esfand 1347 (8 March 1969) governing the election of workers' and employers' representatives to labour councils and dispute boards;

16. Regulations implementing the Act concerning the withdrawal of transferred lands from farmers who are addicted to narcotics;

17. Regulations concerning Farmer's Health Insurance;

18. Regulations implementing article 50 of the Act on the nationalization of water resources;

19. Regulations implementing chapter 3 of the Act on the nationalization of water resources;

20. Regulations implementing the Act authorizing the limited cultivation of the opium-poppy and the export of opium.

[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 OF 15 DEY 1347 (5 JANUARY 1969) CONCERNING THE WITHDRAWAL OF TRANSFERRED LAND FROM FARMERS WHO ARE ADDICTED TO NARCOTICS

Sole article. If farmers who have become owners or lessees of agricultural land under the laws governing land reform and the distribution and sale of public lands are addicted to narcotics and are not cured of their addiction within the term specified in the regulations, by utilizing the facilities and opportunities to be provided for by the Government in the regulations governing the implementation of this Act and to be made available to them, the Ministry of Land Reform and Rural Co-operatives shall, without returning paid-up instalments, place the land transferred to the addicted farmers at the disposal of agricultural joint-stock companies, rural co-operatives or other local farmers or prospective farmers. In the case of farmers who have leased privately-owned land under the land reform laws and regulations, the Ministry shall remove it from their possession through the local Office of Land Reform and Rural Co-operatives and the lessor shall be required, upon notification from the Office of Land Reform and Rural Co-operatives, to lease the property in question for the remainder of the term of the original lease and on the terms set forth therein to a person or persons of the categories specified in article 16 of the Act amending the Land Reform Act, of 19 Dey 1340.

Similarly, any shareholders or members of agricultural joint-stock companies or rural co-operatives who are addicted to narcotics and are not cured of their addiction within the term specified in the regulations by utilizing the facilities and opportunities to be provided for by the Government in the regulations governing the implementation of this Act and to be made available to them shall be deprived of their membership in the said organizations and have their shares placed at the disposal of the organization concerned, in accordance with the provisions set forth in the regulations governing the implementation of this Act.

...

ACT OF 14 BAHMAN 1347 (3 FEBRUARY 1969) INCREASING THE PENALTY FOR EMPLOYING CHILDREN UNDER TWELVE YEARS OF AGE IN CARPET-WEAVING FACTORIES

Sole article. Any person who employs a child under twelve years of age in any capacity in a carpet-weaving factory shall be sentenced to corrective detention for a term of six months to one year and payment of a fine from 5,000 to 50,000 rials.

If the offence is repeated, the offender shall be sentenced to three years of corrective detention and payment of a fine of 300,000 rials.

This Act shall not apply to Factories coming under article 7 of the Labour Act.[2]

Note. The Government shall make provision for the organization of carpet-weavers' co-operatives.

...

[2] i.e., to family factories where the work is done exclusively by the employer and his immediate relatives.

ACT OF 15 ESFAND 1347 (6 MARCH 1969) AUTHORIZING THE LIMITED CULTIVATION OF THE OPIUM-POPPY AND THE EXPORT OF OPIUM

Article 1. With effect from the date of approval of this Act and as long as the opium-poppy continues to be cultivated in neighbouring countries, the Ministry of Land Reform and Rural Co-operatives shall be authorized to engage in the cultivation of the opium-poppy in areas and to an extent to be determined each year with the approval of the Council of Ministers.

If it is established to the Government's satisfaction that cultivation of the opium-poppy has been stopped in neighbouring countries, opium-poppy cultivation shall be discontinued in Iran also.

Article 2. All transactions, whether internal or external, storage, handling and transporting of opium in any form (*teryak, shire* or derivatives) shall be the monopoly of the State.

Article 3. The use of the substances referred to in article 2 is prohibited except on medical grounds or for scientific purposes. Offenders shall be liable to the maximum penalties prescribed by law. Authorization to use and the conditions for using opium for medical and scientific purposes shall be in accordance with the regulations governing the implementation of this Act.

Article 4. Any person who receives a salary, wage, attendance fee or similar payment from a ministry, profit-making or commercial State agency, a public agency, or a municipality or in any other way receives payment from public funds or the national budget in any capacity and who is addicted to opium or an opium derivative shall be separated or dismissed on the instruction of the head of the organization or agency concerned, as the case may be, if the addiction has not been cured within the term specified in the regulations governing the implementation of this Act.

The procedure for implementing this article shall be governed by special regulations to be drawn up and put into force by the National Consultative Assembly and the Senate.

Article 5. Workers covered by the Labour Act who are addicted to opium or a derivative thereof and are not cured of their addiction within the term specified in the regulations governing the implementation of the present Act, shall be dismissed from their employment and deprived of the benefits of the Labour Act and the Social Insurance Act. The duration and mode of suspension from employment and deprivation of benefits under the Labour Act and the Social Insurance Act shall be in accordance with the regulations governing the implementation of the present Act.

Article 6. Any person who is employed in any capacity or studying at a State or private educational or scientific establishment who is addicted to opium or an opium derivative and is not cured of his addiction within the term specified in the regulations governing the implementation of this Act, shall be barred from the establishment concerned. The duration and manner of his suspension shall be in accordance with the regulations governing implementation of this Act.

Article 7. Any businessman engaged in commerce or industry who is addicted to opium or an opium derivative and is not cured of his addiction within the term specified in the regulations governing the implementation of this Act, shall be barred from membership in the Chamber of Commerce or Industry, as the case may be, and deprived of the benefits pertaining thereto.

Article 8. The Government shall make an adequate allocation every year for the treatment of persons addicted to opium or any of its derivatives under a special head in the annual budget.

. . .

ACT OF 21 ESFAND 1347 (12 MARCH 1969) AMENDING CERTAIN ARTICLES OF THE ACT ESTABLISHING HOUSES OF EQUITY

Sole article. The Act establishing houses of equity, of 18 Ordibehesht 1344, is hereby amended as follows:

1. The following note shall be added to article 1:

"*Note.* The Ministry of Justice may establish mobile houses of equity in localities where it deems this necessary. The procedures to be followed in the establishment of mobile houses of equity and the execution of the verdicts issued by them shall be in accordance with regulations to be drawn up by the Ministry of Justice."

2. Article 6 shall be amended to read:

"Article 6. After the elections have been concluded, the district governor shall send the names of the persons who have been elected to membership in the house of equity to the local district court judge, who, provided that the elections have been found in good order, shall issue and transmit to them their credentials. If the elections have not been found in good order, he shall declare the elections null and void and shall report the case, giving a statement of the grounds, to the Central Office for Houses of Equity.

"If one or more of the persons elected lacks the necessary qualifications, the local district court judge shall fill any empty posts from among the candidates who obtained the next largest number of votes and shall furnish them with credentials. If the number of successful and duly qualified candidates is insufficient, the district court judge shall organize elections for the purpose of filling the empty post or posts."

3. Article 9 shall be amended to read:

"*Article 9.* If disorder or remissness is observed in the performance of the functions assigned to a house of equity, or if one or more of the members of a house of equity is unable to perform his functions, the Ministry of Justice shall, as appropriate, dissolve the house of equity or remove such member or members from office. In the event of the dismissal, death or resignation of one or more of the members of a house of equity, the local district court judge shall appoint one or more of the candidates who obtained the next largest number of votes in the last elections to fill the empty post or posts. If none of the candidates is duly qualified and there are more than six months to run before new elections, the district court judge shall organize elections for the purpose of filling the empty post or posts for the remainder of the term."

4. Article 11 shall be amended to read:

"*Article 11.* In civil suits the competence of the houses of equity shall be limited to:

"1. The investigation of suits concerning movable or immovable property where the claim does not exceed the sum of 10,000 rials;

"2. The investigation of suits concerning movable property where the claim does not exceed the sum of 50,000 rials, provided that both parties to the suit give written notice of their consent;

"3. The investigation of suits concerning family disputes and the maintenance of the spouse, children and other dependants;

"4. The investigation of suits concerning illegal possession or abatement of nuisance within the meaning of amending article 1 of the Act for the prevention of illegal possession, and the issuing of appropriate orders; the orders of the house of equity in this instance shall not affect the determination of the ownership rights of the two parties to the suit.

"If a suit concerning ownership of land, buildings or endowed property or illegal possession of land is a subject of dispute between two or more villages, the house of equity shall not have competence to investigate it."

5. Article 12 shall be amended to read:

"*Article 12.* In suits concerning illegal possession and abatement of nuisance, if the house of equity finds the complaint justified, it shall issue the necessary orders for abatement of the nuisance or restoration of possession, and the headman of the village or the police shall, upon the request of the president of the house of equity, be responsible for the immediate execution of such orders.

"The headman may seek the aid of the police. The interested party may within one month after notification of the order of the house of equity lodge a complaint with the local district court; if the court finds the complaint justified, the aforesaid order shall be revoked and the court shall investigate the case and issue a verdict, in accordance with the law. The decision of the district court shall be final."

6. Article 25 shall be amended to read:

"*Article 25.* After the documents reach the district court, the judge shall, if he finds the

verdict sound with respect to competence and observance of the other stipulations of this Act, issue an order for its execution at the request of the interested party, assign the task of executing it to the executive officer of the court, the local headman or any police officer he considers suitable and issue the necessary instructions for the execution of the verdict. Otherwise, he shall, after an investigation, rescind the verdict of the house of equity and, at the request of the interested party, proceed to carry out an investigation in accordance with the law. In such a case, the verdict of the district court shall be final.

"*Note.* Observance of the regulations and formalities governing the execution of judgements shall not be mandatory in respect of verdicts in civil cases issued by the houses of equity, save in exceptional circumstances, and no execution fees shall be levied."

ACT OF 26 FARVARDIN 1348 (15 APRIL 1969) AMENDING CERTAIN ARTICLES OF THE ACT ESTABLISHING ARBITRATION COUNCILS [3]

Sole article. The Act of 9 Tir 1345 establishing arbitration councils is hereby amended as follows:

1. The following note shall be added to article 3 of the Act establishing arbitration councils:

"*Note.* If the workload of an arbitration council warrants such action, the Ministry of Justice may, before the expiry of the three-year term, proceed to establish another arbitration council, specifying the latter's area of jurisdiction. However, cases which have already been brought before the original arbitration council shall not be removed from its jurisdiction."

2. The following note shall be added to article 8:

"*Note.* In areas where the majority of the inhabitants are employed by State organizations or companies or commercially operated organizations established with State capital, the Ministry of Justice may declare that there is no impediment to the participation of such employees in arbitration council elections, whether as electors or as candidates."

3. Article 11 shall be amended to read:

"*Article 11.* The judge of the local county court shall supervise the work of the council, either directly or through the counsellors and shall inform the Ministry of Justice if he observes any irregularity or laxity. The Ministry of Justice may remove any offending member or members from office.

"If any member of an arbitration council is removed from office or resigns or dies, his successor shall be appointed from among the candidates who obtained the next largest number of votes in the election. Upon the appointment of a new member or members, new elections shall be held for the appointment of a president and principal members under article 2. If there are not enough successful candidates to fill the empty place or places and if six months or more of the three-year term are still to run, an election shall be held within one month for the purpose of filling the empty post for the remainder of the term. If, owing to the absence of a quorum for one of the above-mentioned reasons, an arbitration council is unable to investigate the cases before it, and if the holding of new election is not possible because less than six months of the term are still to run, investigation of such cases shall, at the discretion of the Central Office for Arbitration Councils, be assigned to another arbitration council in the same town. If there is no other arbitration council in the locality, all such cases shall be transmitted for investigation to the competent judicial authorities.

"In any town in which there is a district court, the functions assigned to the judge of the county court under this Act shall be performed by the district court judge and the functions assigned to the public prosecutor, by the deputy district court judge or, in his absence, by the clerk of the district court.

"In any area where there is no police-station, the functions assigned to the police magistrate shall be performed by the head of the local *gendarmerie*.

"If, between the date of the announcement of the list of eligible candidates (article 9) and the date set for an arbitration council election, the number of candidates is reduced to less than ten as a result of the withdrawal of one or more of the candidates or for any other reason, the time-limit for the submission of nominations and the registration of voters shall be extended by an order of the Ministry of Justice."

4. Article 12 shall be amended to read:

"*Article 12.* Each arbitration council shall have jurisdiction in the types of case mentioned in articles 14 and 15 of this Act provided that:

"1. The defendant is resident in or employed in the council's area of jurisdiction;

"2. The offence was committed in the council's area of jurisdiction;

"3. In the case of damage suits relating to immovable property or commercial claims, the suit is brought before the arbitration council for the area in which the immovable property concerned is situated, even if the plaintiff or defendant is resident in a different area of jurisdiction."

5. Article 14 shall be amended to read:

"*Article 14.* In civil cases the competence of the arbitration councils shall be limited to:

[3] For extracts from the Act establishing arbitration councils, see *Yearbook on Human Rights for 1966*, pp. 185-187.

"1. Complaints against tradesmen and craftsmen concerning goods or services negotiated, provided that the object of the dispute does not involve more than 20,000 rials;

"2. Damage suits arising from driving accidents and damage suits arising in connexion with immovable property, provided that the amount of damages sued for does not exceed 20,000 rials;

"3. All other property disputes where the sum involved does not exceed 20,000 rials, except disputes concerning immovable property which does not come under the jurisdiction of the arbitration councils;

"4. Disputes relating to commercial payments, provided that the total sum involved does not exceed 50,000 rials;

"5. Insolvency suits, for the purpose of debt assessment and also determination of payment procedures where the original suit was brought before the same council;

"6. Damage suits arising out of offences which come within the councils' competence, where the sum involved does not exceed 50,000 rials and which have been referred to a council by an order of a criminal court. Such suits shall be brought before the arbitration council in whose area of jurisdiction the offence was committed.

"*Note 1.* In the investigation of property disputes and commercial claims under subparagraphs 3 and 4 of this article a quorum shall not be required, provided that both parties give their written consent.

"*Note 2.* Upon receipt of a statutory fee, payable under article 691 of the Code of Civil Procedure and based on the scale applying in the case of district courts, the secretariat of an arbitration council may testify to the authenticity of copies of documents under article 74 of the Code of Civil Procedure.

"The funds derived from this source shall be credited to the public revenue account."

6. Article 15 shall be amended to read:

"*Article 15.* In criminal cases the arbitration councils shall have jurisdiction in respect of all minor offences and offences punishable by terms of correctional detention not exceeding two months or by a fine of not more than 20,000 rials or by a combination of the two penalties. In towns where Act 1339 concerning the powers of police officers in respect of driving offences is enforced, infractions of traffic and driving regulations shall not come within the competence of the arbitration councils.

"*Note.* If a person accused of offences coming within the competence of an arbitration council is accused of other offences also, he shall be tried for all the offences by the competent judicial authorities."

7. Article 18 shall be amended to read:

"*Article 18.* If the counsellor finds the council's decision to be in due accordance with its competence and with the provisions of this Act, the decision shall be final.

"The counsellor shall, within five days, issue an order for the execution of the council's decision to the clerk of the local court or to any member of the council's secretariat.

"In civil cases, observance of the regular legal formalities for the execution of judgments shall not be required in the execution of the council's decisions.

"The Ministry of Justice, shall within three months from the date on which this Act is approved, draft and approve regulations governing the procedure for executing the decisions of arbitration councils.

"In criminal cases, the council's decisions shall be executed by police officers, who shall also render any necessary assistance in the execution of the council's decisions in civil cases if so requested by the executing official and enforce orders issued by the council in all cases.

"Should the counsellor find that the proceedings have not been conducted in accordance with the provisions of this Act, he shall send the file to the competent judicial authority for investigation.

"In the case of decisions of an arbitration council in property suits where the sum involved exceeds 20,000 rials, appeal shall lie only to the county court in whose area of jurisdiction the council is situated. Judgments handed down by the county court in appeals cases and decisions taken by the council on the basis of an agreement between the two parties in civil cases shall be final and binding.

"*Note.* In areas where the Ministry of Justice deems it appropriate, arbitration councils shall have jurisdiction in respect of offences coming under the 1322 Act prescribing penalties for profiteering.

"If the penalty prescribed in such a case by the arbitration council is a term of correctional detention exceeding two months or the closure of the place of business concerned, the Council's decision may be appealed within ten days, and the judgment handed down by the county court shall be final and binding."

...

ACT OF 29 ORDIBEHESHT 1348 (19 MAY 1969) CONCERNING SOCIAL INSURANCE FOR FARMERS

Article 1. With a view to providing for and initiating social insurance scheme for farmers who have or may become owners of their own farms by virtue of the land reform laws and regulations, the Ministry of Land Reform and Rural Co-operatives is hereby authorized to establish the

Farmers' Social Insurance Organization, hereinafter referred to as "The Organization".

The Organization shall have legal personality and full financial and administrative autonomy and shall be administered in accordance with the provisions of this Act on a commercial basis.

Article 2. The Organization shall be responsible for insuring, in accordance with the provisions of this Act, farmers coming under article 1 and members of their family dependent on them or under their guardianship against work accidents, illness, invalidity, death and other social insurance risks.

Article 3. Each of the kinds of insurance referred to in article 2 of this Act and designation of those members of the insured family who are covered by the provisions thereof shall be effected gradually in the various regions of the country, proportionately to the development of facilities and the capacity of the Government, upon the recommendation of the Minister of Land Reform and Rural Co-operatives and approval by the Government.

Article 4. The rural co-operatives and agricultural joint-stock companies, in accordance with the findings and instructions of the Organization, shall insure farmers within their field of operation or under their jurisdiction with the Organization and shall be responsible for paying the insurance premiums to the Organization and co-operating with it.

Article 5. The principal organs of the Organization shall be as follows:

1. The Supreme Council;
2. The Executive Board;
3. The Supervisory Board.

Article 6. The members of the Supreme Council shall consist of the following:

1. The Minister of Land Reform and Rural Co-operatives, who shall be President of the Supreme Council;
2. The Minister of Development and Housing;
3. The Minister of Health;
4. The Minister of Finance;
5. The Minister of Labour and Social Affairs;
6. The Minister of Justice;
7. The Executive Director of the Imperial Social Services Organization;
8. The Executive Director of the Plan Organization;
9. The Executive Director of the Iranian Red Lion and Sun Society.

Note. Two thirds of the above-mentioned members of their plenipotentiary representatives shall constitute a quorum, and decisions shall be taken by a majority of the members present.

Article 7. The functions and powers of the Supreme Council shall be as follows:

1. To approve the rules of procedure of the Council;
2. To approve the regulations governing the implementation and operation of this Act, except in the case of such regulations as are referred to other authorities for approval;
3. To audit and approve the Organization's budget, statement of accounts and balance-sheet;
4. To determine the salaries and allowances of the Executive Board and the Supervisory Board;
5. To approve the withdrawal of any sum from the Organization's reserves and the acceptance or granting of any loan or credit;
6. To approve proposals concerning the purchase or sale of or any type of transactions relating to the movable or immovable property of the Organization;
7. To take a decision in any case where the authorities referred to in article 4 of this Act are, by reason of *force majeure,* unable to pay an insurance indemnity which is due or unable to pay it as a lump sum;
8. To take a decision concerning disputed claims;
9. To issue an opinion or take a decision on any subject which may be put to the Supreme Council by the President of the Council or the Executive Director.

Article 8. The Executive Board shall be composed of the Executive Director and two other members, the latter to be appointed for a period of three years, without prejudice to the reappointment or removal from office. The Executive Director shall be Chairman of the Board.

The Executive Director shall be appointed by imperial decree on the recommendation of the Minister of Land Reform and Rural Co-operatives and following approval by the Council of Ministers.

The other two members of the Executive Board shall be appointed by the Minister of Land Reform and Rural Co-operatives.

In the event of the death or removal from office of any member of the Executive Board, a deputy shall be chosen to replace him for the remainder of his term.

Article 9. The functions of the Executive Board shall be as follows:

1. To draft the regulations the approval of which falls, under this Act, within the competence of the Supreme Council and to submit them to the Council;
2. To approve the administrative rules of procedure, on the recommendation of the Executive Director;
3. To prepare the budget, statement of accounts and balance-sheet and submit them to the Supervisory Board and to the Supreme Council;
4. To take a decision concerning the establishment of branch offices or representation, within the limits of the approved budget, and concerning the termination of such branch offices or representation;
5. To take a decision concerning the investment and exploitation of the Organization's funds and reserves;
6. To take a decision concerning the establishment of new premises and the development or

alteration of existing premises, within the limits of the approved budget;

7. To issue an opinion or take a decision on any other matters which may be put to the Board by the Executive Director;

8. To take a decision concerning other matters which come within the competence of the Executive Board by virtue of the provisions of this Act or decisions of the Supreme Council;

9. To take a decision in respect of all transactions where the sum involved does not exceed 500,000 rials, without referring such matters to the Supreme Council.

Article 10. The Executive Director shall be responsible for the implementation of this Act and the decisions of the Supreme Council and shall be invested with all the powers necessary for the administration of the Organization's affairs and the protection of its rights and interests.

The Executive Director shall have power of attorney to represent the organization before all judicial and non-judicial authorities and vis-à-vis any natural or juridical persons and may, on his own authority, delegate his right of signature and part of his powers to his deputy or assistant or to any other member of his staff.

Article 11. The Supervisory Board shall be composed of three members who shall be chosen on the recommendation of the Minister of Land Reform and Rural Co-operatives and with the approval of the Supreme Council. Their term of office shall be one year, and they may be reappointed.

Note. In the event of the death or resignation of any member of the Supervisory Board, a replacement shall be chosen for the remainder of his term of office in accordance with the procedure set forth in this article.

Article 12. The functions of the Supervisory Board shall be as follows:

1. To supervise the implementation of this Act and to ensure that the Organization's operations are carried out in accordance with the relevant provisions;

2. To express an opinion concerning the statement of accounts, balance-sheet and organizational budget, through the Executive Director, at least fifteen days before their submission to the Supreme Council;

3. To perform any other functions which may be assigned to the Supervisory Board by regulations or decisions of the Supreme Council or by an order of the Minister of Land Reform and Rural Co-operatives.

Note 1. For the purpose of performing its functions, the Supervisory Board may request any necessary information from the Organization, and the Executive Director and the officers of the units under his authority shall be required to make available to the Supervisory Board such data, information and clarification as may be necessary.

Note 2. Should the Supervisory Board consider that any operation in the administration of the Organization is unlawful or object to the procedure followed by the Executive Director or to the administration of the Organization generally, it shall submit a comprehensive and substantiated report on the matter to the President of the Supreme Council and, if necessary, shall participate in the meetings of the Supreme Council for the purpose of providing explanations.

Note 3. The rules of procedure of the Supervisory Board shall be prepared by the Board itself and submitted to the Supreme Council for approval.

Article 13. For the purpose of performing its functions, the Organization shall have a central office, branch offices and representatives, subject to approval by the Minister of Land Reform and Rural Co-operatives.

Article 14. Employees of the State, commercial State agencies and banks may, with the consent of the organizations concerned and subject to the provisions of the Law, be transferred to and have their salaries paid by the Organization. Provided that the employees concerned pay their retirement contributions in accordance with the applicable provisions, such periods of service with the Organization shall be regarded as part of their official service.

Article 15. The sources of the Organization's income shall be as follows:

1. Insurance premiums;

2. Income derived from funds and property belonging to the Organization and income derived by the Organization's hospitals, sanatoriums and clinics from payments made by non-insured persons;

3. Contributions and gifts to the Organization;

4. Credits allocated in the Development Plans for the welfare and social insurance of farmers, with the exception of those credits which have been earmarked for the performance of the legal functions of the Ministry of Health and the Ministry of Development and Housing;

5. Income derived from arrears in accordance with the provisions of the regulations to be submitted to the Supreme Council for approval.

Note 1. The Government shall each year allocate and place at the disposal of the Organization the necessary funds for the performance of the functions set forth in this Act.

Note 2. In those rural areas and rural units where the provisions of this Act are put into effect, 1 per cent of the agricultural product and of any other type of income of such rural areas or units shall be collected and placed at the disposal of the Organization.

Article 16. The provisions governing the amount of the premium and the manner of its payment and collection and the scope of the responsibility and obligations of the insurer (the Organization) and the insured (by the Organization) shall be specified in the regulations to be prepared by the Minister of Land Reform and Rural Co-operatives and submitted for approval to the Land Reform and Finance Committees of the two Houses.

Article 17. The Organization's claims under the head of premiums, arrears and fines, as set forth

in this Act, shall be regarded as preferential debts and shall be paid to the Organization before any other debts.

Note. The provisions of this article shall not apply to the minimum wage for agricultural workers.

Article 18. Claims relating to insurance premiums and arrears arising out of the implementation of this Act shall be supported by binding documents, and such amounts shall be collected in accordance with the procedure specified in the regulations to be prepared by the Organization and, following endorsement by the Minister of Land Reform and Rural Co-operatives, submitted for approval by the Supreme Council.

Article 19. The Organization may, in accordance with the regulations to be submitted for approval to the Supreme Council on the recommendation of the Executive Director, admit non-insured patients to its treatment centres on payment of a fee.

Article 20. For the purpose of fulfilling the obligations arising out of the insurance referred to in article 2 of this Act, the Organization may, until such time as it is able to act independently, make the necessary arrangements with competent agencies and insurance, health and medical institutions.

Note. In areas where the Red Lion and Sun Society of Iran and the Imperial Social Services Organization have treatment facilities, insured farmers may continue as before to avail themselves of the free medical services of those institutions in accordance with the relevant provisions.

Article 21. The Organization shall be exempt from payment of any kind of taxes, stamp duty or legal costs. . . . Similarly insured persons and their surviving beneficiaries who receive a pension or assistance under this Act and the relevant regulations shall be exempt from payment of any kind of taxes or dues in respect of such benefits.

Note. Employees of the Organization shall be assimilated to government employees in respect of the payment of taxes and dues on salaries and allowances.

Article 22. This Act shall enter into force on a trial basis for a period of five years. During this period, with a view to finding the most appropriate provisions and the best methods of implementing them, the Minister of Land Reform and Rural Co-operatives, through its Rural Research Centre (article 15 of the Act establishing Agricultural Joint-Stock Companies), shall each year make a detailed appraisal of the methods and progress of the activities of the Farmers' Social Insurance Organization and of its problems and difficulties. If, during this period, the Government considers that amendments need to be made to this Act or to the decisions of the Committees, it shall submit the case to the Parliamentary Committees for Land Reform and Rural Co-operatives for consideration and approval. Such amendments shall enter into effect following their approval.

At the end of the five-year trial period, the Government shall submit a final draft of this Act to the two Houses for approval. The provisions of this Act and any amendments made by the Parliamentary Committees shall remain in effect until such time as a final draft is approved.

. . .

ACT OF 23 AZAR 1348 (14 DECEMBER 1969) SUPPLEMENTING THE ACT CONCERNING THE PARTICIPATION OF WORKERS IN THE PROFITS OF INDUSTRIAL AND PRODUCTION UNDERTAKINGS

Sole article. The following notes to supplement the Act concerning the participation of workers in the profits of industrial and production undertakings are hereby approved:

1. The following note shall be added to article 1:

"*Note.* The expert in economic and social questions shall be selected on the basis of a proposal by the Minister of Labour and Social Affairs and approval by the Council of Ministers. His membership shall be for a period of two years and may be renewed."

2. The following notes shall be added as notes 5 and 6 to article 2:

"*Note 5.* Employers shall transmit a copy of each such collective agreement to the Ministry of Labour and Social Affairs within ten days from the date of the conclusion thereof.

"If the Ministry of Labour and Social Affairs does not approve of the substance of the collective agreement which has been concluded, it shall make known its opinion, within twenty days in the Central Province, and within thirty days in other localities, from the date of its receipt of the agreement or of being notified of the content thereof, having taken due account of the amount of capital invested, the net profit of the undertaking, the number of workers and the general economic and production situation of the undertaking and the general social situation of the workers. If, within one month of its transmission, the opinion of the Ministry of Labour and Social Affairs has not been accepted by both parties and a new collective agreement has not been concluded on the basis thereof, the matter shall be referred to the profit-sharing council, and the decision of the council shall be final and binding.

"The amount granted to the workers under article 2 of this Act by such an opinion of the Ministry of Labour or decision of the profit-sharing council shall in no event exceed 20 per cent of the net profits.

"*Note 6.* The period of validity of each agreement shall not exceed two years. In the

case of undertakings where the budgetary cycle is less than one year, the collective agreement shall be concluded for the period of the budgetary cycle. The date for the payment of shares to workers under this Act shall be specified in each agreement."

3. The following note shall be added as note 3 to article 5:

"*Note 3.* If the recommendations made by the Ministry of Labour and Social Affairs is not accepted by both parties or if they fail to make known their views within the period specified in the recommendation, the matter shall be referred to the profit-sharing council, which shall issue a decision, taking due account of the situation of the undertaking concerned and the measures taken in respect of similar undertakings. The decision of the Council shall be final and binding."

4. The following notes shall be added as notes 2 and 3 to article 8:

"*Note 2.* The provisions of article 8 of the Act concerning the participation of workers in the profits of industrial and production undertakings shall apply also in the case of employers whose workers are covered by a profit-sharing scheme in accordance with the other provisions of article 2 of the Act.

"*Note 3.* For the purpose of supervising the implementation of the Act concerning the participation of workers in the profits of industrial and production undertakings and the observance of collective agreements contracted thereunder, the Ministry of Labour and Social Affairs shall send special officers to undertakings, such officers to be appointed as necessary. Employers shall be required to make available to the officers such data und information as may be necessary and to provide the necessary facilities for the performance of their duties.

"The aforementioned officers shall have the same powers as the labour inspectors mentioned in chapter XI of the Labour Act."

5. The following note shall be added as note 2 to article 16:

"*Note 2.* Observance of the provisions of note 5 to article 2 shall be mandatory in application of the present article."

6. The following note shall be added to article 18:

"*Note.* The profit-sharing council may transfer its powers in respect of the investigation of disputes arising out of the mode of implementation of collective agreements contracted under the Act concerning the participation of workers in the profits of industrial and production undertakings or disputes arising out of the mode of implementation of decisions issued by the profit-sharing council to the disputes board referred to in chapter IX of the Labour Act."

7. The following note shall be added to article 19:

"*Note.* The committee referred to in article 1 of the Act concerning the participation of workers in the profits of industrial and production undertakings shall be renamed 'the workers' profit-sharing council'."

REGULATIONS OF 17 ESFAND 1347 (8 MARCH 1969) GOVERNING THE ELECTION OF WORKERS' AND EMPLOYERS' REPRESENTATIVES TO LABOUR COUNCILS AND DISPUTE BOARDS

CHAPTER I

ELECTION OF WORKERS' AND EMPLOYERS' REPRESENTATIVES TO LABOUR COUNCILS

1. ELECTION OF WORKERS' REPRESENTATIVES TO LABOUR COUNCILS

Article 1. In each undertaking all workers of eighteen years of age and over may participate in the election of the workers' representative.

Note. Each worker shall have one vote and may vote for one candidate only.

Article 2. Workers who are qualified and meet the following requirements may stand for election as workers' representative:

1. Be of Iranian nationality;

2. Be at least twenty-five years of age;

3. Have a reading and writing knowledge of the Persian language;

4. Have his candidacy supported in writing by at least 10 per cent of the qualified workers in the undertaking;

5. Have no record of penal conviction entailing deprivation of civic rights;

6. Be a worker at the undertaking in question;

7. Not be employed in a managerial capacity at the undertaking;

8. Have been employed in the undertaking for at least one year, except in the cases of undertakings which have been in operation for less than one year; if the employer owns one or more undertakings, the candidate's employment record shall be based on the total period of his employment in any of those undertakings.

Article 3. In undertakings where there is a registered trade union to which the majority of the workers belong and which is recognized by the Ministry of Labour and Social Affairs, the workers' candidate shall be nominated by the trade union, and, provided that the candidate meets the requirements set forth in article 2 of these regulations, he shall be issued with credentials as representative by the Department of Labour and Social Affairs without further formalities.

Note. In an undertaking where there is a registered trade union but the majority of workers are

non-members, the trade union shall be entitled only to nominate a candidate.

Article 4. An announcement of a forthcoming election shall be published by the Department of Labour and Social Affairs and posted on the noticeboard of the undertaking or in some other suitable place or brought to the attention of the workers by some other appropriate means. Each candidate shall notify the Department of Labour and Social Affairs of his candidacy within ten days from the announcement of the election, together with a written notice of the workers' support, and shall complete and submit all other required documents within one month from the date of the announcement of the election.

Article 5. After investigating the candidate's qualifications and documents and taking due account of the working conditions in the undertaking, the Department of Labour and Social Affairs shall notify the workers of the names of the qualified candidates and the date, time and place of the voting seven days before the voting is to take place, by posting an announcement on the notice-board of the undertaking or in some other suitable place or by some other appropriate means.

Article 6. In each undertaking the election shall be held under the supervision of a supervisory board composed of a representative of the Department of Labour and Social Affairs and two workers who are literate, have a record of employment with the undertaking and are not opposed by a majority of the candidates and who shall be designated by the head of the Department of Labour and Social Affairs.

Note. Candidates may not be members of the supervisory board.

Article 7. On the day of the election ballot-boxes shall be set up in the undertaking, one for each candidate, with his photograph affixed thereto, and each worker shall deposit in the box of his choice a ballot-paper stamped and signed by the supervisory board.

Note. Voting shall be by secret ballot and conducted in a regular manner.

Article 8. Immediately after the completion of the voting, the counting of the votes shall begin, and the candidate who obtains the largest number of votes shall be the principal representative and the person who obtains the second largest number of votes shall be the alternate representative.

Article 9. Candidates shall be permitted to attend the opening of the ballot-boxes. After the counting of votes, the results of the election shall be set forth in a statement to be signed by the supervisory board. An abstract of the statement shall be communicated to the workers, and copies of the statement shall be kept at the Department of Labour and Social Affairs.

Article 10. Any voter who objects to the way in which the election has been conducted may communicate his objections in writing within one week to the Department of Labour and Social Affairs.

Article 11. Upon the expiry of the period specified in article 10, if 1 per cent or more of the voters have registered objections, the Department of Labour and Social Affairs shall, within ten days, request the Central Board for the Supervision of Elections to investigate the objections.

Article 12. The Central Board for the Supervision of Elections shall be composed of representatives of the Government, the Department of Justice and the Department of Labour and Social Affairs and two workers' representatives on the labour council of the undertaking concerned, subject to approval by the head of the Department of Labour and Social Affairs.

Article 13. The aforementioned Board, which shall meet by invitation at the premises of the Department of Labour and Social Affairs shall within ten days investigate the objections and issue a recommendation.

Note. Decisions of the Board taken by a majority vote shall be final.

Article 14. Should the objections be found valid, the Central Board for the Supervision of Elections shall declare the election null and void and a new election shall be organized forthwith by the Department of Labour and Social Affairs. If the objections are not found valid or if no objections are registered, the Department of Labour and Social Affairs shall issue credentials to the candidates elected to the posts of representative and alternate representative.

Article 15. Each workers' representative shall hold office for a period of two years from the date on which his credentials are issued.

Note 1. If a new trade union managing committee is elected, the new committee may replace the incumbent workers' representative on the labour council by a candidate of its own choice.

Note 2. If, upon the expiry of a representative's term of office the holding of an election is delayed for some reason, the outgoing representative may remain in office until such time as an election is held, provided that such extension of his term of office does not exceed one year.

Note 3. If two thirds of the workers make a written declaration of non-confidence in the workers' representative, or if during his term of office the representative becomes disqualified or no longer meets all the requirements set forth in article 2, paragraphs 1, 5, 6 and 7, the Department of Labour and Social Affairs shall report the case to the Central Board for the Supervision of Elections in order that the Board may take a decision concerning the invalidation of his credentials and the holding of a fresh election.

Article 16. In the event of the death or resignation of the representative, the alternate representative shall act as representative for the remainder of the term of office.

2. Election of employers' representatives to labour councils

Article 17. The employer's representative on the labour council shall be the employer himself or a plenipotentiary representative, whose appointment shall be communicated in writing to the Department of Labour and Social Affairs.

Article 18. An employer's plenipotentiary representative must be chosen from the management or the labour force of the undertaking concerned.

Note. An employer who owns more than one undertaking may select and register one individual as his plenipotentiary representative on the labour councils of all his undertakings.

CHAPTER II

ELECTION OF WORKERS' AND EMPLOYERS' REPRESENTATIVES TO DISPUTES BOARDS

Article 19. For the purpose of the election of workers' and employers' representatives to the disputes boards provided for in article 40 of the Labour Act, the Department of Labour and Social Affairs shall issue an invitation to all workers' and employers' representatives on labour councils and in registered trade unions, workers and employers being invited separately. Each group, workers on the one hand and employers on the other, shall elect by secret ballot three representatives and three alternate representatives. The Department of Labour and Social Affairs shall issue credentials to the representatives so elected.

Note 1. Only trade unions with majority membership shall be invited to participate in the election of representatives.

Note 2. In the case of undertakings where there is both a workers' representative on the labour council and a majority membership trade union, only the workers' representative on the labour council shall be invited on behalf of the workers.

Note 3. Workers' representatives and alternate representatives must possess the qualifications set forth in article 2 of these Regulations.

Article 20. The election shall be held under the supervision of a board composed of a representative of the Department of Labour and Social Affairs and two of the representatives attending the elections. The results of the elections shall be announced immediately after the voting and shall be set forth in a statement to be signed by the Supervisory Board. Copies of the statement shall be kept at the Department of Labour and Social Affairs.

Article 21. Each representative shall hold office for a period of two years from the date on which his credentials are issued.

Note. If a workers's representative on a disputes board becomes disqualified or no longer meets the requirements set forth in article 2, paragraphs 1 and 5, of these regulations, his credentials shall be invalidated and a successor shall be elected by the procedure set forth above.

IRAQ

NOTE [1]

1. During 1969, a decision was taken by the Revolutionary Command Council, providing for the teaching of the Turkoman language to Turkoman minorities.

2. Matters concerning social security are dealt with in the following laws:

(*a*) Law No. 68 of 1969 on the Lawyers' Pension Fund;

(*b*) Law No. 73 of 1969 on the Private School Teachers' Pension Fund;

(*c*) Law No. 110 of 1969 on the First Amendment to the Journalists' Pension Law No. 134 of 1965, establishing a Pension Fund for journalists;

(*d*) Law No. 112 of 1969 Labourers' Pension and Social Security, under which Iraqi workers for the first time receive pensions, whereas in the past they had been subject to social security;

(*e*) Law No. 180 of 1969 on the Artists' Pension. This Law, being the first of its kind promulgated in Iraq, accords artists the right to receive a pension;

(*f*) Law No. 202 of 1969 on the Relief Fund;

(*g*) Law No. 73 of 1969, supplemental to Law No. 106 of 1967 on the Purging of Government Apparatus, providing that the period of discharge for political reasons of labourers and employees shall be reckoned towards annual increments and pension.

3. The following labour laws were adopted:

(*a*) Law No. 129 of 1969 on the Artists' Trade Union. This is the first law in Iraq to establish a trade union for artists.

(*b*) Law No. 178 of 1969 on the Journalists' Trade Union.

(*c*) Law No. 153 of 1969 on the Medical Professions' Trade Union.

(*d*) Law No. 108 of 1969 on the Iraqi National Union of Students.

4. Law No. 86 of 1969 abolished Law No. 64 of 1967 and Law No. 10 of 1968 and lifted the legal restrictions imposed by these laws on the acts of Iraqi Jews.

5. With regard to the judiciary, the following laws were promulgated:

(*a*) Law No. 92 of 1969 on Amnesty in respect of Fugitives, Offenders and Army Deserters outside Iraq.

(*b*) Law No. 100 of 1969 on Amnesty in respect of Absentees under article 57 of the Military Penal Code.

(*c*) Law No. 83 of 1969 on Civil Procedure.

(*d*) Law No. 151 on the Administration of Civil Jails. This Law adopted for the first time in Iraq the principle of classifying prisoners on a scientific basis, giving political prisoners and detainees special privileges.

(*e*) Penal Code No. 111 of 1969, replacing previous penal codes.

6. The following laws relate to the right to property:

(*a*) Law No. 128 of 1969, Amending Law No. 121 of 1967 on the Compensation of Owners of Lands Inundated by the Waters of the Dokan and Derbendi-Khan Dams.

(*b*) Law No. 66 of 1969, Amending the Agrarian Reform Law. The amendment provides for the distribution of State-owned lands among peasants in the Governorates of Thi Qar and Maisan.

(*c*) Decision No. 233 of 18 June 1969 of the Revolutionary Command Council (published in the *Official Gazette*, No. 1746), providing for the transfer to Peasants' Associations of the ownership of artesian wells and their machinery.

7. In the international field, the Government of the Revolution promulgated the following laws:

(*a*) Law No. 135 of 1969, ratifying the International Convention on the Elimination of All Forms of Racial Discrimination.

(*b*) Law No. 138 of 1969, ratifying the Treaty on the Non-proliferation of Nuclear Weapons.

(*c*) Law No. 195 of 1969, ratifying the International Labour Agreement No. 122 of 1964.

(*d*) Law No. 207 of 1969 on the National Committee for the World Food Programme.

[1] Note furnished by the Government of Iraq.

FIRST AMENDMENT TO THE INTERIM CONSTITUTION [2]

Article 1. The following paragraph shall be added to article 44 of the Interim Constitution as paragraph 8:

"8. The Council of the Revolutionary Command shall have the power to issue laws and decrees having legal force without reference to the Council of Ministers."

Article 2. This amendment shall enter into force on the date of its publication in the *Official Gazette*. The Prime Minister and the Ministers shall be responsible for giving effect to it.

Explanatory statement

Since the Council of the Revolutionary Command has competence to issue decrees and enact legislation, inasmuch as it is, under article 58 of the Interim Constitution, the Supreme State authority; and with a view to the speedy attainment of the objectives of the revolution and the protection thereof; and whereas the powers of the Council of the Revolutionary Command as set forth in the Interim Constitution did not include the right to promulgate laws and decrees directly, an omission which conflicted with the Council's right to exercise the legislative power, so that the people might have been hindered in the attainment of their revolutionary dues, which must be determined by the Council of the Revolutionary Command directly, without reference to the Council of Ministers: for these reasons this amendment has been promulgated.

[2] Published in *Al-Waqai' al-Iraqiyya*, No. 1705, of 12 March 1969. Extracts from the Interim Constitution appear in the *Yearbook on Human Rights for 1968*, pp. 193-197.

SECOND AMENDMENT TO THE INTERIM CONSTITUTION [3]

Article 1. The following paragraph shall be added to article 17 of the Interim Constitution as paragraph (*c*):

"(*c*) However, the movable and immovable property of persons who have been convicted by a competent court of the crime of espionage on behalf of a foreign power or of conspiracy to destroy the progressive socialist régime and the economic and social basis thereof may be expropriated and ownership thereof transferred to the State by a law."

Article 2. Article 18 of the Interim Constitution shall be cancelled and superseded by the following:

"*Article 18.* The permissible maximum for agricultural ownership shall be established by law, and any property in excess of the maximum shall revert to the State without the award of compensation. Non-Iraqis may not own agricultural land except in the circumstances specified by law."

Article 3. This amendment shall enter into force on 15 May 1969.

Explanatory statement

1. Imperialist conspiracies have repeatedly been launched against our Iraqi people and the other Arab peoples by agents of imperialism who have abandoned all scruples and enriched themselves at the people's expense, selling themselves to foreign Powers for motives of base greed. It was essential therefore to take counteraction by providing for the expropriation of the movable and immovable property of persons convicted of such offences.

2. From the dawn of Islam until the British imperialist occupation of Iraq, the land had always been the property of the State. However, British imperialism set about creating a feudal class to support its rule and enacted reactionary laws to that end. Since feudal ownership was a prop of imperialism and an obstacle to economic and social progress and to the restoration of what had been the legitimate state of affairs in the country since the very beginning of the Islamic era, and in view of the significance of the land and the role of the peasants, who are the real producers, it was essential to restrict agricultural ownership and abolish compensation for land in excess of the legally prescribed maximum.

[3] Published in *Al-Waqai' al-Iraqiyya*, No. 1729, of 15 May 1969.

THIRD AMENDMENT TO THE INTERIM CONSTITUTION [4]

Article 1. Paragraph 1 of article 42 of the Interim Constitution shall be cancelled.

Article 2. Paragraph 1 of article 43 of the Interim Constitution shall be cancelled and superseded by the following:

"*Article 43.* 1. The Council of the Revolutionary Command may remove a Council member from office by a decision of a two-thirds majority of its principal members. By a decision of a two-thirds majority of its members it may also admit new principal members, provided that the total number of Council members shall not exceed fifteen."

Article 3. The following paragraph shall be added to article 43 as paragraph 4:

"4. The Council of the Revolutionary Command shall elect from among its members a Deputy President who shall assume the powers of President of the Council of the Revolutionary Command and of the President of the Republic in his absence."

Article 4. 1. Paragraph 4 of article 44 shall be cancelled.

2. In paragraph 5 of article 44 the words "decisions of the Council of Ministers" shall be deleted.

Article 5. Article 50 of the Interim Constitution shall be cancelled and superseded by the following:

"*Article 50.* The President of the Republic shall be Head of State, Commander-in-Chief of the Armed Forces, President of the Council of the Revolutionary Command and Head of Government, and shall exercise the following powers:

"1. The appointment of one or more deputies to represent him in his capacity as President of the Council of Ministers, with the title 'Deputy President of the Council of Ministers' and the acceptance of the resignation and the removal from office of such deputy or deputies;

"2. The appointment of Ministers, the acceptance of their resignations, and their removal from office; Ministers shall be responsible to him for their conduct and the discharge of their functions;

"3. The ratification of international treaties and agreements and of laws and regulations;

"4. The appointement, removal from office, dismissal and retirement of public officials in accordance with the law;

"5. The appointment and retirement of officers in accordance with the law;

"6. The appointment and retirement of judges and political representatives in accordance with the law;

"7. The acceptance of the credentials of representatives of foreign States and international and diplomatic bodies to the Republic of Iraq;

"8. The declaration and termination of a state of emergency in the circumstances specified by law."

Article 6. Article 55 of the Interim Constitution shall be cancelled.

Article 7. Article 60 of the Interim Constitution shall be cancelled.

Article 8. Article 61 of the Interim Constitution shall be cancelled and superseded by the following:

"*Article 61.* The President of the Republic shall exercise the powers of Government and shall be assisted by the Council of Ministers. The Government shall be the executive and administrative power and shall be composed of the President of the Republic, as Head of Government, his deputy, one or more deputies of the President of the Council of Ministers, and the Ministers. Each member shall exercise his function in accordance with the provisions of this Constitution and the provisions of the law. The President of the Republic or his deputy may confer the Presidency of the Council of Ministers on any one of the deputies of the President of the Council of Ministers.

Article 9. In article 66 of the Interim Constitution the words "Prime Minister or" shall be deleted.

Article 10. Article 68 of the Interim Constitution shall be cancelled and superseded by the following:

"*Article 68.* The President of the Republic, his deputy, the deputies of the President of the Council of Ministers, and the Ministers shall be barred during their term of office from engaging in any independent profession or economic occupation, buying or renting State property or selling property to the State."

Article 11. Article 71 of the Interim Constitution shall be cancelled.

Article 12. Article 95 of the Interim Constitution shall be cancelled and superseded by the following:

"*Article 95.* The President of the Republic shall promulgate this amendment to the Interim Constitution, and it shall enter into force on the date of its publication in the *Official Gazette.*"

Explanatory statement

It was found that the principle of collective government required the enlargement of the membership of the Council of the Revolutionary Command by the admission of the leaders who

[4] Published in *Al-Waqai' al-Iraqiyya*, No. 1798, of 10 November 1969.

participated in the planning and execution of the revolution of 17 July 1968 and who have continued to strive for the full realization of its objectives. Since the leadership elements to be admitted to the Council as principal members have been and are participating in the work of leadership in the Council of the Revolutionary Command side by side with the official members, their admission will constitute a mark of proper esteem and a recognition of the fact that they have been participating in that work ever since the revolution of 17 July.

It was noted also that since the promulgation of the Interim Constitution of the Republic of Iraq on 21 September 1968 the President of the Republic had, at the same time, been President of the Council of Ministers, and this has remained the situation up to the present. Although this does not conflict with any provision of the Interim Constitution, it was deemed advisable to include in the Constitution a specific provision confirming the *status quo*.

The incidents and challenges Iraq and the Arab nation are encountering from imperialism, Zionism and their allies call for wisdom and resolution and a strong hand at the helm to ensure the triumph of the goals of the revolution and the defeat of its enemies, and these requirements are best met by a presidential system of government suited to the situation in the country at the present stage.

IRELAND

NOTE [1]

LEGISLATION

1. The Industrial Development Act, 1969

The existing law in regard to facilities and assistance for the promotion of new manufacturing industries and for the expansion and development of existing industries is amended and extended by the Industrial Development Act, 1969. The Act provides for incentives for the encouragement of industry in the form of grants for new industries, the re-equipment of existing industries, training, research and development. The Industrial Development Authority are given power to provide advance factories, sites and services for anticipated industrial development, to exercise their functions on a regional basis and to provide housing for persons employed in industry.

2. The Industrial Relations Act, 1969

This Act provides for the expansion of the Labour Court and enables its Chairman to divide the Court into three divisions of equal status, instead of two as heretofore, if he thinks this is necessary for the speedy despatch of business. Power is given to the Minister for Labour to appoint Rights Commissioners, who will investigate a trade dispute which exists or is apprehended, at the request of a party to the dispute, unless the other party objects. On such an investigation the Rights Commissioner would make a recommendation to the parties on the merits of the dispute and notify the Court of his recommendation. A party to the dispute is entitled to appeal to the Court against the recommendation. In that event, the Court would hear the appeal (in private) and its decision would be binding on the parties.

Among many provisions designed to improve further industrial relations is a provision which empowers the Labour Court, in consultation with representative organizations of workers and employers, to draw up rules of fair employment in various industries. The rules would have legal status with penalties for contraventions.

3. The Electoral Act, 1969

The 1966 Census returns made it necessary to revise the *Dáil* constituencies. This is achieved by the Electoral Act, 1969. The number of members of the *Dáil* after the next dissolution is fixed at 144. This is the same as at present and is the maximum permissible under the Constitution. The Act sets out the revised constituencies and specifies the number of members to be returned for each one. There will be twenty-six three member constituencies, fourteen of four members each and two of five members each.

4. The Finance Act, 1969

The Finance Act, 1969 contains a provision that where a person who is solely resident in the State has published, produced or sold a work of his, being a book or other writing, a play, musical composition, painting or sculpture which is original and creative and which the Revenue Commissioners determine to have cultural or artistic merit, he shall be entitled to exemption from tax on profits or gains derived from the work.

5. The Shipping Investment Grants Act, 1969

A person carrying on or proposing to carry on a business in the State is, under the Shipping Investment Grants Act, 1969 to be entitled to a grant towards approved capital expenditure incurred in providing for use for the purposes of that business a new ship or a new part of equipment for a ship, or in converting a ship for such use. The person must be a citizen of and ordinarily resident in the State and, in order that a body corporate may qualify, it must be incorporated and resident in the State.

6. The Social Welfare (Miscellaneous Provisions) Act, 1969

The main purpose of the Act is to give effect to the decision of the Government as announced by the Minister for Finance in his Budget Statement on 7 May 1969 to increase social assistance payments and children's allowances, to introduce a scheme of grants payable in respect of multiple births of three or more children, to raise from 16 to 21 years, for those still undergoing full time education, the age limit applicable to orphans and the children of widows receiving social welfare pensions from the beginning of August 1969, to increase the rates of social insurance benefits and contributions and to extend the scope of the scheme of payments to incapacitated aged pensioners, in respect of a daughter or step-daughter looking after them, from the beginning of January 1970.

[1] Note furnished by the Government of Ireland.

ITALY

NOTE CONCERNING THE DEVELOPMENT OF HUMAN RIGHTS IN 1969 [1]

The protection of human rights in criminal proceedings was the subject of two Acts amending certain provisions of the Code of Criminal Procedure which were promulgated as a result of judgements of the Constitutional Court which had declared those provisions unconstitutional. Both were measures taken to deal with an emergency but they do fall within the framework of the reform of the Code of Criminal Procedure which is at present being undertaken by the competent authorities.

Act No. 780 of 7 November 1969 (*Gazzetta Ufficiale* No. 290 of 17 November 1969), amending article 389 of the Code of Criminal Procedure (concerning cases in which a summary examination is instituted), is based on judgement No. 117 of the Constitutional Court, issued on 21 November 1968, which declared unconstitutional the third paragraph of article 389 "to the extent that it precludes the possibility of ascertaining, in the course of the proceedings, the judgement of the *pubblico ministero* regarding the clarity (incontrovertibility) of the evidence", on the ground that it was incompatible with article 25, 1, of the Constitution, according to which "No one may be denied access to his lawful judge as provided by law" (in this case, the examining judge). However, the legislature [2] having examined the reasons for the above-mentioned judgement of the Constitutional Court, concluded that the other instances of summary examination, not only that applicable when the evidence is incontrovertible, were open to the same charge of unconstitutionality, and it was therefore to be expected that further declarations of unconstitutionality might be applied to the entire body of rules governing summary proceedings. In this connexion, the legislature also draws attention to the Constitutional Court judgement to the effect that, under the present system, the competence of the examining judge is derived from the *pubblico ministero* on the basis of criteria which are not free from appraisals and judgements not founded on rigid objective criteria. For this very reason the principle of the lawful judge, which applies also to the preliminary examination stage of proceedings, was held to be violated.

By virtue of the amendments made by the new Act to article 389 of the Code of Criminal Procedure, a jurisdictional limitation has been placed on the action of the *pubblico ministero*, a step which has the twofold merit of bringing the rules on the subject into line with the above-cited constitutional principle and of having required only a brief, expeditious interlocutory procedure in order to provide the outline of a final solution to the issue of the procedure for preliminary examinations. The Act repeals that portion of the second paragraph which provided that the examining judge was bound to transmit the documents to the *pubblico ministero* at once if the accused person made a confession, and adds three new paragraphs (between the third and fourth paragraphs of the article), on the basis of which the accused in any summary preliminary examination may, within five days of the serving of an order on him or of receiving reliable information of a police order concerning him, request that formal preliminary proceedings be instituted against him. The Procurator of the Republic may grant the request—in which case formal preliminary proceedings will also be instituted against his fellow accused—or may reject it by an order stating the reasons for his decision, which will be duly registered; in the event of rejection, the accused may appeal within five days to the examining judge: if the appeal is granted, a formal preliminary examination will be undertaken; otherwise the documents will be returned to the Procurator of the Republic, who will proceed with the summary preliminary examination.

Act No. 923 of 5 December 1969 (G.U. No. 317 of 17 December 1969) enacts amendments to the Code of Criminal Procedure concerning preliminary investigations, right to a defence, notice of proceedings and appointment of counsel for the defence. The legislator's purpose in this Act was to give immediate effect to the rulings contained in judgement No. 86 (1968) of the Constitutional Court declaring unconstitutional articles 225 and 232 of the Code of Criminal Procedure in so far as they make it possible, in the course of the judicial police's investigations to which they refer, for preliminary examinations to be carried out without applying articles 390 and 304 *bis, ter* and *quater* of the Code of Criminal Procedure.

[1] Note prepared by Dr. Maria Vismara, Director of Studies and Publications of the Italian Association for the United Nations, Chief Editor of *La Communità Internazionale*, a publication of that Association, and government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Bill introduced in the Senate of the Republic, fifth legislature, No. 410. In the relevant report of the Senate Committee (No. 410-A), reference is also made to Constitutional Court judgement No. 52 (1965): see *Yearbook on Human Rights for 1965* (Italy).

In his detailed report to the Chamber of Deputies,[3] the reporter drew attention to the content of this important judgement[4] which, in its statement of reasons, offered directions to the legislature by drawing attention, among other things, to "the decline in the use of criminal proceedings in comparison with the much more circumscribed field, as regards the right of defence, of preliminary investigations". The Court says, in essence, that if the preliminary investigations are in the nature of a true summary preliminary examination, as in fact occurs, then the rules for such examinations must be followed. And if, in practice, these preliminary investigations assume increasing importance and are ever being abused in the sense that they are resorted to even when the documents could be transmitted to the judge or the judge himself could initiate the examination procedure, and if, above all, the documents collected in the course of this summary preliminary examination are of great importance—as we know they are—for the continuation of the judicial process, for the formation of a judgement and for the final decision, then a conflict arises with article 24 of the Constitution, the spirit of which is that the rights applicable to judicial preliminary examinations should be extended to this preliminary stage as well, or at least that no activities should be carried out at this stage that are in the nature of genuine criminal proceedings. The broad powers of investigation conferred by article 225 on the judicial police and by article 232 on the *pubblico ministero*, particularly with regard to investigations which amount to the assembling of evidence to be used directly at the trial, had been criticized in Constitutional Court decision No. 86 as being likely to constitute a source of abuses and uncertainty, and thereby to create an uncertain situation, one incompatible with the certainty of the law and therefore with the fundamental right of defence.

The Constitutional Court left the legislature two alternatives: (*a*) to limit the functions of the judicial police, whether acting on its own initiative (article 225), or on the instructions of the *pubblico ministero* (article 232); (*b*) to extend the rights applicable to summary preliminary examinations to the preliminary investigation stage. On the basis of the Government's Bill, the legislature chose the second course.

Article 1 of this Act (replacing article 78 of the Code of Criminal Procedure: attribution of the status of person accused) extends the principles of the rights of accused persons and persons who are merely suspects—rights stated in article 78—to the judicial police investigation stage, and establishes the principle that no one shall be compelled to testify against himself. This principle is further safeguarded by article 8, third paragraph, of the Act (see below), the purpose of which is to protect the position of a person who, being examined as a witness, may find that he is testifying against himself without having been warned of the possible consequences. Article 2 (replacing the second paragraph of article 134 of the Code of Criminal Procedure: nomination of counsel chosen by the accused) removes the prohibition on the acceptance by officials and officers of the judicial police of the nomination by the accused of defence counsel, but leaves unchanged the prohibition of the giving of advice by them on the choice of defence counsel.

Article 3, one of the most important in the Act, replaces the whole of article 225 of the Code of Criminal Procedure (summary inquiries) in accordance with the following criteria: (*a*) reduction of the grounds for summary judicial police inquiries to the single requirement of urgent need to assemble evidence of the crime and making it obligatory for the rules for formal preliminary examination to be observed in the course of all such inquiries, without administering the oath, unless otherwise provided by law; (*b*) elimination of certain functions which are "essentially" in the nature of a preliminary examination from those attributed in such cases to the judicial police, by excluding the interrogation of the detained or arrested person, which is to be undertaken only by the *pubblico ministero* or the *pretore*, and only after his transfer to a prison, as provided in article 238; (*c*) appointment of counsel, by the accused or by the court, for the person accused or suspected, not later than the summary judicial police inquiry stage; (*d*) defence counsel's right to be present at identity parades carried out by the judicial police, the parallel right, embodied in article 224, applicable in cases of searches by judicial police remaining unchanged; (*e*) obligation to notify defence counsel of such identity parades or searches, in the manner laid down in article 304 *ter*; (f) filing of the reports of identity parades, searches (including personal searches), inspections, seizures and interrogations carried out by the judicial police, in the manner laid down in article 304 *quater*, through the *pubblico ministero* or the *pretore*, to which or whom these documents are to be transmitted immediately, as the specific reference to article 227 of the Code of Criminal Procedure is intended to emphasize.

Articles 4 and 5 of the Act, replacing articles 231, first paragraph, and 232 of the Code of Criminal Procedure, prescribe (according to the guidelines given in judgement No. 86 (1968) of the Constitutional Court) the application of the principles stated in article 3 (new article 225 of the Code of Criminal Procedure) to the judicial police activities (so-called "preliminary examination") carried out by the *pretore* or the *pubblico ministero*, respectively. Article 6, replacing article 238, first and fourth paragraphs, of the Code of Criminal Procedure (concerning the detention of suspects by the judicial police) contains two important innovations: the first, which is connected with the abrogation of the power of the judicial police to interrogate detained persons, effected by the new article 225 of the Code of Criminal Procedure (introduced by article 3 of the Act), substitutes the words "the officials may hold the detained persons for such time as is strictly necessary for the initial inquiries" (these being to check the identity of the detained person, to verify the prime sources of evidence, the traces of the crime and the like) for the words "the

[3] Chamber of Deputies, fifth legislature, No. 243-A: Prof. Giuliano Vassalli, reporter.

[4] And to judgement No. 52 (1965) of the Court: see *Yearbook on Human Rights for 1965* (Italy), p. 170.

officials may hold the detained persons for the period of time which is strictly necessary for the interrogation" (former article 231, first paragraph). The second and more important innovation is that of eliminating the power to continue the detention until the seventh day after its initiation (old article 238, fourth paragraph, of the Code of Criminal Procedure); on the basis of this amendment, detention, unless approved by the Procurator of the Republic or by the *pretore* within forty-eight hours of being informed of it, is automatically revoked (see article 238 *bis* of the Code of Criminal Procedure). Article 7 adds a new article in the Code of Criminal Procedure, namely, article 249 *bis*, which provides that "relatives shall be notified of the arrest or detention" by the judicial police, in the event of the arrest of persons caught in the act or in the event of the detention of suspects; the notification shall be made with the consent of the arrested or detained person.

Articles 8 and 9 of the Act relate to the notice of proceedings and the appointment of defence counsel. Article 8 contains the text which replaces article 304 of the Code of Criminal Procedure; the new text provides that the notice of proceedings, and consequently the invitation to the accused person to appoint counsel, fall within the sole competence of the judge only, and that the notice must be given at the time of the first preliminary judicial examination—whether formal preliminary examination, summary preliminary examination or preliminary examination conducted by the *pubblico ministero* and the *pretore* —but not at summary judicial police inquiries; notice is given to all those persons who may have a legitimate interest as private parties (the accused person, party claiming civil relief, party liable for civil damages, civil party liable for fine); if, during the interrogation of a person who has not been accused, indication of his guilt should emerge, the judge must warn him that anything he says from that moment on may be used against him and again invites him to appoint counsel; the judge shall appoint a designated counsel when the person concerned fails to do so; in no case may statements made by the person concerned in the absence of his counsel be used.

Counsel appointed in accordance with these provisions shall have the functions proper to defence counsel for private parties with regard to the proceedings in question. At the beginning of the proceedings at which the accused person is present, the judge must invite him to select defence counsel and, if he fails to do so, must designate counsel for him.

By article 9, which replaces article 390 of the Code of Criminal Procedure, the rules established for notice of proceedings and for appointment of defence counsel in the formal preliminary examination are made applicable also to the summary preliminary examination and to the preliminary examinations conducted by the *pubblico ministero* and the *pretore*.

* * *

Wide-ranging social security measures (Universal Declaration, article 22) have been adopted in Act No. 153 of 30 April 1969 (G.U. No. 111 of 30 April 1969, Supplement) on revision of the pension ordinances and social security regulations. This set of measures is highly significant politically, inasmuch as it is an expression of the Government's striving for income redistribution, equal justice and better management of the economy. While many problems still await satisfactory solutions, these measures can be said to place Italy's social welfare legislation ahead of that of many other nations.[5] The Act has as its basic short-term and long-term aims: (*a*) the assumption by the State as from 1 January 1976 of the entire burden of the social fund; (*b*) the improvement of present levels of pension payments and the gradual achievement of a pension equivalent to 80 per cent of remuneration; (*c*) the institution of a social pension for citizens over the age of sixty-five who have no other income; (*d*) reform of the social welfare bodies.

The Act has seventy-two articles and five schedules and thus covers all aspects of the matter in detail. A summary of its provisions follows:

From 1 January 1969 minimum monthly pensions of "employees" increased from L18,000 to L23,000 for persons under the age of 65 and from L21,900 to L25,000 for persons aged 65 and over; minimum monthly pensions of "independent workers" increased from L13,000 to L18,000.

Extension of the minimum benefits under compulsory disability, old age and survivor insurance to Italian citizens drawing pensions from the National Social Insurance Institute of Libya and to emigrant workers drawing pensions whose rights were acquired under international agreements and conventions. From 1 January 1969 a 10 per cent increase in pensions under the general compulsory disability, old age and survivor insurance scheme which became payable prior to that date and the same increase in independent workers' pensions regardless of the date on which they become payable.

Equalization of the disability and old age pensions payable to female workers insured under the regulations applicable prior to 1 May 1968, these pensions to be calculated on the basis of the same criteria applied to insured male workers.

Increase from 65 to 74 per cent of the pension/remuneration ratio in the case of pensions which become payable after 31 December 1968, and increase of the ratio to 80 per cent in the case of pensions which become payable after 31 December 1975. The base remuneration for the purpose of calculating contributions and pension payments is stated in the form of a list of the elements expressly excluded from the computation of remuneration. The period of actual or theoretical contribution for the purpose of determining annual pensionable remuneration is no longer the last 156 weeks, but, for pensions which become payable after 31 December 1968, the average of the best three sets of 52 weeks among the 260 weeks preceding the date on which the pension becomes payable; for pensions which become payable after 31 December 1975, the three most advantageous sets are selected from the last 520

[5] Report of the Senate Committee, fifth legislature, No. 500-A.

weeks of actual and theoretical contribution. Automatic adjustment of pensions by a device which increases the amount of pensions by a percentage equal to the increase in the cost of living index (prepared in connexion with the sliding wage-scale for industrial workers).

Pensioners who are working for an employer are allowed to draw their pensions subject to certain limitations: in all cases, the minimum pension is payable, but on that part of the pension in excess of the minimum a deduction of 50 per cent of the excess is made by the employer; moreover, a pensioner who works may not receive a pension exceeding L100,000. The ban on combining pension and remuneration does not apply to the annual thirteenth pension instalment or to persons who work for employers outside the national territory. The Act re-establishes the so-called long-service pension for employees and independent workers who have qualifying service for insurance purposes of thirty-five years and can provide evidence of thirty-five years of voluntary contributions, whether actual or theoretical (credited to ex-servicemen and similar categories); payment is, however, conditional on the recipient's not doing any work for an employer on the date when the pension is payable: if such work is resumed, the rules on combining pension with remuneration become applicable.

Improvements have also been made in reversionary pensions and qualifications involving the number of years for which the parties were married, the ages of the spouses and age differences have been eliminated. The indirect reversionary pension for owner-farmers, sharecroppers and tenant farmers is brought under the regulations applicable to insurance for employees. The supplements for dependent relatives of workers on pension are made proportional to the family allowances of workers in industry. Pensioners are granted health benefits for those of their children who are students and under the age of twenty-six. The theoretical contributions for periods of military service are taken into account, even if the person concerned was not previously registered under the compulsory insurance scheme; a worker may pay a "redemption" contribution for a period equivalent to the appointed period for completion of a degree course. Employees formerly excluded from compulsory insurance for periods prior to 1 September 1950 by reason of their income may exercise a "redemption" option.

A further innovation is the crediting to management reserves of the unpaid contributions of bankrupt firms or firms facing an emergency as a result of severe natural disasters. (This provision provides a solution to many difficult situations which have arisen recently and obviates any loss to the workers.)

Finally, an entirely new aim has been achieved by the Act in the institution of a non-reversionary annual pension of L156,000 for citizens over 65 who have no other income; this pension, which is charged to the social fund and for which an application must be made, is conditional on the absence of any regular interest payments or financial receipts, other than the annual subsistence allowance for ex-servicemen who served in the 1915-1918 war; the amount of any such interest payments, receipts or income not exceeding L156,000 annually is deducted from the social pension.

Under the Act the reorganization of the social welfare bodies is delegated to the Government, but the fundamental criteria and principles on which the new arrangements are to be based are clearly stated.

* * *

Yet another judgement of the Constitutional Court upholds the principle of the equal rights of both spouses (Universal Declaration, article 16): judgement No. 147 of the Constitutional Court of 3 December 1969.

As a result of judgement No. 126, issued by the Constitutional Court on 16 December 1968, [6] there were some fifty remand orders challenging the constitutionality of articles 559, third paragraph (adulterous relations), and 560, first paragraph (concubinage), of the Penal Code, [7] by reference to articles 3 and 29 of the Constitution. The Constitutional Court, holding that these orders raised identical and analogous questions of constitutionality, decided all of them in a single judgement.

The Court first disposed of some of the arguments adduced as grounds for the orders. One of these deserves mention on account of the affirmation of principle it induced the Court to make. In the opinion of one of the judges *a quo*, article 560 of the Penal Code was to be challenged, not only in connexion with the principle of the equality of both spouses, but also as violating the protection of family unity guaranteed by article 29 of the Constitution, [8] inasmuch as the penal consequences of failing in the duty of conjugal fidelity [9] would endanger the very existence of the family community, through the application for the imposition of a penalty and the possible sentencing of one of the spouses. The Court rejected this argument and stated that, while the legislator undoubtedly cannot make

[6] See judgements of the Constitutional Court Nos. 126 and 127 (1968) in *Yearbook on Human Rights for 1968* (Italy), pp. 211, 212.

[7] While the first two paragraphs of article 559 of the Penal Code, which the said judgement of the Court declared to be unconstitutional, deal with adultery only, the third paragraph deals with the "adulterous relationship" and makes it punishable by imprisonment for up to two years; the fourth paragraph makes this offence punishable on the application of the husband. Article 560 of the Penal Code deals with "concubinage": "A husband who maintains a concubine in the conjugal home or, if with public knowledge, elsewhere, shall be punished by imprisonment for up to two years. The concubine shall be punished by the same penalty. The offence shall be punishable on the application of the wife."

[8] Constitution, article 29: "The Republic recognizes the rights of the family as a natural social unit based on marriage. Marriage is based on the moral and legal equality of both spouses, with the limits prescribed by law for safeguarding family unity."

[9] The obligation of mutual conjugal fidelity is imposed on both spouses by article 143 of the Civil Code (see judgement No. 126 (1968) of the Constitutional Court in *Yearbook*, *op. cit.*).

rules which are inconsistent with the protection of family unity, it is equally the case that, precisely in order to safeguard that unity, the fundamental obligations inseparable from the marriage bond must be governed by penalties, civil or criminal, of preventive intent. In a later part of its judgement, the Court, having demonstrated that the unconstitutionality of the disputed provisions derives from the unequal treatment of the spouses, states that the legislature may, in exercise of its political discretion, establish whether and in what circumstances conjugal infidelity constitutes an offence "but, in pursuance of article 29 of the Constitution, is bound to impose the same treatment for husband and wife".

With this principle as its standard of reference, the Court proceeded to investigate whether the contested provisions did apply "an inadmissible disparity of treatment as between husband and wife".

The Court considers it of fundamental importance to affirm that the offences of "adulterous relationship" and "concubinage" are structurally different. Sufficient proof of this is "the fact that for the offence of concubinage the act must take place 'in the conjugal home or, with public knowledge, elsewhere', whereas the circumstances of the act appear to be quite irrelevant in the case of adulterous relationship: this amounts to saying that those violations of conjugal fidelity which are necessary and sufficient to constitute the offence of adulterous relationship if committed by the wife are not sufficient, if committed by the husband, to render him guilty of concubinage. And if identical conduct is, for the purpose of criminal law, relevant in the case of one spouse but not the other, the inevitable conclusion is that the contested provisions impose different treatment for husband and wife, despite the fact that the law... assigns to both the duty of conjugal fidelity."

Having declared that such disparity of treatment is unjustifiable unless closely connected with the requirement of family unity, the Court refers to its judgements Nos. 126 and 127 (1968), repeats even more forcefully the principles stated in them, and accordingly reaffirms that the said requirement is the only restriction permitted by the Constitution on the equal treament of spouses. "In this connexion it is incumbent upon the Court to confirm, with regard to the questions now under consideration, what it stated in both these decisions of last year, namely, that the more severe treatment of the wife's infidelity, the more indulgent treatment of the husband's infidelity (and this is where the disparity of treatment lies) may, indeed, cause the disintegration of the family: in any event, it can certainly not be considered as designed to protect the family's unity." Rather than contending that "punishment of the unfaithful wife is in accordance with the requirement of safeguarding the family", the same should be said, in observance of the principle of equality, of the lesser punishment of the husband for an analogous offence: it would, after all, be irrational to hold that the punishment of the husband would endanger family unity!

"On the basis of what has been stated herein, it must be recognized that the third paragraph of article 559 of the Penal Code, since it punishes the wife for acts which, if committed by the husband, are irrelevant for the purpose of the criminal law, is unconstitutional. But the declaration of unconstitutionality necessarily applies also to the first paragraph of article 560 because, firstly, it is the conjunction of both these provisions which gives substance, because of the heterogeneity of the criminal acts to which they refer, to an inadmissible disparity of treatment as between husband and wife, and secondly, because, should only the provision concerning the adulterous relationship of the wife be revoked, the law would then under article 560 take cognizance only of the conjugal infidelity of the husband, with the same result, that of violating the principle of equality."

The Court accordingly declares articles 559, third paragraph, and 560, first paragraph, of the Penal Code unconstitutional. It also declares unconstitutional the following provisions of the Code: article 559, fourth paragraph; article 560, second and third paragraphs; article 561; the part of the first paragraph of article 562 on the loss of marital authority by reason of a sentence for the offence of concubinage; article 562, second and third paragraphs; and article 563. [10]

* * *

The judgement of 13 February 1969 of the Supreme Court of Cassation (*Il Foro Italiano*, November 1969, Part II, 602) confirming the decisions of the judges of the first and second rank, on the merits, is indicative of the tendency of Italian judicial practice to give to the existing provisions of the Code on relations between spouses—provisions which do not, as yet, entirely satisfy the principle of the equal rights of both spouses embodied in article 16 (1) of the Universal Declaration—an interpretation which approaches as closely as possible the "moral and legal equality of both spouses" guaranteed by article 29, second paragraph, of the Constitution "within the limits prescribed by the law for safeguarding family unity".

The *pretore* of Taranto, in a judgement of 24 September 1967, had convicted G.T. of the offence dealt with in article 570, first and second paragraphs, of the Penal Code, [11] on the grounds that he had abandoned the conjugal home and failed to provide means of subsistance to his wife. The *tribunale* (lower criminal court) of Taranto had, in a judgement of 24 May 1968, confirmed the *pretore*'s decision. In his appeal to

[10] Article 561 relates to non-punishable instances and extenuating circumstances; article 562 to the accessory penalty and the civil penalty associated with a sentence for bigamy or concubinage; article 563 to the extinction of the offence of adultery or concubinage. All the provisions declared unconstitutional by this judgement are in Title XI, chapter I, of the Penal Code, concerning matrimonial offences.

[11] This article, on "violation of the obligations of family assistance", renders liable to punishment a person who, "having abandoned the family home... fails in the obligations of assistance inherent... in the status of spouse" and "fails to provide means of subsistence... to his or her spouse".

the Court of Cassation, G.T. pleaded, as his first ground of appeal, that there had been no abandonment by the husband, but rather a refusal of the wife to follow the husband; [12] and, as his second ground, that under article 146 of the Civil Code the obligation to provide maintenance for the wife is suspended as long as the wife refuses to follow the husband.

The Supreme Court declares, *inter alia*, in its judgement: "As this Court has already had occasion to state, the wife's duty to follow the husband to a domicile chosen by him is not to be interpreted as an absolute incontestable right of the husband himself; that right must be exercised in relation to specific reasonable requirements about which the wife must be duly and fully consulted, as befits the relationship of mutual material and moral assistance which the law requires to be observed between spouses. In this case, the judges as to the merits found that no specific and plausible justification for the decision to transfer the conjugal home was offered by the appellant, for which reason, in fact, he was held to be guilty of the offence described in the first paragraph of article 570 of the Penal Code. The second ground of appeal is likewise unfounded because, contrary to the appellant's argument, the refusal of the wife to follow the husband to the domicile arbitrarily chosen by him does not cause the maintenance obligation to be suspended, such suspension being provided for in article 146 of the Civil Code only in the case of a wife who without good reason abandons the conjugal roof and refuses to return."

G.T.'s appeal was accordingly rejected.

* * *

With regard to the equality in dignity and rights of all human beings and, in particular, the equal rights of both sexes (Universal Declaration, article 1 and article 2, first paragraph), the Constitutional Court issued judgement No. 53 on 28 March 1969.

The Ministry of the Treasury, in its order of 17 March 1959, had refused Mrs. M.G.S., as a married person, an indirect military pension for the loss of her brother, who had been reported missing in Russia during the Second World War; the pension had been paid to her father until his death in June 1958. The applicant had appealed to the State Audit Court against the order on the grounds that she had been separated *de facto* from her husband for over ten years. The *pubblico ministero* has asked that the appeal should be rejected, citing article 71, first paragraph, sub-paragraph (*c*), article 84, second paragraph, and article 77, first paragraph, of Act No. 648 of 10 August 1950, under which the indirect pension for the death of a member of the armed forces in wartime is payable, after the death of his parents, to his unmarried minor or, if incapacitated, adult sisters. The State Audit Court, acting *ex officio*, in its order of 23 January 1967 raised the question of the constitutionality of these provisions in the light of article 3, first paragraph, of the Constitution.

The Constitutional Court declared the question to be a legitimate one. "The contested provisions of Act No. 648 of 10 August 1950 govern the treatment, for pension purposes, of the collateral relatives of members of the armed forces who died in wartime or of civilians who died through act of war, and provide that the indirect pension is granted not only to minor brothers and minor unmarried sisters if neither parent is living or if the mother is not entitled to the pension, but also to adult brothers and unmarried sisters who, on the date of death of the serviceman or civilian, are incapacitated for any paid employment or who become so incapacitated after that date but before attaining their majority or before the date on which the pension formerly paid to the father or mother devolves upon them. . . . It is a condition for the granting of the pension in all cases that the collateral relatives should, because of the death of the serviceman or civilian, lack the necessary means of subsistence. . . . It is also provided that the indirect pension originally paid to the parents of the serviceman or civilian should devolve upon orphaned collateral relatives if they are minors or incapacitated for any paid employment and, if sisters, unmarried."

The Court points out, first of all, that the war pension for collateral relatives is of the nature of a "maintenance allowance" and that the right to receive such a pension is accordingly conditional upon a state of genuine need, and is, therefore, recognized when there is proof that, by reason of the death of the serviceman or civilian, the collateral relatives have lost the means necessary for their subsistence and are not in a position to supply themselves with the basic essentials of existence, either because they are minors or, if adults, are unfit for any remunerative work. "It is undeniable, however, that these objective and clearly specified conditions may apply with equal force to brothers or sisters, even if they have married. . . Accordingly, no rational justification can be discerned for that part of the contested provisions which provides solely on the basis of the subject's belonging to a stated sex, for depriving a married sister of the right to pension and not treating a married brother in the same way. The fact that both objective situations are absolutely identical creates the requirement of uniform treatment and therefore makes unconstitutional, because they violate the principle of equality set forth in article 3 of the Constitution, those parts of the contested provisions contained in article 71, sub-paragraph (*c*), article 77, first paragraph, and article 84, second paragraph, which recognize the right to pension of the sister of the deceased serviceman or civilian only if she is unmarried. And since these provisions are reproduced word for word in article 64, first paragraph, sub-paragraph (*c*), article 75, first paragraph, and article 76, second paragraph, of Act No. 313 of 18 March 1968, reforming the legislation governing war pensions, [13] those provisions, too, must be declared unconstitutional."

* * *

[12] By virtue of article 144 of the Civil Code (Marital authority) "the wife... is obliged to accompany him [the husband] to any place in which he deems fit to establish his residence".

[13] See *Yearbook on Human Rights for 1968* (Italy).

On the subject of legal protection for children born out of wedlock, the basis for which is the equality in dignity and rights of all human beings (Universal Declaration, article 1), there has been one relevant judgement of the Constitutional Court; it is to the effect that, in the right of representation, only the legitimate child, to the exclusion of all other relatives, may have primacy over the natural child.

Judgement No. 79 of the Constitutional Court of 14 April 1969 is concerned with the right of succession and of representation of natural children; it was issued on the basis of a remand order of 26 June 1967 of the *Tribunale* of Genoa, in which articles 467 and 577 of the Civil Code were challenged as conflicting with articles 3 and 30, third paragraph, of the Constitution. In article 467 of the Civil Code the right of representation is attributed, in general, only to the legitimate descendants of the appointed heir;[14] article 577 of the Civil Code grants the right of representation, in the event of succession *ab intestato*, to, among others, the natural child of the appointed heir, but only if the *de cuius* leaves no legitimate relatives up to the third degree. Article 3 of the Constitution provides, in general, that all citizens are "of equal social dignity" and are equal "before the law", without any distinction; in article 30, third paragraph, of the Constitution, "The law guarantees to children born outside marriage every form of legal and social protection compatible with the rights of the members of the legitimate family."

The Court first points out that the protection of the rights of natural children in the Constitution is not in the form of an abstract "favour" to those natural children who have been acknowledged or declared; it is, however, fully justified, as the first part of the third paragraph of article 30 indicates, in cases in which it is not incompatible with the interests of "the members of the legitimate family". This is not to say that the Consitution has completely assimilated natural to legitimate children, since "the scope of the rights of the former vis-à-vis the latter must, in fact, be determined by reference to the primacy of the latter and, on the basis of common sense, through the discretionary power of the ordinary legislator"; it must be recognized, however, that the assimilation is undeniable when there is no legitimate family.

The Court then sets about determining what the constitutional provision means by legitimate family and in so doing bases its judgement on articles 29, 30 and 31 of the Constitution. The constitutional guarantee in article 29 covers the group founded on marriage, in other words, the group which, born of that union, is built upon the equality of both spouses and family unity; such equality and unity can be neither demanded nor assumed with respect to the ascendants or collateral relatives of one who by marriage has founded a natural association. Article 31, "in which the family and its responsibilities are those deriving from marriage", also indicates that the authors of the Constitution were concerned solely with the spouse and the descendants. That is the effect, too, of article 30, first paragraph, which recognizes duties and rights of parents with regard to their children but not with regard to their ascendants or collateral relatives, and of the third paragraph of that article, in which, according to the Court's interpretation, "the mention of the legitimate family of a person who has natural children obviously does not include the ascendants or collateral relatives". From all of this the Court deduces that a person's legitimate family includes only the spouse and the children, whether married or not, and never includes either collateral relatives or ascendants. "Thus, at the constitutional level, in the same way as a person's natural children are owed protection, even if they have contracted matrimony, his legitimate children are protected even if they have founded their own conjugal association; accordingly, the legitimate family referred to in article 30, third paragraph, undoubtedly comprises all children [of a parent] and it is the compatibility of the protection of the so-called illegitimates with their rights that the law has to determine."

The judgement states, in conclusion, that if a person who cannot or will not accept an inheritance or legacy from his parent or brother leaves or has no legitimate children (or their descendants), his natural child shall be granted the right of representation which would devolve upon his legitimate child and shall have this right even if the spouse of the "represented heir" is living, inasmuch as one spouse cannot succeed the other by representation. When the natural child succeeds by representation, he replaces his parent in the same "order and degree".

The Court therefore declares: that the whole of article 577 of the Civil Code is unconstitutional (in that it embodies a system of inheritance which is at variance with the right of representation of natural children); that article 467 of the Civil Code is unconstitutional "but only in that part which excludes from representation the natural child of a person who, being the son or brother of the *de cuius*, cannot or will not accept, and leaves or has no legitimate descendants". As a consequence of declaring article 467 unconstitutional, the Court was obliged to declare article 468 of the Civil Code unconstitutional in the same respects, inasmuch as that article, by permitting the succession by representation of only the descendants of a person who cannot or will not accept, implicitly (given the fact that descendant is always understood to mean a person born in wedlock) denies that right to the natural child in the absence of legitimate descendants of the father.

* * *

Judgement No. 28 of 5 March 1969 of the Constitutional Court affirms two principles of the Universal Declaration—that of the equality of all citizens before the law (article 7) and that of equal protection against judicial errors (article 10).

[14] Civil Code, article 467: "In the event of succession by representation legitimate descendants replace their ascendant in the same order and degree in all cases in which he cannot or will not accept the inheritance or legacy. . . ."

The Supreme Court of Cassation, by an order of 7 December 1967, had submitted for judgement a challenge of the constitutionality of article 553, 2, of the Code of Criminal Procedure which was made in an application for the review of criminal sentences imposed on A.T. in November 1965 and made executory; A.T. had been sentenced to a combined fine for various lesser offences (*contravvenzioni*) (failure to pay insurance contributions, etc.). The appellant had justified his application by stating that the very fact which provided ground for the said sentences (existence of a subordinate employment relationship) had been declared to be non-existent by an order of acquittal pronounced by the same judge in January 1966. Since the latter order was inconsistent with the earlier criminal sentences, the application for a review was well founded, within the meaning of article 554 of the Code of Criminal Procedure. In his preliminary submission A.T. had claimed that article 553, 2, was unconstitutional, as being contrary to articles 3 and 24 of the Constitution. Article 553 of the Code of Criminal Procedure permits, at any time and in the cases prescribed by law, a review of convictions which are not subject to appeal; sub-paragraph 1 allows it to all persons convicted of a serious offence (*delitto*) and sub-paragraph 2 in the case of only those convicted of a lesser minor offence (*contravvenzione*) who, as a result of that conviction, are declared to be habitual or professional offenders.

The Supreme Court of Cassation, in its remand order, having stated that the institution of review has as its purpose to redress a judicial error, as provided in article 24, last paragraph, of the Constitution, [15] submitted that, since the power to exercise the right to impugn is made conditional upon the personal status of the appellant, the principle of the equality of all citizens before the law might be violated.

The Constitutional Court considered the question well founded and in its judgement stated as follows: "The place of the institution of review in the system of legal remedies is that of an extraordinary means of defence of the convicted person and it is prescribed for the redress of judicial errors through the annulment of judgements of conviction which are recognized to be unjust after the matter has become *res judicata*. This meets the extremely laudable ethical and social requirement of ensuring, without time limitations and even if the penalty has been served or paid, the protection of an innocent person within the framework of the more general protection, expressly emphasized in the Constitution, of inviolable personal rights. Review has necessarily been made subject to conditions, limitations and precautions, in order to make its purposes compatible with the requirement—a fundamental one in every legal system—of certainty and stability in judicial situations and with the unimpugnability of jurisdictional judgements of conviction which have become *res judicata*. But the trend in our positive legislation is towards gradually extending the categories of subjects in favour of whom the review of criminal *res judicatae* has been permitted—a reflection of an ever-growing bias towards protecting the material and moral interests of persons wrongly convicted."

The Court points out, however, that the innovations introduced into the institution of review after the advent of the Constitution did not affect article 553, 2, and that the exclusion from the right to apply for investigation of a judicial error of persons who, having been convicted of a lesser offence (*contravvenzione*), were not as a result declared to be habitual or professional offenders still obtains. Such exclusion seems to be a definite violation of the principle of equality (article 3, first paragraph, of the Constitution). The position is that because, as a requirement of substantial justice which is reflected in article 24 of the Constitution, the institution of review was positively prescribed for the protection of, among others, persons wrongly sentenced for lesser offences (*contravvenzioni*), the restriction contained in the contested provision—to the detriment of most of the offenders concerned—does not appear to be founded on rational grounds applying to the variety of situations which may arise. The penalties laid down for lesser offences—imprisonment for up to three years and fine—may, in practice, be quite serious, both in themselves and in the other consequences prescribed by law. The penalty of imprisonment may be for a maximum of three years, and be increased to five or six years if there are aggravating circumstances or more than one offence; the fine, which, within certain limits, may be commuted to imprisonment, can in certain cases amount to quite substantial sums; possible accessory penalties (for example, suspension from the practice of a profession or skill, publication of the judgement and sentence) may adversely affect the personal life of the sentenced person; the sentence for a lesser offence may also affect any judgements made as to the capacity of the accused to commit further offences or may cause the application of security measures; moreover, it may be recorded in the card-index of criminal records and it imposes, in addition to liability for the costs of the proceedings, the obligation of restitution and reparation of damage, if any.

All of this shows that in many cases other than those contemplated in article 553, 2, of the Code of Criminal Procedure "conviction for a lesser offence may have an extremely adverse affect not only on the liberty and property, but also on the honour and the moral and social dignity of the subjects, i.e., moral property which should be safeguarded from the social reprobation which, independently of the nature and gravity of the penalty imposed, accompanies the judicial finding of guilt in the case of certain lesser offences."

The Court accordingly declared unconstitutional that part of article 553, 2, of the Code of Criminal Procedure in which the right to apply for review of a sentence for a lesser offence is confined exclusively to those cases in which the person so sentenced has in consequence been declared to be a habitual or professional offender.

[15] Constitution, article 24, last paragraph: "The law shall lay down the conditions and procedure governing the redress of judicial errors."

* * *

In conclusion, attention is drawn to other judgements of the Constitutional Court which provide further confirmation of the inviolability of the right of defence guaranteed by article 24, second paragraph, of the Constitution [16] and proclaimed in article 11 (1) of the Universal Declaration.

In judgement No. 149 of 3 December 1969 the Constitutional Court declared unconstitutional, as being contrary to article 24, second paragraph, of the Constitution, those parts of: (*a*) article 44 of royal legislative decree No. 2033 of 15 October 1925 on the "repression of fraud in the preparation and marketing of substances for agricultural use and agricultural products", which was converted into Act No. 562 of 18 March 1926 and amended by Act No. 190 of 27 February 1958; (*b*) article 1 of Act No. 283 of 30 April 1962 on "health regulations for the production and sale of foodstuffs and beverages"; and (*c*) article 42 of Act No. 580 of 4 July 1967 on "regulations for the processing and marketing of cereals, meals and flours, bread and food paste preparations", which, in revising the regulations for the analysis of food products suspected of being adulterated, exclude the right of defence guaranteed by articles 390 and 304 *bis*, *ter* and *quater* of the Code of Criminal Procedure. [17]

Judgement No. 148 of 3 December 1969 declares unconstitutional certain provisions of the Code of Criminal Procedure. Under an earlier judgement of the Constitutional Court (No. 86 of 1968), which had declared parts of articles 225 and 232 of the Code of Criminal Procedure unconstitutional, [18] all judicial police acts performed or ordered by the Procurator of the Republic in pursuance of article 232 of the Code of Criminal Procedure must, when they are the same as the acts contemplated in article 304 *bis* to *quater*, be governed by the same guarantees of a defence provided for in the latter provisions. The same ruling applies to acts performed by the judicial police in pursuance of article 225 of the same Code (interrogation of the accused person, identity parades, inspections and confrontations).

The remand orders which provided grounds for the judgement in question were in fact concerned with the "ascertaining of the physical evidence" and "technical operations" referred to in articles 222, second paragraph, and 223, first paragraph, which were challenged. The Constitutional Court maintained that those provisions were partly unconstitutional on the same grounds as had been cited in its earlier judgement on articles 225 and 232 of the Code of Criminal Procedure, inasmuch as the two provisions in question guaranteed no right of defence to persons suspected of the offence to which the "ascertaining" and "technical operations" referred. The Court accordingly declared unconstitutional, as being at variance with article 24, second paragraph, of the Constitution, those parts of articles 222, second paragraph, and 223, first paragraph, of the Code of Criminal Procedure which preclude the application to the judicial police operation of ascertaining evidence and its technical operations of articles 390 and 304 *bis*, *ter* and *quater* of the Code of Criminal Procedure. Consequently, it also declared unconstitutional the following provisions of the Code: (*a*) that part of article 222, second paragraph, which precludes the application to seizure of articles 390 and 304 *quater*; (*b*) that part of article 231, first paragraph, which precludes the application of articles 390 and 304 *bis*, *ter* and *quater* to judicial police acts performed or ordered by the *pretore*; (*c*) that part of article 234 which precludes the application of articles 390 and 304 *bis*, *ter* and *quater* to judicial police acts performed or ordered by the procurator general of the Court of Appeal; and (*d*) that part of article 134, second paragraph, which prohibits officials and agents of the judicial police from accepting the nomination of the accused person's chosen counsel.

The judgement points out that, as a consequence of the rulings contained in judgement No. 86 (1968) and the present judgement, and bearing in mind other relevant provisions of the Code of Criminal Procedure, it is to be concluded that "the right of defence for which article 304 *bis*, *ter* and *quater* makes provision in the case of preliminary examinations extends to all the acts performed by the judicial police vis-à-vis a person suspected of an offence prior to such preliminary examination".

[16] Constitution, article 24, second paragraph: "The right of defence at every stage and level of juridical proceedings is inviolable." In this connexion, see Constitutional Court judgements No. 11 of 4 February 1965 and No. 52 of 16 June 1965 in *Yearbook on Human Rights for 1965* (Italy), pp. 170, 171.

[17] Article 390 is concerned with the appointment of defence counsel in summary preliminary examinations, article 304 *bis* with the preliminary proceedings at which counsel may be present, and article 304 *ter* and *quater* with the procedures for notice and deposit.

[18] Article 225 of the Code of Criminal Procedure is concerned with summary inquiries which, in the course of the initial part of summary preliminary examinations, may be undertaken by the police; article 232 deals with the judicial police acts which, in the same initial part of summary preliminary examinations, may be performed by the procurator of the Republic directly or through the judicial police.

IVORY COAST

ACT NO. 69-371 OF 12 AUGUST 1969, AMENDING AND SUPPLEMENTING CERTAIN PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE [1]

Article 1. The following provisions of the Code of Criminal Procedure shall be amended, supplemented or reworded as follows:

Article 16. "The following are officers of the criminal police:

Procureurs de la République and their deputies;

Examining judges;

Judges of sections;

Mayors and their deputies;

Chiefs of police;

Police commissioners;

Police officers;

Inspectors appointed as officers of the criminal police in conditions laid down by decree;

Officers of the *Gendarmerie*;

Non-commissioned officers of the *Gendarmerie*, including sergeants or station commanders;

Non-commissioned officers of the *Gendarmerie* who have passed the criminal police officers' examination and have been nominated in conditions laid down by decree."

Article 18. "Officers of the criminal police shall have authority within the territorial area where they exercise their habitual functions. However, those whose territorial area lies within the area of jurisdiction of the court to which they are attached may, in cases of emergency, exercise authority within the whole of that area of jurisdiction. Upon express rogatory commission and in cases of serious or *flagrante delicto* offences, they may also exercise authority throughout the territory of the Ivory Coast."

Article 44. "The *Procureur de la République* himself or one of his deputies shall represent the *Ministère public* in the police court established in the area of the court of first instance. He may refer petty offences of which he is informed to police courts within his area."

. . .

Article 112, first paragraph. "At the first appearence of the accused person, the examining judge shall verify his identity, shall inform him of the acts he is alleged to have committed, and shall receive his statements. If the charge is not dropped, the judge shall advise the accused person of his right to select a counsel either from among the advocates or probationer advocates enrolled in the bar of the Ivory Coast or from among the advocates enrolled in foreign bars, provided that their countries have a reciprocity agreement with the Ivory Coast."

. . .

Article 112, third paragraph. "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 be requested to establish an address for service within the area of the jurisdiction of the court."

Article 115, second paragraph. "Counsel shall be invited to attend either by registered letter sent at least three days before the civil claimant is heard or the interrogation takes place, or by notification delivered twenty-four hours before the hearing or interrogation by the clerk of the court of law enforcement officer."

. . .

Article 139, second paragraph. "When the examining judge is a judge of a section of the court, he may order an extension of the period of detention pending trial without calling for an application by the *Procureur de la République.*"

Article 140, third paragraph. "When the examining judge is a judge of a section of the court, he shall, without prejudice to the provisions of article 186, seventh paragraph, make a ruling without requesting the opinion of the *Procureur de la République* in the case covered in the preceding paragraph."

Article 141:. . .

Second paragraph. "In courts of first instance, the examining judge must immediately transmit the file to the *Procureur de la République* so that he may prepare his statement. When the examining judge is a judge of a section of the court, he may, without prejudice to the provisions of article 186, seventh paragraph, rule on the application for provisional release without calling for an application by the *Procureur de la République.*"

Third paragraph. "The examining judge shall rule on the application, by means of an order

[1] *Journal officiel de la République de Côte d'Ivoire*, Special Number No. 38, of 25 August 1969. For extracts from the Code of Criminal Procedure, see *Yearbook on Human Rights for 1962*, pp. 139-149.

containing a statement of reasons, no later than five days after reception of the application."

Fourth paragraph. "Where a civil claimant is a party to the action, the examining judge shall inform him immediately of the application in the manner laid down in article 115, second paragraph. The examining judge may not issue the order untill three days after the notification or despatch of the registered letter to the civil claimant, who may submit observations."

...

Article 156, first paragraph. "Any court examining or trying a case in which a question of a technical nature arises may, at the request of the *Ministère public*, automatically, or at the request of the parties, order an expert's report, to be made by a single expert, save in special circumstances justifying appointment of two or more experts."

...

Article 183. "Notice of all orders of the court shall be given within twenty-four hours and in the manner prescribed in article 115, second paragraph, to the counsel of the accused and of the civil claimant.

"Procedural notices shall be brought to the attention of the accused, and orders for adjournment or for transmission of documents to the *Procureur général* shall be brought to the attention of the civil claimant in the same manner and within the same time-limits.

"Orders against which the accused or the civil claimant may lodge an appeal under article 186 shall be served on them at the request of the *Procureur de la République* within twenty-four hours.

"In all cases, if the accused is held in custody, the orders shall be notified to him by the clerk of the court.

"Notice of any order which does not conform to his applications shall be given to the *Procureur de la République* on the same day it is issued by the clerk of the court, on penalty of a civil fine of 1,000 francs ordered by the President of the arraignment chamber."

Article 185: ...

Third paragraph. "The *Procureur général* shall also in all cases have the right to lodge an appeal, by notification to the office of the clerk of the court, within ten days following the order of the examining judge."

Fourth paragraph. Supplemented as follows: "In the case provided for in article 186, seventh paragraph, the period allowed to the *Procureur de la République* to lodge an appeal shall begin on the day when the telegram is received at the *Parquet*."

Article 186: ...

Fourth paragraph. "... The period allowed for the appeal shall begin on the day of the service or notification made to them... If the accused is detained, his declaration of appeal shall be transmitted through the warden..."

...

Seventh paragraph. "If the accused is detained at the place where a section of a court sits, the examining judge shall immediately inform the *Procureur de la République* by telegram of any order for dismissal or release on bail. After a period of six days following the despatch of the said telegram, the accused must be released, if the examining judge has not been informed, by any means, of the appeal lodged by the *Ministère public*."

...

Article 214, third paragraph. "If the arraignment chamber feels that there is reasonable ground for imposing a correctional penalty only, because of the circumstances, it may, by means of a decision accompanied by a statement of reasons and on the recommendation of the *Ministère public*, commit the defendant for trial by the correctional court, which may not refuse to exercise jurisdiction."

...

Article 378. "If the accused person is not held in custody, the notice delivered by the *Ministère public* need not be followed by a summons if the person to whom it is addressed appears voluntarily.

"It shall indicate the offence concerning which the proceedings are taken and the law under which it is punishable.

"If the accused person is held in custody, the procedure must be by notice only."

Article 380. "Anyone who has lodged a complaint or claimed to be injured by the offence must be called to the hearing."

Article 381: ...

Second paragraph. "If a civil claimant has not obtained legal aid, he must, under penalty of having his action declared non-admissible, deposit with the clerk of the court the sum estimated to be necessary to cover the expenses of the proceedings."

Third paragraph. "In this case, the court to which the case is referred shall fix the amount of the deposit at the first hearing of the case. A further deposit may be required when it appears that the balance is inadequate to cover all the expenses, including registration of the sentence."

Article 402, first paragraph. "An accused person summoned for an offence punishable by a fine or by a term of imprisonment of two years or less may, in a letter to the President attached to the file, request to be tried in his absence."

Article 406. "A person liable under civil law and the insurer may always be represented by a lawyer. In such cases, the judgement in respect of them is given after an open hearing of both sides."

...

Article 766. "Cases of crimes or correctional offences committed by minors of less than eighteen years of age are referred by the *Procureur de la République* to the children's judge. In sections of courts, the case is referred to the judge of the section, either automatically or by application from the *Procureur de la République*.

"In no case may the *flagrante delicto* or direct summons procedure be used against a minor.

"When a minor of less than eighteen years of age is involved in the same case as one or more persons over eighteen, against whom proceedings are being taken for a *flagrante delicto* offence or by direct summons, the *Procureur de la République* shall open a special file on the minor and refer it to the children's judge. If a preliminary investigation has been opened, the examining judge shall hand over the case of both the minor and of the accused persons of full age to the children's judge as quickly as possible."

...

Article 776, first paragraph. "A minor of at least sixteen years of age who is accused of a crime shall be tried by the assize court for minors, which meets during the session of the Assize Court."

...

JAPAN

NOTE [1]

I. LEGISLATION

1. Law on the Special Treatment of Disease Caused by Environmental Pollution (Law No. 90 of 15 December 1969)

The problem of public nuisances has generally emerged and evolved along with the modern industrial development. In Japan, where there has been rapid economic growth since 1955, public nuisances such as pollution of air, contamination of water, noise, offensive smells, etc., have emerged and become a big social problem.

Faced with this, the state and local public bodies established the Public Nuisance Countermeasure Standard Law (Law No. 132 of 1967) and took many other legislative and other measures, in order to prevent public nuisances. However, in fact people began to suffer from the so-called public nuisance diseases such as the *minamata* disease (affection of the central nerve caused by poisoning by methyl mercury compound) in Kumamoto Prefecture, *itai-itai* disease (disease caused by chronic poisoning by cadmium), *yokkaichi* asthma (affection of respiratory organs caused by pollution of air).

The Law mentioned in the heading was enacted for the purpose of giving relief to those persons who are affected by those public nuisance diseases.

As for the methods of relief, this Law provides for temporary measures to be taken to supply those persons suffering from diseases caused by pollution of air or water with expenses and allowances for medical treatment and nursing. These measures aim at filling up the gap until the damages are paid by the person causing the public nuisance or any other solution under private laws is reached and are of considerable significance as a social security system.

2. Law on Special Measures concerning the Desegregation of Outcasts (Law No. 60 of 10 July 1969)

The Constitution of Japan guarantees in its Article 14 the equality under the law of all the people of Japan.

In view of the fact that the security of living of a group of people of Japan is even now being interfered with by segregation, which was customarily established in the development of society in the history of Japan, the law dealt with here was enacted for the purpose of implementing the principle of the Constitution mentioned above. It provides that in order to abolish various factors which unduly obstruct the rise in the social and economic positions of these people, the state and local public bodies should, in mutual co-operation, take measures for the betterment of living environments, promotion of social welfare, development of industries, stability of occupation, improvement of education, intensification of activities for the protection of human rights, etc.

3. Law Amending Partially the Law on the Foundation for Promoting Social Welfare Agencies Inc. (Law No. 89 of 10 December 1969)

This Law was enacted to amend partially the Law on the Foundation for Promoting Social Welfare Agencies Inc., which, together with other laws and ordinances concerning social welfare, aims at contributing to the promotion of social welfare by providing fundamental matters common to all fields of social welfare work.

With a view to stabilizing the livelihood and advancing the welfare of mentally and physically handicapped persons after they are bereaved of their guardians, this amending law reorganized the system of maintenance and mutual aid of mentally and physically handicapped persons, which had been operated by each local public body on its own initiative, into one national system, which is of great significance as a measure for the welfare of those persons.

II. JUDICIAL DECISIONS

1. A decision showing the court's holdings on the right that one's own picture may not be taken in the course of criminal investigation and its limitation (Supreme Court Decision of 24 December 1969)

This decision holds in the first place that there are cases in which police officers, etc., are authorized, for the benefit of public welfare, to take a picture of the face, etc., of an individual, even against his will, without any warrant in the course of a criminal investigation, and while referring to the limits of such authority further holds that it must be exercised only when a crime is being committed or it is deemed that a crime

[1] Note furnished by the Government of Japan.

has just been committed so that the preservation of evidence as as matter of urgency is required, to be done in such a manner and within limits generally admitted.

In this specific case, eventually the taking of a picture was justified as an authorized act. However, the decision is significant in that it holds that every person has the right that the picture of his face and figure may not be taken arbitrarily without his consent.

2. A DECISION HOLDING THAT WHEN THERE IS A REASONABLE GROUND FOR BELIEVING AN ALLEGATION TO BE TRUE, IT PREVENTS CONSTITUTION OF A CRIME OF DEFAMATION (DECISION OF THE SUPREME COURT OF 25 JUNE 1969)

This decision holds that the provision of Article 230-2 of the Penal Code aims at harmonizing the protection of the reputation of an individual as a personal right and the guarantee for the liberty of speech properly performed, and accordingly, when a person, who has been accused of defaming another person, by alleging a fact, has a reasonable ground to believe the truth of that allegation, he has no criminal intent and, therefore, the crime of defamation is not constituted, even when he cannot prove the truth of the fact alleged. This is a modification of the judicial precedent stating that a person cannot escape criminal liability in so far he cannot prove the truth of the alleged fact.

3. A DECISION THAT PUNISHMENTS COULD NOT BE IMPOSED ON THE ACCUSED MEMBERS OF A PUBLIC SCHOOL TEACHERS' UNION FOR DISTRIBUTING LETTERS OF DIRECTIVE, COMMUNICATING THE PURPOSE OF THE STRIKE AND OTHER ACTIVITIES WHICH THEY PERFORMED AS EXECUTIVE MEMBERS OF THE UNION DURING THE PERIOD OF THE UNION'S STRIKE (DECISION OF THE SUPREME COURT OF 2 APRIL 1969)

This decision was rendered not for a single reason but for three different kinds of reasons. However, the idea common to all these reasons is that in view of the nature of the function of public officials affecting the public interests, the provisions of the Local Public Service Law which prohibit strikes by officials of local public bodies should not be deemed unconstitutional, but the provisions for the punishment of officials of local public bodies for their acts of encouraging strikes, etc. (Article 61, item (4), of the Local Public Service Law) should be applied only when there is found reasonable ground enough to punish them, and, therefore, in cases of strike, like the one in this case, which cannot be said to be so much illegal, the acts of distribution of letters of directive, etc., which are usually incidental to strikes, should not be punished.

III. MAIN TRENDS

1. SYSTEM OF CIVIL LIBERTIES COMMISSIONERS

The Civil Liberties Commissioners are posted in cities, towns and villages throughout the country for the purpose of protecting human rights of individuals, and are performing vigorous activities in the respective communities.

The actual number of them as of 31 December 1969 is 9,227, including 1,017 female Commissioners.

The main activities of these Commissioners in 1969 are represented by 6,150 cases of report and investigation of cases of violation of human rights and 116,519 cases of counselling concerning human rights. Besides the above, efforts were made for the development of the sense of human rights among the people by information activities through newspapers, television and radio and by holding lecture and round-table-talk meetings at *Kominkan,* schools, etc., in various places.

2. HUMAN RIGHTS WEEK

The week from 4 December 1969 ending on the Human Rights Day, 10 December the same year, was designated as the "21st Human Rights week", and during the week nation-wide activities were vigorously carried out for promoting the sense of human rights of the people.

3. LEGAL AID SYSTEM

In Japan, the work of legal aid, which guarantees equal protection of law to poor people, has been performed by the Legal Aid Association, an incorporated foundation, with the assistance of the Civil Liberties Bureau of the Ministry of Justice, Civil Liberties Commissioners, etc.

The results of the work have increased every year. In the 1969 fiscal year legal aid was applied for in 5,245 cases and was given in 1,968 cases (37.5 per cent of the total) where it was found that the requirements for it were fulfilled.

Legal aid given in the year covered all kinds of civil suit cases involving such family affairs as inheritance, divorce, recognition of a child; matters concerning immovable properties (land and houses), and damages, monetary loans, etc.

Cases involving traffic accidents were particularly frequent in recent years, comprising about 50 per cent of the cases in which the giving of legal aid was decided on and the greatest emphasis in the work of legal aid was laid on the relief of victims of traffic accidents.

In the 1969 fiscal year, a subsidy from the National Treasury amounting to 80,000,000 yen (about $222,000) was defrayed for the expenses for legal aid, representing an increase of 5,000,000 yen (about $14,000) over the previous fiscal year.

4. TENDENCY OF HUMAN RIGHTS PROBLEMS

While the sense of human rights of the people of Japan has been developed owing to various activities in the International Human Rights Year of 1968, there is no end to human rights violation cases, which are becoming more and more complicated, keeping pace with the economic development and the increasing complexity of social relations.

The problems of public nuisances and traffic accidents remain difficult to solve, and recently there has been found, as is the case with the group violence by radical students, a trend among a part of the people to be too eager to insist upon their own claims to admit the human rights of other persons and this has developed into a new type of human rights problem.

Faced with this, the state and local public bodies have made joint efforts to take strong comprehensive measures for the solution of these problems.

The number of cases of human rights violation received by the Civil Liberties Bureau of the Ministry of Justice and the Civil Liberties Commissioners throughout the country in 1969 was 9,994, and the number of cases of human rights counselling received by them in the same year was 238,005. The number of these cases is increasing every year.

KENYA

NOTE [1]

I. THE CONSTITUTION OF KENYA 1969 [2]

The Constitution of Kenya was amended and restated in 1969 by an act of Parliament which reproduced the said Constitution in a revised form. In the spirit and letter of the principles and objectives embodied in the 1948 Universal Declaration of Human Rights, the Constitution provides in Chapter V clauses on the protection of fundamental rights and freedom of the individual, sets forth, *inter alia*, the right to life, the right to personal liberty, protection from slavery and forced labour, protection from inhuman treatment, protection from deprivation of property, protection against arbitrary search, freedom of conscience, freedom of expression, freedom of assembly and association, freedom of movement, protection from racial and other forms of discrimination and stipulates that there shall be no derogation from these fundamental rights and freedoms.

Chapter V

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Article 70. Whereas every person in Kenya is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin or residence or other local connexion, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

(*a*) Life, liberty, security of the person and the protection of 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.

Article 71. (1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence under the law of Kenya of which he has been convicted.

(2) Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case—

(*a*) For the defence of any person from violence or for the defence of property;

(*b*) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(*c*) For the purpose of suppressing a riot, insurrection or mutiny; or

(*d*) In order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

Article 72. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say—

(*a*) In execution of the sentence of order of a court, whether established for Kenya or some other country, in respect of a criminal offence of which he has been convicted;

(*b*) In execution of the order of the High Court of Appeal exercising jurisdiction in Kenya punishing him for contempt of any such court or of another court or tribunal;

(*c*) In execution of order of a court made to secure the fulfilment of any obligation imposed on him by law;

(*d*) For the purpose of bringing him before a court in execution of the order of a court;

(*e*) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law of Kenya;

(*f*) In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(*g*) For the purpose of preventing the spread of an infectious or contagious disease;

(*h*) In the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted

[1] Note furnished by the Government of Kenya.

[2] The text appears in the *Kenya Gazette Supplement*, No. 27 (Acts No. 3), Act 5 of 1969, Nairobi, 18 April 1969.

to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(*i*) For the purpose of preventing the unlawful entry of that person into Kenya, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Kenya or for the purpose of restricting that person while he is being conveyed through Kenya in the course of his extradition or removal as a convicted prisoner from one country to another; or

(*j*) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Kenya or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonable for restraining that person during any visit that he is permitted to any part of Kenya in which, in consequence of any such, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(*a*) For the purpose of bringing him before a court in execution of the order of a court; or

(*b*) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released shall be brought before a court as soon as is reasonably practicable, and where he is not brought before a court within twenty-four hours of his arrest or from the commencement of his detention, the burden of proving that the person arrested or detained has been brought before a court as soon as is reasonably practicable shall rest upon any person alleging that the provisions of this subsection have been complied with.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connexion with those proceedings or that offence save upon the order of court.

(5) If any person arrested or detained as mentioned in subsection (3) (*b*) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

Article 73. (1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include—

(*a*) Any labour required in consequence of the sentence or order of a court;

(*b*) Any labour required of any person while he is lawfully detained that, though not required in consequence of sentence or order of a court, is reasonnably necessary in the interest 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 an armed force, any labour that that person is required by law to perform in place of such service;

(*d*) Any labour required during any period when Kenya is at war or an order under section 85 of this Constitution is in force or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or

(*e*) Any labour reasonably required as part of reasonable and normal communal or other civic obligations.

Article 74. (1) No person shall be subject 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 Kenya on 11 December 1963.

Article 75. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(*a*) The taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of any property in such manner as to promote the public benefit; and

(*b*) The necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result in 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.

. . .

Article 76. (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.

. . .

Article 77. (1) If any person is charged with 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.

. . .

(8) No person shall be convicted of a criminal offence unless that offence is defined, and the penalty therefor is prescribed, in a written law:

Provided that nothing in this subsection shall prevent a court from punishing any person for contempt notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefor is not so prescribed.

. . .

(10) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other adjudicating authority, including the announcement of the decision of the court or other authority, shall be held in public.

(11) Nothing in subsection (10) of this section shall prevent the court or other adjudicating authority from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(*a*) May by law be empowered to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice or in interlocutory proceedings or the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(*b*) May by law be empowered or required to do in the interests of defence, public safety or public order.

. . .

Article 78. (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.

. . .

Article 79. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) That is reasonably required in the interests of defence, public safety, public order, public morality or public health;

. . .

Article 80. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) That is reasonably required in the interests of defence, public safety, public order, public morality or public health;

. . .

Article 81. (1) No citizen of Kenya shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Kenya, the right to enter Kenya, the right to leave Kenya and immunity from expulsion from Kenya.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

. . .

[The Constitution of Kenya also makes provision in Article 93 to enable non-citizens to acquire Kenya citizenship.]

Article 93. Any person who—

(*a*) Has attained the age of twenty-one years;

(*b*) Has been ordinarily and lawfully resident in Kenya for the period of twelve months immediately preceding his application under this section;

(*c*) Has been ordinarily and lawfully resident in Kenya for a period of, or for periods amounting in the aggregate to, not less than four years in the seven years immediately preceding the said period of twelve months;

(*d*) Satisfies the Minister that he is of good character;

(*e*) Satisfies the Minister that he has an adequate knowledge of the Swahili language; and

(*f*) Satisfies the Minister that he intends, if naturalised as a citizen of Kenya, to continue to reside in Kenya,

shall be eligible, upon making application in such manner as may be prescribed by or under an Act of Parliament, to be naturalised as a citizen of Kenya, and the Minister may grant a certificate of naturalisation to any such person who so applies.

2. THE CRIMINAL LAW AMENDMENT ACT 1969 [3]

In 1969, the Kenya Government passed the Criminal Law Amendment Act further to provide

[3] Text appears in *Kenya Gazette Supplement* No. 22 (Acts No. 2), Nairobi, 25 March 1969.

for the regulations to diminish crime and to safeguard the rights, lives and property of nationals.

3. THE SPECIAL PENSIONS (ODONGO) ACT 1969 [4]

The Government of Kenya ensures social security of its workers in its various pensions and Social Security Acts. Consequently, in 1969 it went to the extent of passing the Special Pensions (Odongo) Act to ensure that one of its citizens, Mr. Benjamin Ezekiel Odongo, was given the pension and gratuity he was entitled to:

Article 2. There shall be paid to Benjamin Ezekiel Odongo a pension during his life of the amount of two hundred and ninety-three pounds seven shillings and fifty cents per annum with effect from the 15 August 1968, together with a gratuity of one thousand two hundred and twenty-two pounds seven shillings and ninety cents, in addition to the retiring benefits granted to him under pensions Act.

Article 3. The pension and gratuity provided for by this Act shall be paid out of and charged on the Consolidated Fund.

Article 4. Sections 11, 12, 13, 14, and 15 of the Pensions Act [5] shall apply to the pension and gratuity provided by this Act as if that pension and gratuity were a pension and gratuity granted under that Act.

4. THE AGRICULTURAL FINANCE CORPORATION ACT 1969 [6]

The economy of Kenya is basically agricultural with the majority of its citizens still engaged in this sector. In accordance with the principles and objectives of the 1966-70 Development Plan and to add to the Government's effort to ensure the protection of the right to life of the majority of its citizens the Agricultural Finance Corporation Act was passed in 1969 to cater for the needs of Kenya farmers. The Act provided, *inter alia*, the following:

Article 3

(1) There is hereby established a Corporation, to be known as the Agricultural Finance Corporation.

(2) The functions of the Corporation shall be to assist in the development of agriculture and agricultural industries by making loans to farmers, co-operative societies, incorporated group representatives, private companies, public bodies, local authorities and other persons engaging in agriculture or agricultural industries.

...

(3) The Corporation shall be a body corporate with perpetual succession and a common seal, and shall have power to acquire, own, possess and dispose of property, and to contract and to sue and be sued in its own name.

(4) The Corporation is not subject to the Companies Act or the Banking Act.

...

Article 4

(1) There shall be a Board of Directors of the Corporation, which shall, subject to this Act, be responsible for determining the policy of the Corporation and for controlling its operations.

(2) The Board shall consist of—

(*a*) No less than four and not more than six persons appointed by the Minister of whom at least two shall be appointed by reason of their knowledge of banking or financial matters;

(*b*) The Permanent Secretary of the Ministry, or a person deputed by him in writing to take his place as a Director of the Board; and

(*c*) The Permanent Secretary of the Ministry for the time being responsible for finance, or a person deputed by him in writing to take his place as a Director of the Board.

(3) A chairman and a deputy chairman shall be appointed by the Minister, after consultation with the Minister for the time being responsible for finance, from among the Directors, and the deputy chairman may, in the absence of the chairman, exercise all the powers and discharge all the duties which are conferred and imposed by this Act upon the chairman.

(4) A Director appointed under paragraph (*a*) of subsection (2) of this section shall hold office for such period not exceeding three years from the date of his appointment as may be specified in the instrument appointing him and shall then retire but shall be eligible for reappointment, and in default of any other person having been appointed by the Minister to succeed him within one month of the date of his retirement shall be deemed to have been reappointed.

...

Article 12

(1) The Board may, subject to the approval of the Minister and the Treasury, establish, control, manage, maintain and contribute to pension or provident funds for the benefit of the General Manager and the staff, and may grant pensions and gratuities from any such fund to them on their retirement from the service of the Corporation and to their dependants on their death.

(2) If neither a pension nor a provident fund is established under subsection (1) of this section, or if a fund is established but in the opinion of the Board it provides insufficient benefits, the Board may, with the approval of the Minister and the Treasury, grant from the funds of the corporation pensions and gratuities, or additional pensions and gratuities, as the case may be, to the General Manager and the staff on their retirement from the service of the Corporation and to their dependants on their death.

...

---

[4] Text published in *Kenya Gazette Supplement* No. 49 (Acts No. 5), Nairobi, 21 June 1969.

[5] *Laws of Kenya*, Pensions Act, chapter 189, Revised Edition, 1967. Printed and Published by the Government Printers, Nairobi.

[6] The text appears in the *Kenya Gazette Supplement* No. 21 (Acts No. 1), Nairobi, 21 March 1969.

Article 14

(1) The Corporation shall, subject to this Act, have power to do all such things and to enter into all such transactions as it considers necessary for, or conducive or incidental to, the proper discharge of the functions described in section 3 (2) of this Act, including, without prejudice to the generality of the foregoing, power—

(*a*) To make loans of money in accordance with Part III of this Act;

(*b*) With the concurrence of, and subject to such limitations as may be imposed by, the Treasury, to borrow money or obtain credit either in Kenya or abroad;

(*c*) To furnish managerial, technical and administrative advice, or to assist in obtaining such advice for agricultural industries;

(*d*) After consultation with the Treasury, to invest money which is not for the time being needed for discharging the functions of the Corporation in investments for the time being authorised by law for the investment of trust moneys, or to place any such money on deposit or invest with any public body;

(*e*) To create, make, draw, accept, endorse, execute, issue discount, buy, sell, negotiate and deal in bills, notes, warrants, coupons, stock, debentures and other negotiable and transferable instruments;

(*f*) Subject to this Act, to mortgage the property of the Corporation to secure the repayment of money borrowed by the Corporation.

...

THE PROHIBITED PUBLICATIONS (NO. 1) ORDER OF 31 JANUARY 1969 [7]

...

2. The importation of a newspaper entitled *The Nationalist* published and printed in Dar-es-Salaam and all past and future issues thereof are hereby prohibited.

THE PROHIBITED PUBLICATIONS (NO. 2) ORDER OF 5 FEBRUARY 1969 [8]

...

2. The importation of all past and future issues of a periodical publication entitled *World Revolution* purporting to be published by the Progressive Labor Party and printed by Union Labor, New York, is hereby prohibited.

[7] Published as Legal Notice No. 36 in *Kenya Gazette Supplement No. 10, Special Issue, Legislative Supplement No. 10*, of 3 January 1969.

[8] Published as Legal Notice No. 49 in *Kenya Gazette Supplement No. 14, Legislative Supplement No. 12*, of 12 February 1969.

THE CRIMINAL LAW AMENDMENT ACT 1969

Act No. 3 of 1969, assented to on 21 May 1969
and entered into force on 25 May 1969 [9]

2. The Penal Code is hereby amended by the repeal of section 26 and the substitution therefor of the following—

26. (1) A sentence of imprisonment for any offence shall be to imprisonment or to imprisonment with hard labour as may be required or permitted by the law under which such offence is punishable.

(2) Save as may be expressly provided by the law under which the offence concerned is punishable, a person liable to imprisonment for life or any other period may be sentenced to any shorter term.

(3) A person liable to imprisonment for an offence may be sentenced to pay a fine in addition to or in substitution for imprisonment:

Provided that—

(i) where the law concerned provides for a minimum sentence of imprisonment, a fine shall not be substituted for imprisonment;

(ii) where the law concerned provides for imprisonment together with corporal punishment such person shall be sen-

[9] *Special Issue, Kenya Gazette Supplement No. 22 (Acts No. 2)*, of 25 March 1969.

tenced to imprisonment and to corporal punishment.

3. The Penal Code is hereby amended by the repeal of section 27 and the substitution therefor of the following—

27. (1) A sentence of corporal punishment shall be to receive such number of strokes with a cane as may be specified by such sentence.

(2) No sentence of corporal punishment shall be passed upon any female or upon any male sentenced to death.

(3) Whenever a male person under the age of eighteen years is convicted of an offence for which he is liable to imprisonment the court may, in its discretion, sentence him to corporal punishment in addition to or in substitution for any other punishment to which he is liable:

Provided that no sentence of corporal punishment shall be imposed in default of payment of a fine.

(4) No sentence of corporal punishment shall be carried into effect until after the expiration of the time limited by law for the entry of an appeal in connexion with the proceedings concerned or, if such an appeal has been entered, until after the final disposal thereof.

(5) No corporal punishment shall be inflicted on a prisoner unless, immediately before such infliction, a medical officer has examined the prisoner and has certified that in his opinion such prisoner is physically fit to undergo such punishment.

(6) Corporal punishment shall only be inflicted on a prisoner in the presence of a medical officer, who may at any time during the carrying out of such punishment intervene and postpone the carrying out of the remainder of the punishment if, in his opinion, such postponement is necessary to obviate the risk of grave or permanent injury.

(7) If any person has been sentenced to corporal punishment in substitution for any other punishment to which he might have been liable, and such sentence cannot, either in whole or in part, be carried into effect, such person shall be kept in custody and shall, as soon as possible, be taken before the court which imposed such sentence and such court may, in its discretion, either remit such sentence or the remainder thereof, or pass upon such person any sentence to which he might have originally been liable.

(8) A person sentenced to corporal punishment without imprisonment may be detained in a prison or some other convenient place for such time as may be necessary for carrying the sentence into effect or for ascertaining that the same should not be carried into effect:

Provided that no person under the age of eighteen years shall be detained under this subsection in a prison.

(9) Corporal punishment shall be inflicted with a rod, cane or other instrument of a type approved for the purpose by the Minister, and the Minister may approve different types of rod, cane or other instrument for different ages of persons.

(10) Where no medical officer is readily available for the purposes of subsection (5) or (6) of this section, the duties and powers imposed and conferred by those subsections may be carried out and exercised by any medical practitioner.

4. The Penal Code is hereby amended by the repeal of section 308 and the substitution therefor of the following—

308. (1) Any person found armed with any dangerous or offensive weapon in circumstances that indicate that he was so armed with the intent to commit any felony is guilty of a felony and is liable to imprisonment with hard labour for a term of not less than ten or more than fourteen years together with corporal punishment.

(2) Any person who, when not at his place of abode, has with him any article for use in the course of or in connexion with any burglary, theft or cheating is guilty of a felony, and where any person is charged with an offence under this subsection proof that he had with him any article made or adapted for use in committing a burglary, theft or cheating shall be evidence that he had it with him for such use.

(3) Any person who is found—

(*a*) having his face masked or blackened, or being otherwise disguised, with intent to commit a felony; or

(*b*) in any building whatever by night with intent to commit a felony therein; or

(*c*) in any building whatever by day with intent to commit a felony therein, having taken precautions to conceal his presence,

is guilty of a felony.

(4) Any person guilty of a felony under subsection (2) or (3) of this section is liable to imprisonment with hard labour for five years or, if he has previously been convicted of a felony relating to property, to such imprisonment for ten years.

5. The Penal Code is hereby amended by the repeal of section 322 and the substitution therefor of the following—

322. (1) A person handles stolen goods if (otherwise than in the course of the stealing) knowing or having reason to believe them to be stolen goods he dishonestly receives the goods, or dishonestly undertakes, or assists in, their retention, removal, disposal or realization by or for the benefit of another person, or if he arranges to do so.

(2) A person who handles stolen goods is guilty of a felony and is liable to imprisonment with hard labour for a term of not less than seven or more than fourteen years.

. . .

(4) Where a person is charged with an offence under this section—

(*a*) it shall not be necessary to allege or prove that the person charged knew or ought to have known of the particular

offence by reason of which any goods are deemed to be stolen goods;

...

6. Section 7 of the Criminal Procedure Code is hereby amended by the insertion after subsection (1) of the following new subsection—

(1a) Notwithstanding the provisions of subsection (1) of this section, a subordinate court of the first class held by a Senior Resident Magistrate or a Resident Magistrate may, on the conviction by such court of any person under section 296, 297, 308 or 322 of the Penal Code, pass any sentence authorized for such offence.

7. The Criminal Procedure Code is hereby amended by the insertion after section 344 of the following new section—

344a. (1) Any person who is convicted of an offence under section 296, 297, 308 or 322 of the Penal Code shall be subject to police supervision for a period of five years from the date of his release from prison.

(2) A person who is subject to police supervision under this section shall, whilst he is so subject—

(*a*) reside within the limits of such area as the Commissioner of Prisons shall, in each case, specify in writing;

(*b*) not transfer his residence to any other area without the written consent of the police officer in charge of the specified area;

(c) not leave the area in which he resides without the written consent of the police officer in charge of that area;

(*d*) at all times keep the police officer in charge of the area in which he resides notified of the house or place in which he resides;

(*e*) present himself, whenever called upon by the police officer in charge of the area in which he resides, at any place in that area specified by that officer.

8. The Prisons Act is hereby amended by the repeal of section 43 and the substitution therefor of the following—

43. (1) Every prisoner under sentence of imprisonment with hard labour may be kept to labour, within or without the precincts of any prison, in such type of employment as the Commissioner may direct.

(2) Every prisoner under sentence of imprisonment may be required to engage in such type of employment approved by the Commissioner as the officer in charge may direct.

(3) A medical officer may order that a prisoner not be required to perform any labour, or any labour other than light labour, as the case may be, for such period as the physical and mental conditions of the prisoner may require.

...

THE NATIONAL ASSEMBLY AND PRESIDENTIAL ELECTIONS ACT 1969

Act No. 13 of 1969, assented to on 20 August 1969 and entered into force on 21 August 1969 [10]

...

3. (1) The Minister shall appoint a public officer to be the Supervisor of Elections who, subject to subsection (3) of section 32 of the Constitution, [11] shall have the general direction of and supervision over the administrative conduct of elections.

...

PART II

REGISTRATION OF ELECTORS

4. (1) Whenever the Minister, after consultation with the Electoral Commission, by order so directs, a register of electors shall be prepared in the prescribed manner in respect of all constituencies or in respect of such constituency or constituencies as may be specified in the order.

....

5. (1) No person shall at any time be registered as an elector in more than one constituency.

...

6. A person shall be disqualified for registration as an elector if he has within the preceding five years been convicted of an election offence or been reported guilty of an election offence by the election court.

7. Where a person has been adjudged or declared to be of unsound mind, sentenced to death or imprisonment, adjudged or declared bankrupt or convicted of an election offence, and he is thereby disqualified for being registered as an elector, then, if it is open to him to appeal against the decision (either with the leave of a court or other authority or without such leave), that person shall not be thereby disqualified for being so registered until the expiration of thirty days after the date of the decision or such further period as the Minister in his discretion may, at the request of the person, direct in order to enable the person to appeal against the decision.

10. *Kenya Gazette Supplement No. 65 (Acts No. 8)*, of 22 August 1969.

11 For extracts from the Constitution of Kenya, see *Yearbook on Human Rights for 1964*, pp. 171-179.

PART III

DETERMINATION OF QUESTIONS CONCERNING REGISTRATION

8. Any question whether a person is qualified to be registered as an elector shall be determined in accordance with this Part.

9. (1) A person who has duly applied to be registered and whose name is not included in the appropriate register of electors may submit a claim to the registration officer in the prescribed form and manner and within the prescribed time.

(2) A claim under subsection (1) of this section shall be determined by the registration officer in the prescribed manner, and an appeal shall lie, in the prescribed manner, to a court.

(3) No appeal shall lie from the decision of a court.

10. (1) A person who is registered in a register of electors may, in the prescribed manner, object to—

(*a*) His registration; or

(*b*) The registration in that register of electors of any other person; or

(*c*) The registration in that register of electors of a person who has made a claim under section 9 of this Act,

to a court.

(2) The objection shall be determined by the court, and no appeal shall lie from the decision of the court.

11. In this Part, "court" means any subordinate court of the first or second class having jurisdiction in the constituency concerned.

PART IV

ELECTIONS

12. (1) Where a Presidential election is to be held, the President or the person for the time being discharging the functions of the office of President, as the case may be, shall direct the Speaker to cause notice of the holding of the election to be published in the Gazette.

. . .

13. (1) For the purposes of a Parliamentary election—

(*a*) Consequent upon a dissolution of the National Assembly; or

(*b*) To supply a vacancy arising from any cause other than the dissolution of the National Assembly,

the Speaker shall issue a writ under his hand in the prescribed form addressed to the returning officer [12] of each constituency in which an Elected Member is to be returned.

. . .

14. (1) After a notice has been published in the Gazette under section 12 of this Act, every returning officer shall proceed to hold a Presidential election according to the terms of such notice and in accordance with the Regulations.

(2) After receiving a writ under section 13 of this Act, the returning officer to whom it is addressed shall proceed to hold the Parliamentary election according to the terms of the relevant notice published under subsection (3) of the said section and in accordance with the Regulations.

15. Every person whose name is entered on a register of electors for a particular constituency, and who produces an elector's card issued to him in respect of that registration, and no one else, shall be entitled to vote at any election for that constituency:

Provided that nothing in this regulation shall entitle any person who is prohibited from voting by any written law to vote or relieve that person from any penalties to which he may be liable for voting.

16. A person who is convicted of an election offence or who is reported guilty of an election offence by the election court shall not be qualified to be nominated for election as an Elected Member of the National Assembly for five years following his conviction or, as the case may be, following the report of the election court.

17. (1) Subject to the provisions of this section, a person shall be deemed to be nominated by a political party for election as a member of the National Assembly for the purposes of paragraph (*d*) of section 34 of the Constitution if he is declared to have received the greatest number of votes at a preliminary election held in accordance with this section and the Regulations.

(2) No person shall be nominated by a political party at a preliminary election, and no person shall put himself forward for such nomination, unless—

(*a*) He is qualified in all respects, other than such nomination, to be an Elected Member of the National Assembly; and

(*b*) He is qualified under, and has complied with any provisions of the constitution or rules of the political party concerned relating to members of that party who wish to stand as candidates at preliminary elections.

(3) The voting at all preliminary elections held within a constituency as part of a particular Parliamentary election shall be by secret ballot.

(4) Regulations regarding preliminary elections shall contain such provisions as the Minister may deem necessary to ensure—

(*a*) That all members and supporters of a political party who are entitled to vote at a Parliamentary election in the constituency concerned shall have the opportunity to vote in the preliminary election for the nomination of a candidate of that party for such constituency;

(*b*) That no other person shall be entitled so to vote;

(*c*) That the conduct of a preliminary election shall conform as closely as may be to that at a Parliamentary election.

[12] "Returning officer", as indicated in section 2, means a person appointed under the Regulations for the purpose of conducting any election under this Act.

PART V

VACANCIES IN THE NATIONAL ASSEMBLY

18. If the Speaker has reason to believe that the seat in the National Assembly of a member thereof has become vacant, he shall call for such evidence on the matter as he thinks necessary and may if he thinks fit consult the Attorney-General, and shall thereafter—

(*a*) If he is satisfied that the seat has become vacant, declare that the seat has become vacant, and publish notice of the declaration in the Gazette; or

(*b*) If he is not so satisfied, refuse so to declare.

PART VI

PETITIONS

19. Every application to the High Court under the Constitution to hear and determine a question whether—

(*a*) Any person has been validly elected as President; or

(*b*) Any person has been validly elected as a member of the National Assembly; or

(*c*) The seat in the National Assembly of a member thereof has become vacant,

shall be made by way of petition, and shall be tried by an election court consisting of three judges.

...

22. Upon receipt of a petition the election court shall peruse such petition and—

(*a*) If it considers that no sufficient ground for granting the relief claimed is disclosed therein may reject the petition summarily; or

(*b*) Shall fix a date for the trial of the petition.

23. (1) In the exercise by an election court of its jurisdiction—

(*a*) Witnesses shall be summoned and sworn in the same manner as nearly as circumstances admit as in a trial by the High Court in the exercise of its original civil jurisdiction and shall be subject to the same penalties for the giving of false evidence;

(*b*) The election court may compel the attendance of any person as a witness who appears to the court to have been concerned in the election or in the circumstances of the vacancy or alleged vacancy, as the case may be, and any person refusing to obey such order shall be guilty of a contempt of court;

(*c*) The election court may examine any witness so compelled to attend or any person in court, although such witness is not called and examined by any party to the petition, and after such examination the witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them.

...

24. (1) Where the Attorney-General is not the petitioner or the respondent in a petition, he or a person appointed by him shall attend the trial of such petition for the purpose of ascertaining whether any election offence has been committed and for any other purpose he thinks fit.

(2) Where the Attorney-General or a person appointed by him attends the trial of a petition under subsection (1) of this section, he shall have the same power to call witnesses, and to examine or cross-examine witnesses, called by parties to the petition, as those parties have.

25. No elector who has voted at any election shall, in any proceedings to question the election, be required to state for whom he has voted.

...

KUWAIT

NOTE [1]

1. Law No. 5 of 1968 regulates public aid and implements the provisions of Article 25 of the Universal Declaration of Human Rights. The said law provides for giving aid to widows, divorced women, deserted women, orphans, non-married women, disabled persons, old persons, sick persons, families of students, pregnant women, nursing women, destitute persons, families of prisoners and persons who are involuntarily unemployed.

2. Kuwait is a party to the Convention for the Elimination of All Forms of Racial Discrimination.

3. Kuwait is a party to the Convention for Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and its Final Protocol done at Lake Success on 21 March 1950.

4. Kuwait is also a party to the Convention No. 29 concerning forced or compulsory labour adopted in 1930.

5. The Courts of Kuwait have not made any decisions relating to human rights during the year 1969.

[1] Note furnished by the Government of Kuwait.

LAOS

The Government of the Kingdom of Laos has communicated, for publication in the *Yearbook on Human Rights for 1969*, the text of Act No. 57/30 of 1 October 1957, defining public rights and freedoms.[1]

[1] For the text of the Act, see *Yearbook on Human Rights for 1961*, pp. 206-208.

LEBANON

REPORT ON HUMAN RIGHTS UNDER LEBANESE LAW [1]

Despite the extremely difficult situation resulting from the bloody events which engulfed some of the countries of the Middle East in June 1967 and which have had repercussions far beyond the frontiers of the countries that participated in the military operations, Lebanon continues to implement with notable fidelity the principles of liberty, which are part of its fundamental structures. This "birth-place of man" cannot, if it is to remain true to itself, seriously infringe the fundamental rights of the individual.

Thus, Lebanese law continues to reflect the love of liberty felt by an entire people which throughout its history, protected by its impregnable mountains—those sanctuaries against tyranny—and by the sea, has kept intact its liberty and its relations with other countries.

It should be emphasized, today more than ever, that Lebanon's institutions, and in particular the officers of courts, whose independence is a constitutional principle, continue to serve as a bulwark against administrative arbitrariness and to promote a policy of social and economic development.

I. LIBERTY AND ADMINISTRATION

1. Individual liberty—prisons

Respect for the person of a prisoner is an essential part of respect for his individual liberty. Lebanese law therefore constantly seeks to improve the conditions of detention. Under a Decree of 6 January 1967, the prison regulations, which date from 1949, have been amended for the better in three major respects. Firstly, the doctors attached to penitentiaries are required to visit them at least three times a week. Secondly, prisoners are entitled to exercise for a total of three hours daily and to have access to worthwhile periodicals and books. Thirdly, the shower-bath system is organized in such a way that at least two baths a week must be allowed during the cold season and at least three a week throughout the rest of the year. [2]

2. Freedom of the press

(1) Freedom of the press is considered by the Lebanese courts to be a fundamental liberty; consequently, any serious infringement of it by the Administration is regarded as an "assault" and redress may be sought in the courts, which are the guardians of liberty. Thus, the Court of Cassation confirmed a judgement of the Court of Appeal of Beirut ordering the Lebanese Government to pay an amount equivalent to $US 6,500 in compensation for the damage sustained by a journalist as a result of the decision to introduce censorship of the press. That decision was taken by the Council of Ministers in order to deal with difficult domestic circumstances in 1958, and journalists were notified of it verbally by the Minister of Information. As early as 21 October 1958 the Conseil d'Etat, after stating that this had been a particularly serious infringement of the principle of liberty and of legality, inasmuch as censorship could only have been introduced by statute, annulled the verbal censorship order. Almost ten years later, the Court of Cassation finalized the protection against the particularly serious irregularity which the decision to censor newspapers represented. [3]

(2) An important order of the Court of Appeal of Beirut [4] pertaining to the press is published in the *Revue judiciaire libanaise* for 1968 (pp. 724-725). The order finds that realism in literature is not an offence against public decency, punishable by law. Two points deserve to be emphasized. The first is that articles 56 and 62 of the Press Code [5] conferred on the State Counsel-General to the Court of Appeal, to the exclusion of any administrative authority, sole power of suspension and seizure, which in the case of *Local* publications belonged to the Ministry of Information. Only the *parquet* may institute proceedings in such matters.

The second point is the question of defining offences against public decency, punishable under article 56 *sexies* of the Press Code and, more generally, under article 532 of the Penal Code, neither of which gives any definition of the term. The legislator's silence was interpreted by the Court as an expression of intent to leave the

[1] Note prepared by Dr. Hassan-Tabet Rifaat, member of the Conseil d'Etat, lecturer at the University of Lebanon and the Faculty of Law and Economic Science, Beirut, government-appointed correspondent of the *Yearbook on Human Rights*.

[2] Decree No. 6394, 6 January 1967, *Journal officiel* 1967, p. 27.

[3] Cass. No. 121, 4 June 1968, *Revue judiciaire libanaise* 1969, p. 1273.

[4] Appeal of 23 July 1964, *Revue judiciaire libanaise* 1968, pp. 724-725.

[5] Act of 14 September 1962.

definition "to the discretion of the judge, whom it behoves to consider the case brought before him in all its aspects, taking into account all the circumstances and all the parties involved. . .". Before the criminal nature of a publication can be judged, it is necessary to consider it in its entirety in order to discern the intent of the author. The Court accordingly rejected the prosecution's argument that certain expressions were obscene. In exonerating the novelist, the Court noted that "the defendant had left her native village to go to Paris, where she found herself in an environment which was completely different from her own and which she sought to describe; she denies having tried to arouse sexual instincts. . .". The Court stated that "it is satisfied that the novelist, in describing reality . . . in its most repulsive aspects, sought only to give a lesson to those who might be tempted by a dissolute way of life".

3. Political rights—Membership in the Communist Party or the People's Social Party—Article 30 of the Universal Declaration of Human Rights—Article 17 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

The Conseil d'Etat of Lebanon had occasion to consider the attitude of the Lebanese Administration, which had refused to issue to N.C., leader of the Communist Party, and to G.A., an influential member of the People's Social Party (Parti populaire social), the final receipts which would have signified acceptance of their candidacy for the legislative elections in the spring of 1968.

In ruling first on the case of Mr. N.C., [6] the Conseil d'Etat evolved a doctrine which it took as the basis for rejecting the petition of Mr. G.A. ten days later; [7] in accordance with this doctrine, the attitude of the Administration was approved as being in conformity with article 34 of the Election Act of 26 April 1960. This article constitutes the corner-stone of the law on the subject under discussion here. Briefly, it provides that any Lebanese wishing to be a candidate in the legislative elections must formally announce his candidacy and submit to the Ministry of the Interior a notarized application accompanied by the documents required under the Act. He is then issued with a *"provisional"* receipt. However, this document does not entitle him to be included in the list of candidates, since he needs a *"final"* receipt, issued within five days after delivery of the first one, certifying that his candidacy has been accepted as fulfilling the legal requirements. An express or tacit decision by the Minister of the Interior not to issue the *final* receipt may be referred to the judge responsible for reviewing acts in excess of authority.

In order to review the case the judge must solve a preliminary problem; the Minister must, when refusing to approve a candidacy, act strictly within the law. On what grounds can his refusal be justified? This is the first question. The judge will then have to decide on the extent of his review; will it concern only the material accuracy of the facts, or will it extend also to their legal implications? This is the second question.

(1) *Rejection of a candidacy*

The key to the matter is the above-mentioned article 35, paragraph 1 of which raises no difficulty; it authorizes the Minister of the Interior to reject any candidacy which does not fulfil the conditions laid down by the Act (citizenship, full age, no convictions for offences of a dishonourable nature, etc.).

Paragraph 2, however, is worded more ambiguously and requires a more careful approach, since it authorizes the Minister not to issue the final receipt "for reasons other than those provided for in paragraph 1", although the person concerned can, of course, refer any such refusal for investigation to the Conseil d'Etat. Upon the latter guardian of liberty devolves the awesome task of ensuring the protection of a fundamental right, namely, the right to solicit the votes of the electorate. For this purpose, the Conseil d'Etat has had to apply principles of equity, since the Act, in its excessive vagueness, contains nothing to limit the judge's power of discretion. It has accordingly had to determine what the "reasons other than those provided for in paragraph 1" of article 35 should be deemed to encompass. The answer given by the Conseil d'Etat is that this clause refers to "cases arising from legal situations which create an incompatibility between a given candidacy and the purpose of representation of the people, within the bounds of Lebanese public policy". This definition distinguishes between the general conditions of ineligibility, which are judged *uniformly* for everyone (age, citizenship, etc.), and the *special* conditions which have to be judged individually for each candidacy, the criterion here being the compatibility of the candidacy with Lebanese public policy. This criterion has been defined as it relates to the candidate's membership in a prohibited political party.

A broad interpretation was first of all excluded. The Conseil d'Etat refused to recognize the right of the Minister of the Interior to reject a candidacy simply because the candidate belonged to an unauthorized or dissolved political association; no doubt it did not wish to espouse the quarrels or suspicions of the Administration.

"Whereas," stated the Conseil d'Etat, "refusal to approve a candidacy on the ground that the candidate is a member of an unauthorized or prohibited political party constitutes a serious precedent calculated to open the way to abuses *unless it is subordinated to the purpose of representation of the people, as required by Lebanese public policy.*"

After ruling that the scope of the Act could not encompass a ground for automatic refusal over which it could have had only a minimal

[6] C.E. No. 368, 19 March 1968, *Revue judiciaire libanaise* 1968, p. 367.

[7] C.E. No. 395, 29 March 1968; *Revue judiciaire libanaise* 1968, p. 371. With regard to these two decisions, reference may be made to the note by H. T. Rifaat in *Proche Orient, Etudes juridiques*, published by the Faculty of Law and Economic Sciences, issue of May-August 1969, pp. 107 *et seq.*

power of review, the Conseil d'Etat specified the kind of political associations whose members might be refused access to the Chamber of Deputies. Adopting the criterion of "the purpose of representation of the people", it held that the only persons who could be deemed ineligible were members of parties "which are in fact branches of foreign parties and which adopt programmes and policies at variance with the situation in Lebanon, particularly when such parties have been dissolved or have not been authorized".

This reasoning enabled the Conseil d'Etat to treat alike the People's Social Party, which "has remained true to its doctrine—a doctrine that is to a great extent alien to Lebanon and to the constitutional entity of the country", and the Communist Party, which was strictly subordinate to foreign communist parties. "Their programme", stated the Conseil d'Etat, "is in opposition to the political system laid down in the Lebanese Constitution and is contrary to Lebanese society and Lebanese public policy."

This inevitably brings to mind article 30 of the Universal Declaration of Human Rights and article 17 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Without having to refer to those articles, the Lebanese Conseil d'Etat has evolved similar principles of juridical preventive measures. Obviously, these rulings do not deprive the Administration of its power of discretion, and it may well be that, with the imponderables which can never be excluded in politics, the Lebanese Ministry of the Interior will one day issue "final receipts" to members of political parties whose principles are deemed, according to the decisions discussed here, to be incompatible with "the purpose of representation of the people, as required by Lebanese public policy".

(2) *The judge's power of investigation*

On 6 January 1968, the Conseil d'Etat rendered a decision which is of the greatest importance as regards the extent of the power of investigation possessed by the judge responsible for reviewing acts in excess of authority, particularly where public liberties are concerned. The Conseil d'Etat very rightly ruled that in this field its power of review extended also to the Administration's estimation of the danger presented by the facts, in order to verify whether the administrative decision was *compelled* by the circumstances of time and place". [8]

This ruling was confirmed three months later by the two decisions discussed here and was *extended to political rights.*

"Whereas," stated the Conseil d'Etat, "in the case of . . . public liberties judicial review is not limited to the accuracy of the facts, it extends also to their legal implications, to the estimation made in the (contested) act of the danger they present, and to the question whether they justify the action decided upon, regard being had to the circumstances of time and place."

The Conseil d'Etat added that the power of review was "general and absolute", always and in all cases, whether the relevant texts were protective or restrictive. This judicial interpretation is dangerous since it might, in its rigidity, clash with the will of the legislator. The judge, being bound by the principle of legality, must take into account the socio-political climate as reflected by the legislation in force. The more extensive the field of liberty, the wider will be the judge's power of review. Conversely, the judge will have to confine himself to a narrower investigation when liberty is restricted.

4. TRADE UNIONS

(1) The Conseil d'Etat is not competent to take cognizance of claims relating to trade union activities; such cases being a matter for the ordinary courts of law. Consequently, applications for the annulment of trade union elections may not be made to the administrative tribunals. [9]

(2) The constitution of trade unions composed of employees of the autonomous agencies is not within the purview of the Minister of Social Affairs; the latter is competent to authorize the constitution of professional unions, governed by the Labour Code, which aims at "ensuring equilibrium between capital and labour, preventing the ascendancy of one over the other and safeguarding reciprocal rights and obligations by means of free and informed discussion calculated to promote the continued stability and development of labour, in the interests of all". [10]

II. ECONOMIC AND SOCIAL RIGHTS

1. RIGHT OF OWNERSHIP—ECONOMIC FREEDOM

(1) The Court of Appeal of Jabal Lubnan applied article 15 of the Lebanese Constitution in refusing exequatur for a bankruptcy order by the court of first instance of Aleppo, Syria, dated 21 February 1967, against a textile manufacturer whose mill had been nationalized in Syria and who had been unable as a result to honour his commitments.

The Lebanese court found that the cessation of payments could not be imputed to the manufacturer and that it had been so imputed by the nationalization decision. The circumstances in which that decision had been taken, including the lack of any compensation, were totally incompatible with the norms laid down in article 15 of the Lebanese Constitution, which reads as follows: "Rights of ownership shall be protected by law. No person may be expropriated except on grounds of public utility in the circumstances defined by law and on condition that fair compensation is paid beforehand." Thus, the foreign judgement was held to be contrary to Lebanese

[8] C.E. No. 6, 6 January 1968, *Revue judiciaire libanaise* 1968, p. 375. Reference may be made to the note by H. T. Rifaat in *Proche Orient, Etudes juridiques* 1968, pp. 89 *et seq.*

[9] C.E. No. 1763, 8 December 1967, *Rec.* 1968, p. 10.

[10] C.E. No. 982, 22 October 1968, *Rec.* 1968, p. 180.

public policy and the application for exequatur was rejected. [11]

(2) When an act of the Administration seriously infringes the right of private ownership, a petition for compensation may be made to the ordinary courts of law, as the guardians of property. On appeal by the owners of lands which had been used by UNRWA to set up a camp for Palestine refugees, the Court of Cassation found that UNRWA was merely executing the decision of the Lebanese authorities earmarking certain lands for the setting-up of the camp. Sole liability for compensation therefore lay with the Lebanese Administration. [12]

(3) Where a company holding a concession installs high-voltage lines across another's property, it is liable for compensation as having infringed the right of ownership only if, after having been given notice to remove the lines, it refuses to comply with the request of the owner wishing to cultivate or work is land. [13]

2. Freedom of commerce and industry

In the *Yearbook on Human Rights for 1965* we reported a ruling that was notably conducive to freedom of commerce and industry. [14] In 1968 the Conseil d'Etat, on appeal by the same petitioner, whom the Administration persisted in prosecuting, rendered a decision confirming its previous ruling.

In connexion with article 107 of the Highway Code, promulgated on 26 December 1967, paragraph 2 of which provides that a licence to manufacture vehicle registration plates must be obtained in advance, the Conseil d'Etat held that the Administration did not have unfettered jurisdiction and was bound to issue the licence upon request if the applicant fulfilled the conditions laid down by law. Those conditions could be set only by law, and any additional condition, including the imposition of a time-limit on the validity of a permit, was void. [15]

3. Social rights—pharmacy

Pending the generalization and extension of the social security system (sickness-maternity branch), which is in fact taking place, the cost of pharmaceutical products is a burden on the budgets of the middle class and the less well-to-do. Consequently, the prohibition of the sale of drugs by pharmacists at less than the rates officially laid down was a socially unjust measure. The legislator rectified this in 1968 by providing that "any pharmacist is completely at liberty to sell drugs at prices below the official rates" without incurring the risk of disciplinary or other penalties. [16] Of course, the 1968 Act provides only a partial measure of freedom. Since it is to be interpreted strictly, the pharmacist must conform to professional standards, including that laid down in article 84 of the Act organizing the profession, [17] which requires manufacturers to sell drugs "only to pharmacists who are proprietors of pharmacies". Violation of article 84 is a ground for disciplinary proceedings. [18]

III. PUBLIC LIBERTIES IN TIMES OF EXCEPTIONAL CIRCUMSTANCES

(1) Article 10, paragraph 2, of Legislative Decree No. 10 of 7 July 1967 assigns to the Commander-in-Chief of the Army "the responsibility for maintaining order, whenever that responsibility is conferred upon the army". In that event all the armed forces, including the police and gendarmerie, are placed at the disposal and under the direct authority of the Commander-in-Chief.

When a crisis necessitates the application of this provision, [19] no situation derogating from the ordinary law with respect to liberties is created; the usual protective rules subsist, and the Army has no authority under the Legislative Decree to restrict the rights of individuals. There is simply a change of command.

(2) The situation with respect to liberties is more seriously affected when a state of emergency is decreed. [20] In case of imminent danger resulting from foreign war, armed insurrection or disturbances threatening public safety or public order —in other words, in case of events constituting a public calamity [21]—the legal rules for the protection of liberties that are laid down to govern the life of the nation during periods of absolute tranquility cannot be applied to the letter without the risk of incalculable consequences.

Consequently, in Lebanon as elsewhere, the law has made provision for exceptional rules that apply in case of a state of emergency, which is decreed by the Council of Ministers, subject, as stipulated in article 2, "to the parliament's meeting to consider the measure within eight days, *even if it is not in session*".

Three sets of consequences then arise:

(i) First, with respect to general police powers; these are held by the Commander-in-Chief of the Army, who assumes authority over the internal security forces, fireman, forest rangers, and so on.

(ii) Next, the military authorities are given special powers of the kind encountered, in comparative law, in a number of legal systems;

---

[11] Jabal Lubnan Appeal, No. 185, 1 April 1969, *Revue judiciaire libanaise* 1969, pp. 1226 et seq.

[12] Cass. No. 3, 7 January 1969, *Revue judiciaire libanaise* 1969, p. 860.

[13] Cass. No. 187, 18 December 1968, *Revue judiciaire libanaise* 1969, p. 514. See also Beirut Appeal, No. 1114, 31 July 1969, *Revue judiciaire libanaise* 1969, p. 1089.

[14] *Yearbook on Human Rights for 1965*, p. 190, No. 6.

[15] C.E. No. 1030, *Rec.* 1968, p. 176.

[16] Act comprising a sole article, No. 15/68, 26 January 1968, *Journal officiel* 1968, p. 267.

[17] Act of 31 October 1950.

[18] Beirut Appeal, No. 1333, 31 October 1968, *Revue judiciaire libanaise* 1968, p. 1354.

[19] *Journal officiel* 1967, No. 55, p. 965.

[20] Legislative Decree No. 52, 5 August 1967, *Journal officiel* 1967, No. 65, p. 1260.

[21] Legislative Decree No. 52, article 1.

they relate, for instance, to domiciliary searches, prescribed residence for persons whose activities are a threat to public security, the prohibition of meetings contrary to public policy and the institution of military censorship over the information media.

(iii) Transfer to the military courts of violations of the state of emergency, violations of the Constitution and, in certain cases, offences relating to unlawful passage across the frontiers is an automatic consequence of the declaration of a state of emergency.

The application of these extreme measures is not, fortunately, a common occurrence in Lebanon, where public opinion is very sensitive and chafes at the protracted use of special powers.

LIBYA

CONSTITUTIONAL PROCLAMATION OF 11 DECEMBER 1969 [1]

The Revolutionary Command Council, in the name of the Libyan Arab people who pledged to restore their freedom, enjoy the wealth of their land and live in a society in which every honest citizen has the right to well-being and abundance, who are fully determined to smash the fetters impeding their movement and preventing them from joining the rank of their brethren all over the Arab homeland to struggle for the restoration of every span of land desecrated by colonialism and to eliminate obstacles preventing Arab unity from the Atlantic to the Arabian Gulf, who believe that peace cannot be established save on the basis of justice, who appreciate the significance of strengthening relations with all nations struggling against colonialism, who discern that the alliance between reactionary forces and colonialism is responsible for backwardness they suffer from despite the abundance of their natural resources as well as for corruption spreading in the governing structure, and who discern their responsibilities for the establishment of a national, democratic, progressive and unitary government, and in the name of the popular will expressed on September 1 by the armed forces who toppled the monarchial régime and proclaimed the Libyan Arab Republic in defence and support of the revolution to help it achieve its objectives of freedom, socialism and unity, this constitutional proclamation is made to provide a basis for the régime at the stage of completing the national and democratic revolution and until a permanent constitution is prepared expressing the achievements of the revolution and paving the path before it.

CHAPTER I

THE STATE

Article 1. Libya is an Arab, democratic and free republic with sovereignty of the people who constitute a part of the Arab nation and whose objective is comprehensive Arab unity. The Libyan territory is a part of Africa and is called the Libyan Arab Republic.

Article 2. Islam is the religion of the State and Arabic is its official language; the State protects the freedom of religious ceremonies inaccordance with observed customs.

Article 3. Social security is the basis of national unity and the family based on religion, ethics and patriotism is the basis of society.

Article 4. Work in the Libyan Arab Republic is a right, duty and honour for every capable citizen. Public offices are dutiful for the state employees who aim in discharging their duties at serving the people.

Article 5. All citizens are equal before the law.

Article 6. The State aims at materializing socialism by applying social justice that is banning any form of exploitation. The State endeavours through the establishment of socialist relations in society, to achieve self-sufficiency in production and equity in distribution with the aim of eliminating differences among classes in a peaceful manner and to create a welfare society inspired by Islamic and Arabic heritage and its humanitarian values and the specific circumstances of Libyan society.

Article 7. The State endeavours to liberate the national economy from puppetry and foreign influence so as to turn it into a national and productive economy dependent on public ownership of the Libyan people and private ownership of individuals.

Article 8. Public ownership is the basis to evolve and develop the society and to achieve self-sufficiency in production. The unexploiting private ownership is guaranteed and will not be expropriated save in accordance with the law. Legacy is a right to be administered by the Islamic Shari'a.

Article 9. The State will lay down a regulation for comprehensive national planning, economically, socially and culturally. Co-operation between the public and private sectors will be observed to achieve the objectives of the economic growth.

Article 10. Titles of honour and civilian ranks are banned and all titles of honour previously granted to the members of the former dynasty and retinue are cancelled.

Article 11. Extradition of political refugees is banned.

Article 12. Homes are inviolable and shall not be entered or searched except in the circumstances and in the way defined by the law.

Article 13. Freedom of opinion is guaranteed within the limits of the people's interests and the principles of the revolution.

[1] Text furnished by the Government of the Libyan Arab Republic.

Article 14. Education is a right and an obligation for all Libyans. It is obligatory until the end of the elementary stage, and it is guaranteed by the State through the establishment of schools, institutions, universities and cultural and educational institutions in which education is free. A law will organize the establishment of private schools. The State pays special attention to the welfare of youth, physically, mentally and morally.

Article 15. Medical care is a right guaranteed by the State through the establishment of hospitals and health centres.

Article 16. Defence of the homeland is a holy duty and conscription is an honour for the Libyan man.

Article 17. Taxes cannot be imposed, amended or cancelled without a law. Nobody can be exempted from paying taxes except in cases stated in the law. Also nobody can be asked to pay taxes, unless they are within the limits of the law.

CHAPTER II

RÉGIME

Article 18. The Revolutionary Command Council is the highest authority in the Libyan Arab Republic; it exercises the functions of supreme sovereignty, legislation and deciding the general policy of the State on behalf of the people. By this power it will adopt all necessary measures to protect the revolution and the régime stemming from it.

...

Article 25. Martial laws and the state of emergency are announced through decisions from the Revolutionary Command Council whenever the internal or external security of the state are in danger, and whenever it is essential for protecting and safeguarding the revolution.

...

Article 27. The jurisdiction, with its decisions, is aimed at the protection of the principles of the community and the rights, dignity and freedom of individuals.

Article 28. Judges are independent and there is no authority upon them regarding their verdicts within the law and conscience.

Article 29. Verdicts are issued and implemented in the name of the people.

Article 30. Everyone has the right to resort to courts according to the law.

Article 31. (*a*) There is no crime and no penalty but according to the law.

(*b*) The penalty is personal.

(*c*) The defendant is innocent until proved guilty. All essential guarantees should be provided for exercising the right of defence. It is prohibited to harm the accused or imprisoned people, physically or psychologically.

Article 32. The annulment or commuting of a penalty will be through decision from the Revolutionary Command Council but the general amnesty should be through the law.

CHAPTER III

MISCELLANEOUS AND TRANSITORY PROVISIONS

Article 33. The constitution of October 7 1951,[2] its amendments and all related consequences are cancelled.

...

Article 37. This constitutional proclamation will be effective until the issue of a permanent constitution. It cannot be amended without another constitutional proclamation from the Revolutionary Command Council if deemed necessary in the interest of the revolution.

---

[2] For extracts from the Constitution of 7 October 1951, see *Yearbook on Human Rights for 1951*, pp. 225-228.

LIECHTENSTEIN

ACT OF 21 DECEMBER 1968 AMENDING THE FAMILY ALLOWANCES ACT [1]

1

The Family Allowances Act of 6 June 1957 (as amended by the Acts of 30 January 1961, 3 February 1965,[2] 27 June 1965 and 10 December 1965) shall be amended as follows to include:

"Article 3 (d)

"Foreign frontier commuters and seasonal workers who are gainfully employed in Liechtenstein, in proportion to the duration of their monthly employment. The Government shall regulate the details by ordinance.

"Article 5, paragraph 1 (a)

"Under article 3 (*a*), (*c*) and (*d*), on the first day of work and ends on the day entitlement to wages ceases. The Government shall regulate the details by ordinance.

"Article 6, paragraph 3

"Entitlement to children's allowances shall begin in the month in which the child is born and shall end in the month after he has completed his eighteenth year, or earlier, if the child in respect of whom an entitlement to children's allowances exists, should marry.

"Article 7

"(1) Family allowances may be claimed for children in the following categories: (*a*) children born in wedlock; (*b*) step-children and adopted children; (*c*) illegitimate children, provided they live in the same household as the person making the claim or if such person can be proved to be fully responsible for supporting the child; (*d*) foster-children who are accepted for permanent care and upbringing without remuneration or with only negligible remuneration.

"(2) Where more than one person is qualified to claim for a child, entitlement to family allowances shall normally vest in the person in whose household the child lives or who is fully responsible for supporting the child. Where both spouses, provided they are not separated, fulfil the conditions for a claim, the husband shall be entitled to the allowances.

"(3) Only one allowance may be paid for any one child.

"Article 22, paragraph 2

"(2) To cover the costs incurred in paying family allowances to employees, employers shall make a contribution of 2.5 per cent of the wages paid in cash and in kind, provided that the contribution prescribed in the Act concerning Old Age and Survivors' Insurance applies to such wages."

2

This Act shall enter into force on 1 January 1969.

[1] *Liechtensteinisches Landesgesetzblatt*, No. 5, of 29 January 1969.

[2] For extracts from the Act as amended on 3 February 1965, see *Yearbook on Human Rights for 1965*, p. 195.

ORDINANCE OF 27 JANUARY 1969 CONCERNING GRANTS TO STUDENTS ATTENDING TRAINING ESTABLISHMENTS FOR SOCIAL WORKERS AND TEACHERS OF RETARDED CHILDREN [3]

Article 1. Students attending recognized training establishments for social workers and teachers of retarded children shall, for as long as there is an acute shortage of manpower in those professions in Liechtenstein, be accorded the same treatment in the awarding of educational grants and loans as students attending universities and seminaries.

[3] *Liechtensteinisches Landesgesetzblatt*, No. 12, of 14 February 1969.

ACT OF 23 MAY 1969 CONCERNING THE PROTECTION OF PRIVACY UNDER PENAL LAW [4]

Article 1. Any person who, without the consent of all parties concerned, intercepts with a listening device, or makes a sound recording of, a private conversation among third parties,

Any person who profits from, or passes on to a third party, information which he knows, or must assume, to have come to his knowledge as a result of an offence under paragraph 1,

Any person who preserves or makes available to a third party a recording which he knows, or must assume, to have been produced as a result of an offence under paragraph 1,

Shall, upon complaint by the injured party, be liable to up to three years' rigorous imprisonment or a fine of up to 20,000 francs.

Article 2. Any person who, being a participant therein, makes a sound recording of a private conversation without the consent of the other parties concerned,

Any person who preserves, profits from or makes available to a third party a recording which he knows, or must assume, to have been produced as a result of an offence under paragraph 1, or who discloses to a third party the contents of such a recording,

Shall, upon complaint by the injured party, be liable to up to one year's rigorous imprisonment or a fine of up to 20,000 francs.

Article 3. Any person who observes by means of a visual recording device, or records on an image carrier, a situation involving encroachment on the privacy of another person, or a not otherwise generally accessible situation involving the private life of another person, without the latter's consent,

Any person who profits from or makes known to a third party a situation which he knows, or must assume, to have come to his knowledge as a result of an offence under paragraph 1,

Any person who preserves or makes available to a third party a recording which he knows, or must assume, to have been produced as a result of an offence under paragraph 1,

Shall, upon complaint by the injured party, be liable to up to three years' rigorous imprisonment or a fine of up to 20,000 francs.

Article 4. Any person who intercepts a conversation conducted over a telephone system connected to the telephone exchange, using a telephone station or bridged extension authorized by the Telegraph and Telephone Administration, or who makes a sound recording of such a conversation,

Any person who intercepts a conversation conducted over a telephone system or intercommunication system not connected to the telephone exchange, using a telephone station or bridged extension forming part of that system, or who makes a sound recording of such a conversation,

Shall not be liable to punishment either under article 1, paragraph 1, or under article 2, paragraph 1.

Article 5. Any person who manufactures, imports, exports, acquires, stores, possesses, transports, gives, sells, rents, lends or otherwise brings into circulation, or advertises or gives information concerning the manufacture of, technical devices serving in particular for the illegal interception or illegal recording of sounds or pictures shall be guilty of an offence punishable by up to three years' rigorous imprisonment or a fine of up to 20,000 francs.

Where the offender acts in the interests of a third party, the latter, if he knew of the offence and did not do all he could to prevent it, shall be liable to the same penalty as the offender.

Where the third party is a legal person, a general or limited partnership or a private concern, paragraph 2 shall apply to those persons who acted or should have acted in its name.

Article 6. Any person who maliciously or wantonly misuses a telephone station connected to the telephone exchange in order to harass or annoy another person shall, upon complaint by the injured party, be liable to up to three months' imprisonment or a fine of up to 5,000 francs.

[4] *Ibid.*, No. 34, of 8 July 1969.

ACT OF 12 JUNE 1969 AMENDING THE STATE EDUCATION AND ADVANCED TRAINING GRANTS ACT [5]

I

The State Education and Advanced Training Grants Act of 30 January 1961, *Landesgesetzblatt* 1961, No. 13, as amended by the Acts of 18 November 1964, *Landesgesetzblatt* 1965, No. 2, and 21 December 1966, *Landesgesetzblatt* 1957, No. 9, is hereby amended and supplemented as follows:

[5] *Ibid.*, No. 38, of 23 July 1969.

Article 7, paragraph 3

Education and advanced training grants may, with the authorization of the Government, be awarded to foreigners resident in Liechtenstein, provided that one parent or the recipient himself has held a residence permit issued by the aliens' police for at least ten years.

...

Article 12, paragraph 5

In particularly deserving cases, such as complete disability of the father of the family, fatherless, motherless or orphaned children or difficult financial circumstances, the Grants Commission may, with the consent of the Government, exceed the ceilings for study grants by up to 100 per cent, if the ability, diligence and conduct of the recipient justify such action. Before such an increased grant is awarded, a tax-free study loan must already have been claimed.

Article 16, paragraph 1

The same conditions shall apply to the award of a tax-free study loan as to a study grant.

...

ACT OF 12 JUNE 1969 CONCERNING UNEMPLOYMENT INSURANCE[6]

First part

PURPOSE AND ORGANIZATION

I. Purpose

Article 1. (1) The purpose of the unemployment insurance scheme is to protect insured workers against the economic consequences of unemployment.

(2) For this purpose, it shall pay, as prescribed by law, partial compensation for losses in income incurred by insured workers which are beyond their control and which are due to economic circumstances or attributable to other lay-offs defined as compensable in accordance with article 31.

(3) The Government may take action to counter unemployment.

II. Organization

Article 2. The State shall be responsible for administering the unemployment insurance scheme as prescribed in this Act. The accounts of the scheme shall be kept separate from those of the State.

Article 3. A dependent fund called the "Liechtenstein Unemployment Insurance Fund" shall be established, into which the contributions of employers, insured workers and the State and other income of the Fund shall be paid, and from which the unemployment benefits and, as appropriate, contributions towards countering unemployment shall be made. It will be referred to in this Act as the Insurance Fund.

...

[6] *Ibid.*, No. 41, of 26 July 1969.

Second part

INSURED PERSONS

I. Insurability

Article 13. (1) Only insurable persons may be eligible for insurance.

(2) A person shall be insurable if he: (*a*) is regularly employed in a verifiable full-time gainful occupation; (*b*) is employable by virtue of his mental and physical skills and personal circumstances; (*c*) is at least sixteen years of age; and (*d*) is resident in Liechtenstein.

Article 14. Male and female apprentices to a recognized trade shall be insurable during the last six months before the end of their apprenticeship, provided they meet the requirements laid down in article 13, paragraph 2, sub-paragraphs (*b*) to (*d*). The provisions of this Act shall apply *mutatis mutandis* to insurable male and female apprentices, the master being equated with the employer and the apprenticeship with the employment relationship.

Article 15. Persons in special circumstances, for example workers employed in an independent secondary occupation or whose activity is difficult to verify, apprentices, co-working family members of the owner of the enterprise and foreign workers not resident in Liechtenstein may be recognized as insurable by decision of the *Landtag*.

Article 16. (1) All insurable persons employed by an enterprise established in Liechtenstein must be insured unless one of the following exceptions apply.

(2) The following shall be exempt from the insurance requirement: (*a*) persons over sixty-five years of age; (*b*) officials and employees of the State, the districts or other public bodies, institutions and agencies; (*c*) clergymen and persons in holy orders; (*d*) servants employed exclusively in

private households; (*e*) agricultural workers; (*f*) married women not separated from their husbands.

...

II. VOLUNTARY INSURANCE

Article 20. Insurable persons not subject to mandatory insurance may participate in insurance schemes on a voluntary basis, provided they are not over sixty years of age. This shall also apply, in particular, to workers whose employers are neither established nor have a place of business in Liechtenstein.

...

THIRD PART

UNEMPLOYMENT BENEFITS

I. CLAIMS AND ENTITLEMENT

Article 26. Insurance payments to insured persons entitled to claim shall be in the form of unemployment benefits.

Article 27. Insured persons shall be entitled to claim unemployment benefits if they: (*a*) were properly insured or subject to mandatory insurance during the last six months before the beginning of unemployment; (*b*) have been laid off and are entitled to compensation; (*c*) are employable during the lay-off; (*d*) have reported to the authorities in accordance with regulations.

...

IV. CALCULATION OF UNEMPLOYMENT BENEFITS

Article 36. (1) Unemployment benefits shall be paid in daily units, which shall be calculated on the basis of the insured worker's covered earnings and of his maintenance and support obligations.

...

Article 37. The daily unit shall consist of a basic benefit together with supplements for the fulfilment of maintenance or support obligations.

Article 38. The basic benefit shall amount to 70 per cent of the covered daily earnings in the case of married insured workers and those treated as such and to 60 per cent of the said earnings in the case of other insured workers.

...

Article 40. The daily unit shall be reduced by the amount by which it exceeds 85 per cent of the covered daily earnings.

Article 41. (1) The maximum number of daily units which an insured worker shall be entitled to claim in the course of a calendar year shall be determined by the period of insurance completed by him before the beginning of unemployment. The said maximum number shall be: 60 complete daily units if the period of insurance is at least six months; 80 complete daily units if the period of insurance is at least twelve months; 100 complete daily units if the period of insurance is at least twenty-four months.

(2) No insured worker shall receive benefits totalling more than 360 daily units after he has reached the age of sixty-five.

(3) In periods of prolonged high unemployment, the Government may, by ordinance, increase the maximum number provided for in paragraphs (2) and (3) by not more than one-half for the entire country or for particular economic sectors.

...

FOURTH PART

FINANCING

I. FUND RAISING

Article 49. (1) The funds for the payment of unemployment benefits shall consist of the insurance contributions of insured workers and employers, and State contributions (article 57).

(2) Insurance contributions for workers subject to mandatory insurance shall be paid in equal amounts by the insured worker and his employer; the same shall apply to voluntarily insured workers who are no longer subject to mandatory insurance solely because of their age. In other cases, employers shall be under no obligation to pay a share of the contributions for voluntarily insured workers.

II. INSURANCE CONTRIBUTIONS

Article 50. The insurance contribution to be paid for each insured worker shall be assessed as a permillage of the earnings liable to such contribution.

...

III. STATE CONTRIBUTIONS

Article 57. (1) The State shall make contributions to payments from the Insurance Funds through a guarantee fund constituted for this purpose (paragraph 2).

...

(2) The guarantee fund from which the contributions referred to in paragraph 1 are to be paid shall be constituted on the date of entry into force of this Act, with a capital of 1 million francs, and shall be administered by the Government.

...

LUXEMBOURG

ACT OF 19 MARCH 1969 AMENDING CERTAIN PROVISIONS CONCERNING THE CRIMINAL POLICE AND *FLAGRANTE DELICTO* CONTAINED IN THE CODE GOVERNING PRELIMINARY INVESTIGATIONS IN CRIMINAL CASES, AND ABROGATING ARTICLE 65 OF THE ACT OF 23 JULY 1952 CONCERNING THE ORGANIZATION OF THE ARMED FORCES [1]

...

Article IV. Articles 83 to 86 of the Code governing preliminary investigations in criminal cases shall be abrogated and replaced by the following provisions:

"*Article 83.* If it is impossible for a witness to appear, the examining judge shall visit him to take his evidence or shall issue a commission rogatory for the purpose in accordance with the article which follows.

"*Article 84.* The examining judge may issue a commission rogatory calling upon any cantonal judge in his judicial district, any officer of the criminal police in that district or any examining judge to prepare all the documentation relating to preliminary investigations in the localities under their respective jurisdictions. To the extent authorized by the commission rogatory, the judge or officer of the criminal police thus delegated shall exercise the full powers of the examining judge and shall observe all the rules by which the latter would be bound if he were undertaking the investigation himself. However, the *procureur d'Etat* and assistant officers of the criminal police under the *procureur d'Etat* may not examine or confront the accused. A delegated officer who is not a member of the judiciary may not take sworn testimony.

"*Article 85.* An officer of the criminal police who has taken testimony pursuant to articles 83 and 84 above shall transmit the written record thereof to the examining judge who issued the commission rogatory.

"*Article 86.* If the witness has been heard under the conditions provided in article 83 although he could have appeared in answer to the summons served upon him, the examining judge may, after ordering him to appear to explain his actions, impose the fine laid down in article 80."

Article V. Paragraph 1, article 32, of the Code governing preliminary investigations in criminal cases shall be abrogated and replaced by the following provision:

"In all cases of *flagrante delicto,* if the act is punishable by law with a criminal penalty or correctional imprisonment, the *procureur d'Etat* may travel to the scene in order to draw up the written report required for the purpose of establishing the existence of the *corpus delicti,* the condition thereof and condition at the scene of the crime, and to receive statements of persons who might have been present or might have information to give."

Article VI. Paragraph 1 of article 40, of the Code governing preliminary investigations in criminal cases shall be abrogated and replaced by the following provision:

"In such cases of *flagrante delicto,* if the act is punishable by law with a criminal penalty or correctional imprisonment, the *procureur d'Etat* may order the apprehension of accused persons present against whom substantial evidence exists."

Article VII. Article 59 of the Code governing preliminary investigations in criminal cases shall be abrogated and replaced by the following provision:

"In all cases deemed to be *flagrante delicto,* if the act is punishable by law with a criminal penalty or correctional imprisonment, the examining judge may, pursuant to the rules laid down in chapter IV, personally draw up all the documents which are normally prepared by the *procureur d'Etat.* The examining judge may request the *procureur d'Etat* to be present without, however, delaying the operations prescribed in that chapter."

Article VIII. Article 106 of the Code governing preliminary investigations in criminal cases shall be abrogated and replaced by the following provision:

"Any law enforcement officer, and indeed any person, is bound to apprehend an offender caught *in flagrante delicto,* and to bring him before the *procureur d'Etat* or the nearest officer of the criminal police without requiring a warrant to compel attendance, if the act is punishable by law with a criminal penalty. Any law enforcement officer may apprehend an offender caught *in flagrante delicto* and bring him before the *procureur d'Etat* without requiring a warrant to compel attendance, if the act is punishable by law with correctional imprisonment."

[1] *Mémorial,* No. 16, of 10 April 1969.

Article IX. This Act shall be without prejudice to the powers vested by special legislation in members of the police force and officials of certain departments.

ACT OF 28 OCTOBER 1969 RESPECTING THE PROTECTION OF CHILDREN AND YOUNG WORKERS [2]

Chapter I

SCOPE

1. The provisions of this Act shall apply to:

(1) children until they reach the age of 15 years or complete their compulsory shooling, as regards work of any kind;

(2) adolescents of either sex until they reach the age of 18 years, if they are employed as workers or apprentices or as part of their vocational training and do not enjoy more favourable conditions of employment in virtue of special legislation or by collective agreement:

Provided that sections 21 and 22 and clause (7) of section 23 shall apply to adolescents until they reach the age of 21 years.

2. The conditions governing the work of adolescents employed in domestic service and in agriculture and grape-growing shall be determined in Grand-Ducal regulations made on the recommendation of the Minister of Labour and the Minister of Agriculture respectively.

The expression "domestic service" refers only to jobs done in the households of private individuals, to the exclusion of all other jobs of the same type done, *inter alia*, in hotels, restaurants, cafés, bars, clinics and children's homes.

Chapter II

EMPLOYMENT OF CHILDREN

3. It shall not be lawful to employ children on work of any kind, except in cases covered by section 5.

4. For the purposes of this Act the expression "employment of children" means any remunerated employment undertaken by children and any unremunerated employment undertaken repeatedly or regularly.

5. The following shall not be regarded as the employment of children, on condition that it is not harmful, detrimental or dangerous to the children concerned:

(1) work done in technical and vocational schools, on condition that its nature is essentially educational, its purpose is not to seek financial profit and the work itself is approved and supervised by the appropriate public authorities;

(2) assistance in household work by children belonging to the family.

The following shall be regarded as children belonging to the family:

(1) legitimate and legitimated children;

(2) adopted children;

(3) children for whom the person benefiting from the services rendered is permanently responsible.

6. It shall not be lawful to arrange for children to take part in public performances, except in the interests of art, science or education.

An individual permit may be issued by the Minister of National Education, after consultation with the Director of the Inspectorate of Labour and Mines, if an application to that effect, accompanied by written permission from the child's father or guardian, is made by the persons organising a performance. The participation of children in performances must not involve any danger to their health or morals or be detrimental to their education.

No permit shall be issued for a child to take part in circus, variety or cabaret performances.

Children shall not be permitted to take part in performances covered by this section unless the following conditions are fulfilled:

(1) they must be at least 6 years of age;

(2) they must not appear in a performance after 11 p.m.;

(3) they must be given an uninterrupted rest of at least fourteen hours between two performances.

Chapter III

EMPLOYMENT OF ADOLESCENTS

1. *Hours of work*

7. The hours of work of adolescents shall not normally exceed forty a week or eight a day.

In undertakings engaged in continuous processes the weekly hours of work may be extended from forty to forty-four, on condition that the average hours calculated over a period of two weeks do not exceed forty a week.

...

9. Adolescents shall be entitled to a thirty-minute break after four hours' work. Where they are employed on production work in which they belong to a team consisting of both adult and adolescent workers, they shall be granted the same rest breaks as adult workers: Provided that the length of such breaks shall not be less than fifteen minutes.

[2] *Ibid.*, No. 55, of 28 October 1969. A translation into English of the Act has been published by the International Labour Office as *Legislative Series* 1969—Lex. 1.

The breaks referred to in the preceding paragraph shall be reckoned as actual work unless the job is done continuously throughout the day. If the working day is divided into two approximately equal parts, separated by a break of an hour or more, the rest so taken shall be disregarded for the purposes of calculating the hours of work.

In the case of adolescents the length of the uninterrupted daily rest shall not be less than twelve hours.

Adolescents shall be granted a periodic break of at least forty-four consecutive hours in the course of every period of seven days.

10. Adolescents shall be permitted by their employer to be absent from their work in order to follow compulsory vocational training courses.

Time spent at school shall be reckoned towards the hours of work and shall be paid for at the normal wage rate.

2. *Overtime*

11. For the purposes of this Act the expression "overtime" means any work done in excess of the hours prescribed in section 7.

12. It shall not normally be lawful for adolescents to be employed on overtime.

...

3. *Work on Sundays and Statutory Public Holidays*

14. Adolescents shall not be employed on Sundays and statutory public holidays.

An employer shall be permitted by way of an exception to order adolescents to work on a Sunday or statutory public holiday in cases of *force majeure* or where the existence or safety of the undertaking is at stake, but then only in so far as is necessary to prevent a serious disruption of the normal operation of the undertaking. In this latter case a report, indicating the reason or reasons for the work, shall be sent at once to the Director of the Inspectorate of Labour and Mines.

...

15. Work on Sunday shall be remunerated at double time.

For work on statutory public holidays an adolescent shall receive the same remuneration as for work on Sundays, in addition to the allowance provided for in section 3 of the Grand-Ducal Order of 8 August 1947 to make regulations governing statutory public holidays. [1]

4. *Night Work*

16. Adolescents shall not be employed during the night.

For the purposes of this Act the expression "night" means a period of at least twelve consecutive hours. This period shall necessarily include the interval between 8 p.m. and 6 a.m. In the case of undertakings and services operating continuous processes work shall be permitted until 10 p.m.

The provisions of section 6 shall also apply to adolescents in the case of public performances.

5. *Leave with Pay*

17. Adolescents shall be entitled to twenty-four working days' annual leave with pay.

The expression "working day" means all calendar days except Sundays and statutory public holidays. In the case of adolescents covered by a collective agreement providing for special rest days as a result of the introduction of a reduced working week, such rest days shall not be regarded as working days.

Apprentices shall be granted their leave during the holidays observed by vocational training institutions.

6. *Remuneration*

18. From the age of 18 years adolescents shall be entitled, for work of equal value, to the same remuneration as adult workers who have reached the age of 20 years and who are employed in the same jobs, but shall not receive any of the length-of-service bonuses claimable by adults.

...

7. *Safety*

19. It shall not be lawful to employ adolescents on types of work unrelated to their stage of development, requiring them to make efforts out of proportion to their strength or likely to be detrimental to their physical or mental health, whether on account of the nature of the products to be handled, the type of work to be done or the environmental conditions at the workplace. The workplace itself shall more particularly comply with the requirements of cleanliness and decency.

...

8. *Medical Supervision*

22. In the course of the three months preceding their recruitment or apprenticeship all adolescents shall be given a thorough medical examination to ascertain whether they are fit for their employment.

...

23. Every person employing one or more adolescents shall keep a register or card index, containing:

...

(7) the dates of the medical examinations provided for in section 22 and 27 and a copy of the medical certificate testifying to his fitness for employment;

...

24. A Committee on the Protection of Young Workers shall be set up under the Ministry of Labour.

...

It shall be the duty of the Committee to spread a knowledge of the matters covered by this Act, follow closely the way it is enforced and suggest any necessary amendments.

...

27. *Transitional provision.* From the date of commencement of this Act the medical examinations provided for in section 22 shall be carried out and repeated at intervals not exceeding six months by qualified medical practitioners approved by the Minister of Labour and Minister of Public Health.

MADAGASCAR [1]

ACT NO. 69-010 OF 2 JULY 1969 AMENDING CERTAIN PROVISIONS OF ORGANIC LAW NO. 5 OF 9 JUNE 1959 CONCERNING THE NUMBER AND ELECTION OF MEMBERS TO, AND THE ORGANIZATION AND FUNCTIONING OF THE NATIONAL ASSEMBLY [2]

Article 1. Articles 9, 10, 33 and 41 of Organic Law No. 5 of 9 June 1959 and the texts amending them shall be repealed and replaced by the following provisions:

Article 9 (new). The following persons shall also be barred [from standing for election] while they are in office and for a period of three years thereafter:

1. Judges of any court;

2. Directors-general, secretaries-general, commissioners and directors of departments of the central Government;

3. Inspectors-general and inspectors of departments of the central Government;

4. State inspectors and controllers;

5. Directors-general and directors of public credit establishments and semi-public credit associations.

Article 10 (new). The following persons shall be barred [from standing for election] in any electoral district in which they hold office:

1. Heads of province who are not members of the Government, prefects, sub-prefects, and their deputies;

2. The representatives or heads of departments of ministries or commissioner-general's offices at provincial or prefectoral level, whatever their title;

3. Inspectors of such departments;

4. Provincial and prefectoral representatives of public credit establishments and semi-public credit associations;

5. Judges of tribunals;

6. Members of the armed forces (land, sea and air);

7. Civil service training personnel;

8. Disbursement and accounts officers of the Treasury;

9. Chiefs of police, officers, inspectors, and civilian or military policemen and security officers;

10. Heads of rural animation centres;

11. Heads of administrative districts and *chefs de canton*;

The above-mentioned officials shall also be barred [from standing for election] in any electoral district in which they have held office within the previous three years.

Article 41 (new). Deputies shall be elected by the list system; there shall be no political alliances, vote-splitting, incomplete lists or preferential voting.

Seats shall be allocated by majority ballot and as a block to the list which obtains at least 55 per cent of the votes cast.

Should no list meet this condition, seats shall be distributed on the basis of proportional representation in accordance with the highest average rule.

However, in the case of Tananarive, which forms a special electoral district, seats shall be distributed within each list on the basis of proportional representation in accordance with the highest remainder rule.

No seat shall be allocated to a list obtaining less than 5 per cent of the votes cast.

Any change in the method of voting shall be made within the forty days preceding the election of the new National Assembly, at the latest.

...

[1] Texts of acts and decrees furnished by the Government of the Malagasy Republic.

[2] For extracts from Organic Law No. 5 of 9 June 1959, see *Yearbook on Human Rights for 1959*, pp. 195-196.

ACT NO. 69-013 REPEALING AND REPLACING ARTICLES 381 TO 386 OF THE PENAL CODE [3]

Article 1. Articles 381 to 384 inclusive of the penal code shall be repealed and replaced by the following provisions.

"*Article 381* (new). Any person or persons convicted of larceny shall be punished by the death penalty if they were or any one of them was in possession of an openly carried or concealed weapon, even if the larceny was committed during the hours of daylight and by only one person. The same penalty shall be applicable if the convicted persons, or any one of them, had the weapon in a motor vehicle used by them to reach the scene of the crime or to make their escape."

"*Article 382* (new). Any person convicted of committing larceny in any three of the following five circumstances shall be punished by hard labour for life:

"(1) If the larceny was committed at night;

"(2) If it was committed by two or more persons;

"(3) If the convicted person or persons committed the crime by employing housebreaking, scaling or false keys to enter an inhabited or habitable house, apartment, room or dwelling, or any outbuilding thereof, or by impersonating a public, civil or military official, or while dressed in the uniform of such an official, or by producing a false civil or military warrant;

"(4) If the larceny was committed with violence;

"(5) If the convicted person or persons provided themselves with a motor vehicle with a view to facilitating their deed or escape.

"Persons convicted of larceny with violence resulting in wounds or bruising shall also be punished by hard labour for life."

"*Article 383* (new). Any person convicted of committing larceny in the following circumstances shall be punished by a term of hard labour;

"(1) If the larceny was committed in an inhabited or habitable place by one or more persons who had provided themselves with a motor vehicle with a view to facilitating their deed or escape;

"(2) If the larceny was committed by employing housebreaking, scaling or false keys to enter an inhabited or habitable house, apartment, room or dwelling, or buildings, parks or compounds which are not used as dwellings or attached to dwellings, even though the housebreaking may have been committed inside;

"(3) If the larceny was committed with violence."

"*Article 384* (new). Any person convicted of larceny committed on public highways or in railway carriages or any other mode of transport for passengers, mail, public or private funds, or luggage shall be punished by a term of hard labour if committed in any one of the circumstances listed in the first paragraph of article 382."

Article 2. Article 385 of the penal code, which was repealed by Ordinance No. 60-161 of 3 October 1960, is replaced by the following:

"*Article 385* (new). Notwithstanding the provisions of article 44 of this code, the penalty of banishment shall in all cases be imposed:

"(1) For a term of not less than five years in the case of persons convicted of larceny committed in the circumstances listed in articles 383 and 384;

"(2) For a term of from two five years in the case of persons convicted of larceny or attempted larceny committed in the circumstances mentioned in the first and fifth paragraphs of article 386."

Article 3. Article 386 of the penal code is repealed and replaced by the following:

"*Article 386* (new). Any person convicted of larceny or attempted larceny committed in the following circumstances shall be punished by imprisonment for from five to ten years:

"(1) If the larceny was committed in an inhabited place or one used as a dwelling by two or more persons, or with the use of a motor vehicle to facilitate the deed or the escape;

"(2) If the thief is a servant or a paid employee, even when the persons robbed were not his employers but were in either his employer's house or the house to which he accompanied his employer, or if he is a workman or apprentice in his employer's house, workshop or shop; or a person customarily working in the house in which he committed the larceny;

"(3) If the larceny was committed by an innkeeper, hotelkeeper, carrier or boatman or one of their employees through the theft of all or part of any property deposited with them in the said capacities;

"(4) If the larceny was committed, in time of peace or otherwise, by a member of the armed forces against the person with whom he lodged or was billeted;

"(5) If the larceny had as its object a motor vehicle and was made possible by forcible entry of any kind as a result of which the vehicle could be entered or moved, or was followed by dismantling, disguising or any other operation serving to facilitate its disappearance."

[3] For extracts from the penal code of 7 September 1962, see *Yearbook on Human Rights for 1962*, pp. 174-176.

ACT NO. 69-015 OF 16 DECEMBER 1969 CONCERNING THE REQUISITIONING OF PERSONS AND PROPERTY

TITLE I

GENERAL PROVISIONS

Article 1. On the conditions and in the circumstances specified in this Act, all natural persons or legal entities of Malagasy nationality shall be required to place at the disposal of the State all assets in their possession in the territory of the Republic, its territorial waters, its air space, at sea and abroad, for the purpose of safeguarding the Nation's interests or the lives of its inhabitants.

This obligation shall apply to aliens resident in Madagascar, subject to the international conventions to which the Malagasy Republic is a party.

Article 2. When the time available for furnishing assets which are conducive to safeguarding the Nation's interests or the lives of its inhabitants so permits, recourse shall be had to requisition only if other measures, such as amicable agreement, hire, purchase, administrative tender or labour contract, fail.

Article 3. The furnishing of any goods or service requisitioned shall impose upon the State the obligation to pay fair and equitable compensation for the labour or goods requisitioned or for direct proven property damage resulting from such requisition.

Article 4. The purpose of this Act is to define:

The form and nature of requisitions (title II);

The circumstances in which the right to requisitions may be exercised (title III);

The authorities competent to effect requisitions (title IV);

The procedures for exercising the right to requisition (title V);

The compensation payable on account of requisition (title VI);

Disputes arising from requisitions (title VII);

Penalties (title VIII).

ACT N° 69-016, AMENDING CERTAIN PROVISIONS OF ORGANIC LAW N° 5 OF 9 JUNE 1959 CONCERNING THE NUMBER AND ELECTION OF MEMBERS TO AND THE ORGANIZATION AND FUNCTIONING OF THE NATIONAL ASSEMBLY[4]

Article 1. Articles 9 and 10 of Organic Law No. 5 of 9 June 1959 shall be repealed and replaced by the following provisions:

Article 9 (new). The following persons shall also be barred from standing for election while they are in office and for a period of three years thereafter:

1. Judges of any court;

2. Heads of provinces who are not members of the Government and their deputies;

3. Directors-general, secretaries-general and directors of the departments and agencies of the central government;

4. State inspectors and controllers;

5. Inspectors of the departments and agencies of the central government;

6. Prefects and sub-prefects;

7. Directors-general and directors of public credit establishments and semi-public credit associations.

Article 10 (new). The following persons shall be barred from standing for election in any electoral district in which they are in office:

1. Deputy prefects and deputy sub-prefects;

2. Representatives of the heads of departments of ministries or commissioners-general's offices at the provincial or prefectural levels, regardless of their title;

3. Inspectors of such departments;

4. Provincial and prefectural representatives of public credit establishments and semi-public credit associations;

5. Judges of tribunals;

6. Members of the armed forces (land, sea and air);

7. Civil service training personnel;

8. Disbursement and account officers of the Treasury;

9. Chiefs of police, officers, inspectors, and civilian or military policemen and security officers;

10. Heads of administrative districts and *chefs de canton.*

The above officials shall also be barred from standing for election in any electoral district in which their term of office expired less than three years earlier."

...

[4] Extracts from Organic Law No. 5 of 9 June 1959 appear in the *Yearbook on Human Rights for 1959*, pp. 196-197.

ACT NO. 69-019 OF 16 DECEMBER 1969 AMENDING AND AMPLIFYING CERTAIN PROVISIONS OF ORDINANCE NO. 60-119, TO ESTABLISH A LABOUR CODE [5]

Article 1. The sixth and final paragraph of article 21 of Ordinance No. 60-119 shall be repealed and replaced by the following new paragraph:

"If the authority empowered to register the contract fails to grant a permit within forty-five days of receipt of the application for attestation, the contract shall be deemed to have been attested."

Article 2. The following two paragraphs shall be added to article 43 of Ordinance No. 60-119:

"Workers paid by the job or by the piece who perform the work themselves and in the case of whom it is unnecessary to ascertain whether a legally subordinate relationship exists between them and their employer, whether they work under the immediate and continuous supervision of the employer or his agents, or whether the premises, materials or tools which they use belong to them, shall not be deemed to be subcontractors.

"If such workers are assisted by their spouse or children under age, persons accepting work do not by so doing acquire the status of subcontractor, nor do family helpers acquire that of workers within the meaning of this Ordinance: the supplier of the work may always deny access to his premises to persons other than those in possession of a labour contract."

...

Article 4. A Division VI, comprising articles 87 *bis* and 87 *ter* below, and entitled: "Workers' education" shall be added to Title V of Ordinance No. 60-119.

"*Article 87* bis. In undertakings employing more than sixty workers, workers shall be entitled to leave paid by their employers for the purpose of attending workers' education courses, in accordance with the following conditions:

"1. The organization and curriculum of the course must have been approved by the Minister of Labour and Social Legislation;

"2. The number of workers entitled to attend such courses shall be one in the case of undertakings employing fewer than 200 workers, two in the case of undertakings employing between 200 and 500 workers, and three in the case of undertakings employing more than 500 workers.

"3. Trainees shall be selected by agreement between the most representative trade unions or, in the absence of such agreement, on the basis of their proposals, by the inspector of labour and social legislation for the region;

..."

"*Article 87* ter. At their request, workers shall be granted unpaid leave, which shall not be deducted from paid leave, up to a total of twelve working days per calendar year, to be taken in one or two instalments, for the purpose of attending the trade union conferences provided for by statute and trade union seminars.

"Absences authorized in accordance with the foregoing provisions shall not, in any single undertaking, reduce by more than 10 per cent the number of workers in each occupational group specified in the regulations implementing article 57.

"Applications shall be submitted to the head of the undertaking at least fifteen days in advance and shall be considered in the order in which they were filed."

[5] For a summary of the Labour Code, see *Yearbook on Human Rights for 1960*, p. 233.

ACT NO. 69-023 OF 16 DECEMBER 1969 AMENDING ARTICLE 3 (NEW) OF ACT NO. 66-017 OF 5 JULY 1966 CONCERNING CIVIL REGISTRY DOCUMENTS

Article 1. Article 3 *(new)* of Act No. 66-017 of 5 July 1966 concerning civil registry documents shall be amended as follows:

"*Article 3* (new). Until 31 December 1970, special hearings may be held by the civil courts in the chief towns of communes or other places designated by the Minister of Justice and Keeper of the Seals for the issue of court decisions in lieu of birth certificates."

(The remainder of the text is unchanged.)

DECREE NO. 69-145, TO ESTABLISH A SOCIAL INSURANCE CODE

CHAPTER I

SOCIAL INSURANCE CODE

Section 1. The Social Insurance Code established by section 11 of Act No. 68-023 of 17 December 1968 [6] shall comprise four Books:

Book I: the National Social Insurance Fund;

Book II: the family benefit scheme;

Book III: the employment injury scheme;

Book IV: the retirement scheme.

Section 2. The text of the first three Books shall comprise the Family Allowance and Employment Injury Code established by Decree No. 63-124 of 22 February 1963, [7] subject to the amendments contained in Chapter II below.

The text of Book IV, containing administrative provisions under the above-mentioned Act No. 68-023 of 17 December 1968, is attached to this Decree. It will be completed subsequently, in a third Part, by the provisions concerning the voluntary retirement scheme for non-wage-earning physical persons.

CHAPTER II

MISCELLANEOUS PROVISIONS

Section 3. Books I, II and III of the Code shall be amended as follows:

Book I

THE NATIONAL SOCIAL INSURANCE FUND

Section 1 (2). "To forward to the Fund during the first month of each calendar quarter a list indicating the names of all the workers employed during the preceding quarter, indicating the periods of employment and remuneration paid, as well as any other information necessary for the workers' registration;"

Section 1 (3). "To pay to the Fund, on the basis of the said list, his own employer's contribution and the corresponding workers' contributions, the employer being obliged to deduct the workers' contributions from the wages he pays to them;"

...

Book 3

THE EMPLOYMENT INJURY SCHEME

...

Section 165 (7). "Payments to the Health and Welfare Fund."

Section 177. "Every accident resulting in temporary incapacity shall be the subject of a certificate issued by a medical practitioner or failing this, by the nurse of the medical service of the undertaking.

"The said certificate shall mention the injured person's recovery if he recovers before three days have elapsed.

"The certificate shall be forwarded by the person who signed it, within a time limit not exceeding three days: to the medical adviser of the Fund, where the state of the injured person requires hospitalization for a presumed period of at least two weeks; to the provincial office of the Fund in all other cases."

Section 178. "The prior approval of the Fund shall be sought by the patient's medical practitioner in attendance whenever it is a question of treatment, care and benefits supplementary to those immediately required by the injured person's state.

"Such supplementary treatment, care and benefits include, *inter alia,* successive surgical operations, plastic surgery connected with the worker's remunerated activity, treatment care and benefits required on account of a relapse, functional rehabilitation, vocational retraining and supply of prosthetics.

"The approval or refusal of the Fund, given after consultation with its medical adviser, shall be transmitted within the next fifteen days; failure to give notice of any decision during that period shall be taken as equivalent to approval.

"In the absence of such prior approval the Fund shall be entitled to refuse to pay the fees and emoluments of medical practitioners and public health teams."

Section 179. "As soon as he diagnoses recovery or healing of the injury, the patient's medical practitioner in attendance shall immediately forward to the provincial office of the Fund a medical certificate indicating the date of cure or healing leaving the patient's state unchanging or stable, and stating, where applicable, the rate of permanent physical disability, or suggesting a review of the said rate of disability on the expiry of a given period.

"The Fund, on receipt of the said certificate and after consulting its medical adviser, shall fix the date on which the recovery or healing leaving

[6] For extracts from Act No. 68-023 of 17 December 1968, see *Yearbook on Human Rights for 1968*, p. 258.

[7] For extracts from Decree No. 63-124 of 22 February 1963, see *Yearbook on Human Rights for 1963*, pp. 206-208.

the patient's state unchanging or stable is presumed to have taken place, indicating, where applicable, the rate of permanent physical disability."

Section 221. "The entitlement to pension of the surviving spouse referred to in section 215, subdivision (1), shall lapse if he or she remarries (either in the presence of an official of the registry office or by wedding according to custom). The pension shall in this case be commuted by payment of a lump sum equal to three years' instalments: provided that the spouse's pension shall continue to be paid so long as there is a child entitled to a pension under section 215, subdivision (2), above, and shall be commuted only after the child's entitlement has lapsed."

...

DECREE NO. 69-233 OF 17 JUNE 1969, AMENDING DECREE NO. 69-145 DATED 8 APRIL 1969, TO ESTABLISH A SOCIAL INSURANCE CODE

Article 1. Sections 126... and 276 of the Social Insurance Code shall be amended as follows:

"Section 126. The income of the family benefits equalization scheme shall consist of: 1. the contributions referred to in section 33 (1) of this Code payable by the employers referred to in section 1 of this Code: provided that these contributions shall not be levied on wages payable to any skilled workers employed casually in agricultural plantations or local agricultural produce undertakings, i.e. in non-permanent jobs and for periods not exceeding three months in any year."

...

"Section 276. Entitlement to old-age insurance benefit shall be increased to 60 per cent of the minimum guaranteed inter-occupational wage where it is lower than this percentage."

...

MALAYSIA

THE SUMMONS (SPECIAL PROVISIONS) (SINGAPORE) ACT, 1969

Act A 9, assented to on 15 February 1969 and entered into force on 27 February 1969 [1]

. . .

2. (1) Where under the provisions of any law in force in Singapore a Magistrate has issued a summons requiring a person accused of any offence to appear before any Court in Singapore, and such person is or is believed to be in Malaysia, a Magistrate in Malaysia may, if he is satisfied that such summons was issued by a Magistrate in Singapore, endorse the summons with his name, and such summons may then be served on such person as if it were a summons issued by a Magistrate in Malaysia under the provisions of the Criminal Procedure Code.

(2) Where under the provisions of any law in force in Singapore corresponding to the last preceding sub-section, a summons issued by a Magistrate in Malaysia has been endorsed by a Magistrate in Singapore and served on the person accused, such summons shall for the purposes of the Criminal Procedure Code be deemed to have been as validly served as if such service had been effected in Malaysia.

. . .

[1] Printed by His Majesty's Printer and published by authority on 27 February 1969.

MAURITANIA

ACT NO. 69,050 OF 21 JANUARY 1969 LAYING DOWN PENALTIES FOR THE OFFENCE OF FAMILY DESERTION [1]

Article 1. The following shall be declared guilty of family desertion and shall be liable to imprisonment for three months to one year and to a fine of 25,000 to 500,000 francs:

1. A husband who, during his marriage, fails for more than two months to provide for his wife's needs;

2. A husband who, after the dissolution of his marriage, fails for more than two months to provide for his pregnant former wife's needs, if the pregnancy began before the final dissolution of the marriage;

3. A father who fails for more than two months to provide for his children's needs, where the children are under eighteen years of age and are by law his dependants;

4. Any person who, after being ordered to pay maintenance to his spouse, his descendants or his father or mother by a court decision which is provisionally enforceable or has become final, fails for more than two months to pay the whole amount of the maintenance.

Article 2. In addition to the penalties imposed under article 1 above, an offender may be sentenced to forfeiture of the rights set out in article 42 of the Criminal Code for five to ten years.

Article 3. With the exception of the case specified in article 1, paragraph 4, proceedings may be instituted without a prior decision by the civil court.

Article 4. Where the person prosecuted invokes the fact that his marriage has been dissolved, he shall show proof by means of a document of repudiation drawn up by the *cadi* or a court decision.

Article 5. The competent court shall be that of the place where the obligations whose non-fulfilment is penalized by this Act should have been discharged.

Article 6. Without prejudice to any damages, the court hearing the proceedings may:

1. In the cases specified in article 1, paragraphs 1 to 3, order the accused to pay maintenance, reckoned from the day on which he began to evade his obligations.

2. In the cases specified in article 1, paragraph 4, confirm the civil sentence which the accused has failed to execute.

Maintenance payable under this article may be recovered by proceedings instituted in accordance with the provisions of articles 637 to 650 of the Code of Criminal Procedure.

...

[1] *Journal officiel de la République islamique de Mauritanie*, No. 247, 29 January 1969.

ACT NO. 69,266 OF 26 JULY 1969 AMENDING THE STATUTE OF THE *CADIS* [2]

GENERAL PROVISIONS

Article 1. The *cadis* shall preside over the courts instituted under title II of Act No. 65,123 of 20 July 1965 to reorganize the judicial system. [3]

...

Article 5. All *cadis* shall be under the administrative authority of the Minister of Justice.

Article 6. In the performance of their court duties, the *cadis* shall be subject solely to the authority of the law. However, without detriment to the *cadis'* freedom of decision, the President and Vice-President of the Supreme Court may address to them any comments and recommendations they deem conducive to the proper administration of justice and the correct application of the law. The Vice-President of the Court of First Instance and the district judge of Islamic law shall enjoy the same right with respect to the *cadis* within their jurisdictions.

Holders of the office of *cadi* shall have permanent tenure. Subject to the provisions relating to interim *cadis*, they may not be assigned to a

[2] *Ibid.*, No. 260-261, of 27 August 1969.

[3] For extracts from Act No. 65,123 of 20 July 1965, see *Yearbook on Human Rights for 1965*, p. 207.

new post, even by way of promotion, without their consent.

...

Article 10. The exercise of the functions of *cadi* is incompatible with the exercise of any public function or any professional or salaried activity.

Individual *cadis* may 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 *cadi* may carry on scientific, literary or artistic work without prior permission.

Article 11. The exercise of the functions of *cadi* is likewise incompatible with the exercise of any elective function.

Article 12. No relative of a *cadi,* either by blood or by marriage, up to and including the degree of uncle or nephew, may form part of the personnel of the same court of the *cadi.*

Article 13. Any manifestation of hostility on the part of the *cadis* to the principle and the form of the 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 action by *cadis* which is likely to interrupt or hinder the operation of the courts shall likewise be prohibited.

Article 14. Independently of the provisions of the Criminal Code, *cadis* shall be protected against threats or attacks of any kind to which they may be exposed in the performance or in connexion with 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 *cadis* shall be initiated in the manner laid down in article 588 and the following articles of the Code of Criminal Procedure.

Article 15. Cadis may not, apart from their duties, be called upon to perform any public service other than military service and any other service required of them by law.

...

Chapter II

RECRUITMENT

Article 20. Candidates for the office of *cadi* shall fulfil the following conditions they shall: (1) be of Mauritanian nationality; (2) enjoy full civil rights and be of high moral character; (3) be in good standing under the laws regarding recruitment into the army; (4) meet the standards of physical fitness necessary for the performance of their duties and be found free from or completely cured of any illness which might entitle them to prolonged leave of absence; (5) be not less than twenty-three years of age and not more than forty years of age; (6) hold two *certificats en droit* or an equivalent degree or have passed a competitive examination for which the conditions shall be laid down by decree.

...

MAURITIUS

THE PASSPORTS (AMENDMENT), ACT 1969 [1]

...

2. Sections 3 and 4 of the principal Act are hereby repealed and replaced by the following sections:

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.

(2) Every passport shall be in the prescribed form.

(3) It shall be lawful for the Passport Officer to renew or endorse any passport issued under subsection (1) of this section.

4. (1) The Passport Officer may, in relation to an applicant for the issue, renewal or endorsement of a passport under the last preceding section:

(*a*) Refuse to issue the passport;

(*b*) Refuse to renew or endorse the passport;

(*c*) Restrict the validity of the passport to a specified country,

on any one or more of the following grounds, and on no other ground:

(*a*) That the applicant may, or is likely to, engage outside Mauritius in activities prejudicial to the sovereignty or integrity of Mauritius;

(*b*) That the departure of the applicant from Mauritius may or is likely to, be detrimental to the security of Mauritius;

(*c*) That the presence of the applicant outside Mauritius may, or is likely to, prejudice the friendly relations of Mauritius with any other country;

(*d*) That the applicant has, at any time during the period of ten years immediately preceding the date of his application, been convicted for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than one year;

(*e*) That the applicant has been convicted of a criminal offence and the sentence of the Court has not been satisfied or set aside;

(*f*) That criminal proceedings in respect of an offence alleged to have been committed by the applicant have been or are about to be instituted;

(*g*) That a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any enactment for the time being in force;

(*h*) That the applicant has been repatriated and has not re-imbursed the expenditure, incurred in connection with his repatriation;

(*i*) That the applicant owes a debt to the Government, or that civil proceedings for the recovery of any sum of money, whether liquidated or unliquidated, alleged to be due to the Government have been or are about to be instituted;

(*j*) That the applicant is of unsound mind;

(*k*) That the applicant is afflicted with any infectious or contagious disease, or that he has not complied with the requirements of such international sanitary-regulations as may from time to time be prescribed in the interests of world health;

(*l*) That the departure of the applicant from Mauritius is in breach of any international obligation of the Government particulars of which have been laid before the Legislative Assembly.

(2) The Passport Officer may vary the endorsement on a passport or the conditions subject to which a passport has been issued under the last preceding section, or cancel the passport on any one or more of the grounds specified in the preceding subsection and on no other ground.

(3) For the purpose of varying the endorsement on a passport or the conditions subject to which the passport has been issued or for the purpose of cancelling the passport under the last preceding subsection the Passport Officer may, by notice in writing served personally, require the holder of the passport to deliver the passport within such time as may be specified in the notice and if he fails to comply with any such request without reasonable excuse he shall be guilty of an offence against this Act.

3. Section 11 of the principal Act shall have effect as if for subsection (2) thereof there were substituted the following subsection:

(2) Any passport or other travel document delivered to the Passport Officer under the preceding subsection shall, on his leaving Mauritius, be returned to the person who delivered it:

Provided that it shall be lawful for the Passport Officer to withhold, for such time as may be determined by the Minister, the passport or other travel document on any one or more of the grounds specified in section 4 of this Act.

[1] Text furnished by the Government of Mauritius. For extracts from the Passports Act, 1968, see *Yearbook on Human Rights for 1968*, pp. 284-285.

MEXICO [1]

DECISION OF 4 NOVEMBER 1968 EXTENDING THE BENEFITS OF THE ACT RELATING TO THE STATE EMPLOYEES' SOCIAL SECURITY SERVICES INSTITUTION TO THE PERSONNEL OF THE RIO FUERTE AND RIO GRIJALVA COMMISSIONS [2]

1. The benefits of the Act relating to the State Employees' Social Security Services Institution shall be extended to the personnel of the Rio Fuerte and Rio Grijalva Commissions.

2. The personnel of the Commissions shall begin to enjoy the benefits of the Act relating to the State Employees' Social Security Services Institution from the date of publication of this Decision in the *Diario Oficial* of the Federation and from that same date shall pay the contributions referred to in article 15 of that Act; the Commissions shall likewise pay the contributions referred to in article 20 of the Act.

...

[1] Texts of Laws furnished by the Government of Mexico.

[2] *Diario Oficial*, volume CCXCII, No. 36, of 13 February 1969.

NOTICE OF 6 FEBRUARY 1969, TO PROPRIETORS AND PERSONS IN CHARGE OF DRUGSTORES, PHARMACIES AND SIMILAR ESTABLISHMENTS, CONCERNING THE CONSERVATION AND SALE OF THE DANGEROUS DRUGS LISTED BELOW [3]

In pursuance of article 14, paragraphs XIV and XXI, and article 26 of the State Secretariats and Departments Act, article 3, paragraph II, article 4, paragraph III, and article 208 of the Health Code, articles 37 and 75 of the regulations concerning drugstores, pharmacies, laboratories and similar establishments and all other applicable legal provisions, the Secretary of Health and Welfare promulgated a decision establishing those narcotics which, being dangerous drugs, are to be kept under lock and key in drugstores, pharmacies and similar establishments and are not to be sold or dispensed without a physician's prescription. The establishment shall keep the prescription (providing the client with a copy thereof) and shall enter it in a special register, cancelling the original prescription with the establishment's date stamp. The person in charge shall keep the prescriptions for a period of 6 months and shall show them to any Health Officer who visits the establishment in compliance with special orders.

[3] *Ibid.*

DECISION OF 20 OCTOBER 1969 BY WHICH THE OLD AGE INSURANCE SYSTEM REFERRED TO IN ARTICLE 10 OF THE TRANSITIONAL PROVISIONS OF THE ACT RESPECTING SOCIAL INSURANCE SHALL BE GOVERNED BY THE PROVISIONS OF CHAPTER V OF THE SAID ACT [4]

1. The old age insurance referred to in article 10 of the transitional provisions of the Act respecting social insurance contained in the Decree dated 31 December 1942 shall be governed

[4] *Diario Oficial*, volume CCXCVII, No. 17, of 21 November 1969.

by the provisions of chapter V of the Social Insurance Act, regarding insurance against invalidity, old age, unemployment at an advanced age and death.

2. The Mexican Social Insurance Institution, in compliance with the provisions of the Act respecting Social Insurance and all relevant decrees, shall fix the dates on which the affiliation of employers and workers in the mining industry shall begin in municipalities where the compulsory social insurance system is currently in force.

DECREE OF 19 DECEMBER 1969 AMENDING ARTICLE 34 OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES [5]

Sole article. Article 34 of the Political Constitution of the United Mexican States is amended to read as follows:

"*Article 34.* All men and women who, in addition to being Mexicans, possess the following qualifications are citizens of the Republic: I. Those who have reached the age of eighteen years, and II. Those who have an honest means of livelihood."

[5] *Ibid.*, volume CCXCVII, No. 43, of 22 December 1969. For extracts from the Political Constitution of the United Mexican States, see *Yearbook on Human Rights for 1946*, pp. 189-202.

DECREE OF 6 DECEMBER 1969 AMENDING ARTICLE 30, PARAGRAPH (A) (II) OF THE POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES [6]

Sole article. Article 30, paragraph (A) (II) of the Political Constitution of the United Mexican States is amended to read as follows:

"*Article 30.* Mexican nationality is acquired by birth or naturalization.

(A) The following persons are Mexican nationals by birth: I. . . . II. Persons born in foreign countries of Mexican parents; of a Mexican father or a Mexican mother."

[6] *Ibid.*, volume CCXCVI, No. 46, of 26 December 1969.

MONACO

ACT NO. 865 OF 1 JULY 1969 CONCERNING THE ACQUISITION OF MONEGASQUE NATIONALITY [1]

Article 1. Any person born outside Monaco during the period between 1 September 1939 and 8 May 1945 of a parent who was Monegasque by birth, even if the latter has lost such nationality, may acquire Monegasque nationality by making a declaration before the Registrar, provided he is resident in Monaco and shows proof that, as from the expiry of the aforementioned period, he had his legal domicile or was normally resident in Monaco during his minority.

Article 2. This option may be exercised by the persons concerned during a period of one year from 1 July 1969, on which date this Act shall come into force.

[1] *Journal de Monaco*, No. 5,832, of 4 July 1969.

ACT NO. 870 OF 17 JULY 1969 CONCERNING THE EMPLOYMENT OF WOMEN WAGE-EARNERS IN CASE OF PREGNANCY OR CHILDBIRTH [2]

Article 1. No employer may dismiss a woman wage-earner as from the date on which he receives medical certification of her pregnancy until the expiry of a period of twelve weeks following the date of the confinement.

If notification of dismissal has been given and the employer has not received such certification, the woman wage-earner may, within a period of eight days following the notification of dismissal, give proof of her pregnancy by forwarding a medical certificate by registered post with a request for advice of delivery. The dismissal shall, on that account, be revoked.

However, the prohibition and the revocation provided for in the first and second paragraphs above shall not apply in the case of serious misconduct on the part of the woman employee, the cessation or reduction of the undertaking's activity or the expiry of the employment contract.

Any dismissal for one of the reasons mentioned in the preceding paragraph must be submitted for prior consideration by the Disemployment and Dismissal Commission established by article 8 of Act No. 629 of 17 July 1957.

Article 2. Cancellation of the employment contract by the employer for one of the reasons enumerated in the third paragraph of the preceding article may not take effect nor may notification thereof be given during the period of suspension referred to in article 5.

Article 3. A woman medically certified to be pregnant may abandon work without giving notice and without being obliged, on that account, to pay a severance penalty.

Article 4. No employer shall knowingly engage a mother in any work whatsoever during a period of six weeks following her confinement.

The same prohibition shall apply in respect of the two weeks preceding the presumed date of childbirth, unless it is medically established that the work to which the woman is assigned is not harmful to her state of health.

Article 5. The woman shall be entitled to suspend her work for a period beginning eight weeks before the presumed date of confinement and ending eight weeks after the confinement. Suspension of work by the woman during the above-mentioned period may not serve as a ground for severance of the employment contract.

If made necessary by a pathological condition medically certified to be the result of the pregnancy or birth, the period of suspension shall be extended for the duration of such condition but may not exceed eight weeks before the presumed date of the confinement and twelve weeks after the date of the confinement.

Where the confinement takes place before the presumed date, the period of suspension of the employment contract may be extended up to the completion of the sixteen weeks of suspension of the contract to which the woman concerned is entitled.

The woman concerned must advise the employer of the reason for her absence and of the date on which she intends to resume work.

[2] *Ibid.*, No. 5,835, of 25 July 1969.

Any agreement to the contrary shall be null and void.

Moreover, where, through application of the preceding paragraph, the dismissal is null and void, the employer shall be obliged to pay the amount of the wages which would have been received during the period in which the dismissal was null and void.

The woman shall be entitled to legal aid.

Article 6. During the legal duration of the maternity leave referred to in the preceding article, the woman wage-earner shall retain her rights of seniority in the undertaking.

Moreover, at the end of the said period of leave, she shall return to her former post or take up a similar post with at least equivalent pay.

Article 7. On expiry of the legal duration of the maternity leave provided for in article 5, the mother may, in order to bring up her child herself, refrain from resuming her employment, without giving notice and without being obliged, on that account, to pay a severance penalty.

She shall, in that case, at least fifteen days before the end of the period of suspension, advise her employer, by registered post with a request for advice of delivery, that she will not resume her employment at the end of the suspension of her contract.

In such cases, she may, within one year, apply in the same way to be re-engaged; the employer shall then be obliged, for a period of one year after such an application, to engage her preferentially in posts she is qualified to apply for and, in the event of re-employment, to grant her all the rights she had acquired at the time of her departure.

Article 8. In the case of nursing mothers, for one year following the date of childbirth, the employer must grant to the wage-earning mother, for the purpose of nursing, a thirty-minute pause for each four-hour period of work. The time of the pause shall be fixed by common agreement between the employer and the mother. In the absence of agreement, it shall occur in the middle of each period.

...

ACT NO. 871 OF 17 JULY 1969 INTRODUCING PUBLIC ASSISTANCE ALLOWANCES FOR TEMPORARILY AND INVOLUNTARILY UNEMPLOYED WORKERS [3]

Article 1. Temporarily and involuntarily unemployed wage-earners shall be granted public assistance allowances for complete or partial unemployment, in the manner and under the conditions established in this Act.

SECTION I

ALLOWANCE FOR COMPLETE UNEMPLOYMENT

Article 2. For the purpose of determining eligibility for the allowance described in this section, wage-earners of either sex who are at least seventeen years of age shall be regarded as involuntarily unemployed if they show proof that:

1. They lost their employment through circumstances beyond their control;

2. They had been effectively resident in Monaco for at least five years when they submitted their application for employment;

3. During the twelve months before they were registered as seeking employment, they carried on regular work for a minimum period of 150 days or in the case of persons working at home and casual workers and persons treated as such, 1,000 hours of paid employment.

...

Article 5. The allowance for complete unemployment may not be granted to persons who:

1. Do not show proof that they are registered as seeking employment;

2. Do not fulfil the employment conditions laid down in article 2, sub-paragraph 3;

3. Are more than sixty-five years of age or are unemployed because they are physically unable to work;

4. Are out of work because of a collective labour dispute concerning their establishment; however, in cases where a lock-out lasts more than three days, payment of the allowance may be authorized as an exceptional measure, under the conditions laid down in the relevant texts;

5. Are seasonally unemployed; such persons may, however, be granted the allowance if the unemployment is exceptional for the time of year and if they show proof that in the preceding two years they were in paid employment from which they derived regular earnings, at the same time and for the same duration;

6. Were dismissed for serious misconduct or voluntarily left their employment without just cause;

7. Are in receipt of or eligible for a retirement pension.

Article 6. The allowance for complete unemployment shall be withdrawn from beneficiaries who:

1. Fail, without valid reason, to report when summoned on two successive occasions by the Labour and Employment Department;

2. Refused, without valid reason, employment offered by the Labour and Employment Department which pertained either to their trade or to any other occupation compatible with their previous training and their skills and was remunerated at the rate normally paid in that occupation;

[3] *Ibid.*

3. Refuse to attend training or further vocational training courses.

The allowance shall also be withdrawn from persons seeking employment who received it improperly, or those who knowingly made inaccurate declarations or submitted false certificates.

...

SECTION II

ALLOWANCE FOR PARTIAL UNEMPLOYMENT

Article 8. Wage-earners who, although still bound to their employer by an employment contract, suffer a loss of wages because of the temporary closing down of their establishment or the reduction of the hours of work normally observed in the establishment, shall be granted an allowance for partial unemployment.

Article 9. The sole condition of eligibility for the allowance referred to in the preceding article shall be effective residence in Monaco for at least five years at the time when the application for employment was submitted.

...

Article 15. The provisions of article 5, subparagraphs 4 and 5, shall apply to partially unemployed wage-earners.

SECTION III

COMMON PROVISIONS

Article 16. Public assistance allowances shall be paid by the State.

They shall be granted by an administrative decision handed down by the Minister of State in the manner and under the conditions to be established in sovereign ordinance, which shall specify *inter alia* the conditions for investigation of applications, the formalities for granting them, the procedure for lodging appeals without charge, the rules for verification and the method of payment of the allowances.

Article 17. Public assistance allowances may not be drawn simultaneously with benefits of the same type paid by the Social Welfare Office.

...

MOROCCO

LEGISLATION RATIFYING INTERNATIONAL AGREEMENTS

1. *Dahir No. 1-69-116 of 26 Moharrem 1389 (14 April 1969)* [1]

Article 1. The following instruments are hereby ratified:

The convention on mutual assistance and legal co-operation between the Kingdom of Morocco and the Democratic and Popular Republic of Algeria, signed at Algiers on 15 March 1963; the protocol to the aforementioned convention, signed at Ifrane on 15 January 1969.

2. *Dahir No. 926-67 of 18 Rebia 1389 (4 July 1969)* [2]

Article 1. The following instruments, annexed to this Dahir, are hereby ratified: (1) the agreement on the elimination of passport visas; (2) the cultural agreement; (3) the economic, technical and scientific co-operation agreement; (4) the friendship and co-operation treaty, all between the Kingdom of Morocco and the Republic of the Niger and all signed at Rabat on 7 November 1967.

3. *Dahir No. 1-69-112 of 16 Chaabane 1389 (28 October 1969)* [3]

Article 1. The cultural co-operation agreement annexed to this Dahir between Morocco and the Union of Soviet Socialist Republics, signed at Moscow on 27 October 1966, is hereby ratified and shall be published.

[1] *Bulletin officiel* No. 2945 *bis*, of 15 April 1969.

[2] *Ibid.*, No. 2976, of 12 November 1969.

[3] *Ibid.*, No. 2981, of 17 December 1969.

DAHIR NO. 1-69-25 OF 10 JUMADA I 1389 (25 JULY 1969) ESTABLISHING AN AGRICULTURAL INVESTMENT CODE [4]

I. JOINT ARRANGEMENTS

Article 1. Within the framework of development plans, State assistance to the agricultural sector shall be designed to develop natural resources in order to satisfy requirements for vegetable and animal products, to increase agricultural revenue and to further the economic advancement of the country as a whole.

The State shall carry out the capital investment projects necessary for agricultural development and shall encourage those which can be made by farmers themselves.

It shall assist operations designed to preserve and increase the productivity of the land and encourage efforts leading to improved animal production under more hygienic conditions.

It shall pursue agronomic research, assume responsibility for the training of cadres and ensure the preservation of landed property and the rational organization of markets.

Article 2. State aid towards agricultural investments by farmers may include: subsidies and grants; long, medium- or short-term loans, depending on the nature of the operations; technical and material assistance from public authorities, in particular the Ministry of Agriculture and Agrarian Reform.

Article 3. The nature of State aid and of operations and agricultural ventures to be encouraged shall be established by decree.

The procedures for granting State aid shall, for the duration of each development plan, be specified in orders issued jointly by the Minister of Agriculture and Agrarian Reform, the Minister of the Interior and the Minister of Finance.

Article 4. Farmers shall assist agricultural development by discharging the obligations assumed under this Dahir and the texts pertaining to its implementation. The discharge of these obligations shall be determined in the light of the farmer's own resources and the technical and financial assistance the State can provide....

[4] *Ibid.*, No. 2960 *bis*, of 29 July 1969.

NAURU

NOTE [1]

The note attached is a copy of the Constitution of the Republic of Nauru wherein articles 3 to 14 inclusive provide for the protection of fundamental rights and freedoms. [2]

There were no decisions during 1969, from the Courts of Nauru, relating to human rights as defined in the Universal Declaration of Human Rights.

---

[1] Note furnished by the Government of Nauru.

[2] Extracts from the Constitution of Nauru appear in the *Yearbook on Human Rights for 1968*, pp. 294-299.

NETHERLANDS

NOTE [1]

1. THE RIGHT TO RESPECT OF PRIVACY

Legislation

As stated in previous contributions to the *Yearbook on Human Rights*, three bills containing provisions designed to protect privacy have been introduced in recent years in the Second Chamber of the States-General: on 31 October 1966 a bill with complementary regulations protecting the secrecy of telephone conversations; on 4 December 1967 a bill containing provisions aiming to afford protection against the clandestine tapping and recording of conversations by technical appliances; and on 19 June 1968 a bill containing penal provisions relative to portraits of persons, designed to protect privacy.

After the Second Chamber had issued provisional reports on these bills a memorandum was introduced with an amended draft grouping the three initial bills into one. It differed from the previous bills only on a few points of minimal importance.

2. THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

Legislation

I. *The Broadcasting Act ("Omroepwet") and the Broadcasting Decree ("Omroepbesluit"), which came into force on 29 May 1969, are based on a series of principles related to the right to freedom of expression.*

1. *The need for non-exclusiveness and co-operation*

Non-exclusiveness in radio and television should be considered a manifestation of the right to freedom of expression, in so far as it is compatible with the proper utilization of these media; the aim of co-operation is to place radio and television on a basis broad enough to permit joint responsibility for their use and to ensure that they are used efficiently. Non-exclusiveness is reflected, first, in the admission of private radio and television organizations whose objectives, structure and number of members meet legal requirements. This non-exclusiveness is also reflected in the granting of broadcasting time to religious groups, philosophical-religious groups, political parties and in certain cases other institutions not wishing to engage in full-time radio and television broadcasting.

The same non-exclusive attitude exists in the administrative sphere. The body responsible for co-operation, the Netherlands Broadcasting Corporation (Nederlandse Omroep Stichting), is based not only on radio and television circles but also on other cultural and social sectors of society, as can be seen from the composition of the governing boards.

2. *Programmes*

(a) *Content.* Radio and television organizations are under an obligation to transmit a comprehensive programme including cultural, recreational and news programmes in reasonable proportions. The Netherlands Broadcasting Corporation must transmit a joint programme, including not only programmes whose very nature requires joint preparation or transmission, but also programmes whose content requires joint presentation, and programmes which can promote the exchange of ideas among various groups in the population.

(b) *Responsibility.* Programmes should not endanger the security of the State, public order or public morality. The organizations transmitting a programme are responsible for its content. Programmes should not include advertising; they may, however, include information programmes for consumers. The Broadcasting Act makes an exception in the case of the Broadcast Advertising Corporation on Stichting Etherreclame which is responsible for advertising on radio and television.

(c) *Supervision.* Broadcasts are subject to repressive supervision, except in the case of cinematographic films. In transmitting such films, the decision of the Central Commission on Film Supervision must be taken into account.

(d) *Programme guides.* Only the radio and television organizations are permitted to publish a programme guide containing the full programme for Netherlands broadcasts and, as far as possible, foreign broadcasts. The Netherlands Broadcasting Corporation makes a summary of programme information available to the foreign press and foreign radio and television organizations.

(e) *Protection of copyright.* The programme guides are protected under the 1912 Copyright Act (Auteurswet).

(1) *Obligation to broadcast corrections.* The Broadcasting Act provides that correction may be required if, during a broadcast, false or incom-

[1] Note furnished by the Government of the Netherlands.

plete—and thus misleading—information is given on matters of fact.

II. *The 1969 Decree on radio broadcasting time (Radiozendtijdbeschikking) and the 1969 Decree on television broadcasting time (Televisiezendtijdschikking) regulate the granting of the available broadcasting time.*

3. THE RIGHT TO WORK, TO FREE CHOICE OF EMPLOYMENT, TO JUST AND FAVOURABLE CONDITIONS OF WORK AND TO PROTECTION AGAINST UNEMPLOYMENT

Legislation

The Act of 20 February 1964 regulating foreign labour came into force on 1 March 1969. This Act is designed to promote the development of international relations in the socio-economic sphere, and to strengthen guarantees for aliens working or desiring to work in the Netherlands.

4. THE RIGHT TO SOCIAL SECURITY IN CASE OF SICKNESS OR DISABILITY

Legislation

The Act on social measures relating to employment came into force on 1 January 1969. This Act replaced two ministerial decrees in force until that date, namely, the communal regulations on social measures relating to the employment of manual workers and the regulations on social measures relating to the employment of white-collar workers.

This Act can be summed up as follows:

(*a*) There are in our society many people who should in fact make their living by working, but who are temporarily or permanently prevented from working in a normal post because of physical, mental or character defects, illnesses or deformities which may be congenital or incurred;

(*b*) In so far as these handicapped persons are capable of doing productive work, the public authorities must establish for them posts which are as far as possible adapted to their capabilities, thus making it possible to maintain, restore or increase their capacity to work. This activity by the authorities is called "Social measures relating to employment";

(*c*) The Act requires municipal authorities to ensure that persons mentioned under (*a*) living in their communes are employed to carry out, for payment and in suitable conditions, work designed as far as possible to maintain, restore or increase their capacity to work;

(*d*) The Minister for Social Affairs and Public Health supervises the municipal authorities' performance of this task;

(*e*) Conditions of work in these social posts are, as far as possible, the same as in normal posts, in so far as the workers' physical or mental condition does not require adaptation of those conditions;

(*f*) The worker has the right to submit to the municipal authority, which employs him, a complaint against any decision, action or omission, if he considers that it is detrimental to his rights or interests; he also has the right to appeal to the Appeals Council or the Central Appeals Council against the decisions of the municipal authority;

(*g*) The State pays to municipal authorities a certain percentage of the expenditure incurred in the implementation of this Act.

At the end of 1969 more than 43,000 persons were working in posts provided under these social measures relating to employment.

On 1 January 1969, within the framework of the Health Insurance Fund Act, a regulation was introduced establishing the right of participants in health insurance funds to psychiatric examination, treatment and care in psychiatric day-care establishments. This regulation is included in the Decree of 28 April 1969. This new approach encourages medical treatment adapted to modern views regarding persons suffering from mental illness and makes it possible to treat persons who do not (or who no longer) require continuous day-and-night treatment, and who cannot obtain the recommended activation treatment in a given polyclinic.

There is a fixed limit of ninety consecutive treatments for which the participant makes no supplementary payment.

NETHERLANDS ANTILLES

1. THE RIGHT TO A FAIR HEARING

Court decision on Article 6, paragraphs 3-(*b*) and 3 (*c*), of the European Convention on Human Rights.

The Court of Justice of the Netherlands Antilles decided, in its judgement of 16 January 1968, that when a lawyer does not receive authorization to visit an untried prisoner, recourse to article 6, paragraph 3 (*c*), of the Convention is not permissible in the Netherlands Antilles, since, when the European Convention on Human Rights was declared applicable to Surinam and to the Netherlands Antilles, a reservation was made on article 6, paragraph 3 (*c*). Since in the case in question, the lawyer was able to be present at the inquiry conducted by the examining judge and subsequently had free access to the accused, article 6, paragraph 3 (*b*), of the Convention was not violated.

2. THE RIGHT TO FREEDOM OF EXPRESSION

Court decision on article 10, paragraph 2, of the European Convention on Human Rights.

The Court of Justice of the Netherlands Antilles decided, in its judgement of 6 February 1968, that article 1, paragraph 1, of the Curaçao Decree of 22 June 1953 (ban on making a speech in the open air before an audience if written authorization from the Chief of the local police had not been received beforehand) is contrary to article 10, paragraph 2, of the European Convention on Human Rights. In fact, it is impossible to determine from the nature and tenor of the Decree or from the content of the provision whether

there is any legal restriction on the policy concerning authorizations within the terms of article 10, paragraph 2, of the European Convention, because neither the Decree nor the other legal provisions gives the reasons for which an authorization, as described in the provision in question, can be refused or an authorization already given be withdrawn. Authorizations could therefore be refused or withdrawn for reasons other than those quoted in article 10, paragraph 2, of the European Convention on Human Rights.

3. The rights of the child

Legislation

On 1 June 1969 legal provisions came into force permitting adoption, which will contribute to the social welfare of the child.

NEW ZEALAND

NOTE [1]

I. LEGISLATION

1. *Aged and Infirm Persons Protection Amendment Act*

This allows a Magistrate to make an interim order for the protection of an estate where urgent action is needed.

2. *Criminal Injuries Compensation Amendment Act*

This increases the amounts of compensation payable under the Act and provides that compensation may be paid for expenses likely to be incurred, as a result of the victim's death, in providing services for any child of the victim. A child means any child who is under the age of 16 or who is under the age of 21 and unmarried, and who is or will be engaged in a course of full-time education or training.

3. *Criminal Justice Amendment Act*

This inserts into the principal Act a new part relating to mentally disturbed persons. Persons in custody whom the Court considers may be mentally disordered may be detained in a hospital for observation. Where a person is found by the Court to be mentally disordered the Court must make an order that he be detained in a hospital. He may be brought before the Court when he ceases to be mentally disordered. Where a person is acquitted on the ground of insanity the Court must order his detention in a hospital unless it is satisfied that it would be safe to order his immediate release or to allow him to continue serving any sentence of imprisonment or detention to which he is already subject. He may be discharged when his mental condition no longer requires his detention.

4. *Electoral Amendment Act*

This reduces the voting age from 21 to 20.

5. *Legal Aid Act*

This is the first Act to establish a comprehensive system of civil legal aid in New Zealand. The scope and nature of legal aid are set out in sections 15 and 16 of the Act. The chief exclusion from the legal aid scheme is any proceeding under the Matrimonial Proceedings Act other than one exclusively for ancillary relief. A person will not generally be eligible for legal aid if his disposable income (assessed in accordance with section 19) exceeds 2,000 dollars a year or such greater amount as a District Committee may in special circumstances approve. A person may also be refused legal aid if he has a disposable capital (assessed in accordance with section 19) of more than 2,000 dollars and it appears that he can afford to proceed without legal aid. An application for legal aid may be made on behalf of a person who is under 16 or is of unsound mind. A person of 16 or over may apply for legal aid in his own right.

6. *Maori Purposes Act*

Section 9 extends the housing assistance available under the Maori Housing Act 1935 to any Polynesian who is a native of any island of the South Pacific Ocean and any person who is a descendant of such a Polynesian, if he is a New Zealand citizen or has lived in New Zealand for 5 years and is permanently resident there.

7. *Mental Health Act*

This is a consolidation and amendment of earlier legislation.

8. *Minors' Contracts Act*

Under this Act a minor who is or has been married is given full contractual capacity except for the purposes of certain agreements relating to trusts. A contract entered into by any minor aged 18 or over, a life insurance contract or a contract of service entered into by a minor *prima facie* has effect as if the minor were of full age but the Court may, except in specified cases, relieve the minor of his obligations if any provision of the contract is harsh or oppressive or the consideration is so inadequate as to be unconscionable. A contract, other than a life insurance contract or a contract of service, entered into by a minor under 18 is *prima facie* unenforceable against the minor but otherwise has effect as if the minor were of full age. The Court may however enforce the contract against the minor if satisfied that it is fair and reasonable. Every contract entered into by a minor with the prior approval of a Magistrate's Court has effect as if the minor were of full age.

9. *New Zealand Security Intelligence Service Act*

This Act puts the New Zealand Security Service on a statutory basis. The functions of the Service are set out in section 4. Under section 13, impersonation of a security officer is made an offence. Any person ordinarily resident in New Zealand

[1] Note furnished by the Government of New Zealand.

who claims that his career or livelihood has been adversely affected by an act or omission of the Service may complain to the Commissioner of Security Appeals, who must be a barrister or solicitor of the Supreme Court of not less than seven years' practice. After investigating the matter, the Commissioner reports to the Minister, who takes such action as he considers appropriate.

10. *State Services Remuneration and Conditions of Employment Act*

The Act provides for the fixing of rates of remuneration and conditions of employment for employees in the State service.

11. *Status of Children Act*

This Act abolishes the status of illegitimacy in New Zealand law. The relationship between a person and his father and mother is determined irrespective of whether the father and mother are or have been married to each other and all other relationships are determined accordingly. The rule of construction whereby words of relationship signify only a legitimate relationship unless the contrary is expressed is abolished. Nor does the use of the words legitimate or lawful in any instrument in itself preclude the relationship from being determined in accordance with the basic rule given above. However for any purpose relative to succession to property, the construction of any testamentary disposition or trust instrument, or claims under the Family Protection Act 1955, the relationship of father and child is recognized only if the father and mother of the child were married to each other at the time of its conception or at some subsequent time, or paternity has been admitted by or established against the father in his lifetime. The means by which paternity is ascertained are not confined to those set out in section 8 of the Act. Conduct implying recognition of the child would be relevant, for example.

12. *Superannuation Amendment Act*

The Act provides for superannuation allowances to be adjusted so as to alleviate to some extent the effects of inflation.

13. *Wills Amendment Act*

A married minor and a minor of 18 or over is competent to make a will and revoke a will, as if he were of full age. An unmarried minor of 16 or over but under 18 may make a will with the approval of the Public Trustee or of a Magistrate's Court.

II. JUDICIAL DECISIONS

1. *Elvey* v. *Police* (1969) N.Z.L.R. 21

Section 31 (1) of the Child Welfare Amendment Act 1927 requiring an investigation and report by a child welfare officer before the hearing and determination of any proceedings in the Children's Court is not merely procedural but goes to the jurisdiction of the Court. Failure to comply with this provision renders the Court's decision a nullity.

2. *Marshall* v. *Lower Hutt City* (1969) N.Z.L.R. 63

Disqualification from driving for a period "from" a certain date raises a doubt whether the disqualification commences on that date or the following day. A conviction for driving on the date in question cannot be sustained, as the person affected might well be in reasonable doubt about the commencement date. In penal matters, the citizen is entitled to certainty and not doubt.

3. *Stapleton* v. *Auckland City* (1969) N.Z.L.R. 95

A by-law which imposes a licence fee beyond the cost of the service involved, so that it becomes a revenue producing levy or tax, is unreasonable and forbidden by law. Fifty dollars for each vehicle was held to be an unreasonable sum for the licensing of vehicles from which goods were offered for sale in the street.

4. *Forgie* v. *Police* (1969) N.Z.L.R. 101

In a prosecution for indecent assault, the Magistrate misdirected himself by regarding as corroboration the defendant's acceptance of much of the complainant's evidence as to what took place. As there was no independent corroboration, the proper course was for the information to be reheard in the Magistrate's Court. This would give the defendant an opportunity of being tried by jury if he so wished.

5. *Mitchell* v. *Allen and Another* (1969) N.Z.L.R. 110

Medical men who perform duties under the Mental Health Act 1911 are entitled to fair and effective protection against the institution of subsequent proceedings but wherever the Act is invoked to detain a man against his will, a high degree of care must be exercised to see that the facts of the case are within the strict boundaries of the Act. Leave under the Act was granted to the applicant to bring civil proceedings against two doctors whom he alleged had negligently certified him as mentally defective and had him detained in a mental hospital.

6. *Denton and Others* v. *Auckland City and Another* (1969) N.Z.L.R. 256

The hearing of an application before a Town and Country Planning Committee of a local authority pursuant to the Town and Country Planning Act 1953 is of a quasi-judicial character and requires the committee to observe the principles of natural justice. The failure of the committee to disclose at the hearing that there was in its hands a lengthy report from its town planning officer relating to the application was a breach of the principles of natural justice. The decision of the committee was accordingly a nullity.

7. *Police* v. *Thomson* (1969) N.Z.L.R. 513

The mere pronouncing of words of arrest, either without a formal touching of the person sought to be arrested or a submission or acquiescence by him evidenced by words or conduct, does not establish an arrest. On a case stated, it was accordingly held that the Magistrate had rightly rejected a charge against the defendant of escaping from lawful custody.

8. *Dimond Manufacturing Co. Ltd. and Others* v. *Hamilton and Others* (1969) N.Z.L.R. 609

Where a firm of accountants and auditors prepares and certifies a company's balance sheet which a member of the firm later shows to a party for the known purpose of constructing an offer in reliance on the accounts produced, a special relationship is created between the firm and that party. Once it is established that negligence in the preparation and auditing of the accounts resulted in figures being shown which were not in accordance with proper accounting practice and were continuing misrepresentations of fact, an action in tort lies against the firm for loss suffered by that party.

9. *Anderson* v. *Evans* (1969) N.Z.L.R. 769

Section 75 (1) of the Summary Proceedings Act confers jurisdiction on a Magistrate or Justice, in his discretion, to grant or refuse a rehearing without any limitation of the grounds or of the time within which such jurisdiction may be exercised. The dismissal of a general appeal does not deprive a Magistrate of the jurisdiction to grant the different remedy of rehearing and delay is not a bar to an application.

10. *Police* v. *Rushbrooke* (1969) N.Z.L.R. 775

The power to arrest without a warrant given to a constable by section 315 of the Crimes Act is quite unqualified by any limitation as to where the power may be exercised. The purpose of section 317 of the Act is not to restrict this power but to enable a constable to enter upon premises in order to effect the arrest when otherwise he would be a trespasser.

11. *The Queen* v. *Carrington* (1969) N.Z.L.R. 790

Where the evidence of a Crown witness differs from his earlier statement to the Police, there must be a clear direction to the jury that the unsworn statement is not of itself evidence and cannot be made evidence as such unless unequivocally adopted as true by the witness at the trial. As there was no adequate direction to the jury the conviction should be quashed and a new trial ordered.

12. *The Queen* v. *Murphy* (1969) N.Z.L.R. 959

In a case of attempted murder it is necessary for the Crown to establish an actual intent to kill. Where the trial judge directed the jury that the accused could be convicted of attempted murder if he intended to cause bodily harm which he knew was likely to cause death and was reckless whether death ensued or not, there was a misdirection and a new trial should be ordered.

13. *Morris* v. *Wellington City* (1969) N.Z.L.R. 1039

The applicant, an employee of the Corporation, gave evidence for the widow of a fellow employee in a successful action for damages against the Corporation. The applicant was subsequently dismissed from his employment by his superior. It was held to be established beyond reasonable doubt that the dismissal was a punishment for giving evidence against the Corporation. This was contempt of Court for which the superior and the Corporation (which was fully aware of the circumstances) were both liable.

14. *Utah Construction & Mining Co.* v. *Watson* (1969) N.Z.L.R. 1062

In a personnal injury action, the defendant's solicitor instructed counsel to oppose the plaintiff's application under R177 of the Code of Civil Procedure to take the evidence of an orthopaedic surgeon who had previously examined the plaintiff but was now going overseas. The judge granted the application and ordered the plaintiff's costs to be paid personally by the defendant's solicitor. The appeal against the order was allowed because the judge had not given the solicitor an opportunity to be heard in his own defence.

NICARAGUA

DECREE NO. 39 OF 14 APRIL 1969 TO AMEND THE LABOUR CODE

SUMMARY

The Decree amends the Labour Code in relation to, *inter alia*, the employment of children and maternity leave.

The paragraph added to section 122 of the Code states that it is unlawful to employ children under 16 years of age at night and on the compulsory rest day; that added to section 123 provides, *inter alia*, that it is unlawful to employ at night children under 18 years of age in industrial, public or private undertakings or premises or establishments connected therewith, except those in which only members of the same family are employed; that added to section 151 forbids, *inter alia*, children under 15 years of age to perform services on board any vessel except vessels on which only the members of the same family are employed and children under 18 years of age to be employed on board ship as storekeepers or trimmers, firemen or stokers; and that to section 175 permits children under 14 to be employed in agricultural work outside school hours, on work compatible with their school attendance and without prejudice to the provisions of section 124 and other provisions limiting the employment of minors.

With regard to maternity leave, the paragraph added to section 129 reads as follows: "If the confinement occurs after the presumed date indicated by the medical practitioner or midwife, the paid prenatal maternity leave shall be prolonged until the actual date of the confinement; in this case the duration of the compulsory postnatal maternity leave shall not be less than six weeks."

The text of the Decree appears in *La Gaceta*, No. 81, of 15 April 1969. Translations thereof into English and French have been published by the International Labour Office as *Legislative Series* 1969—Nic. 1.

DECREE NO. 41 OF 26 APRIL 1969, TO MAKE REGULATIONS UNDER THE LAW TO ESTABLISH A TRIPARTITE COMMITTEE ON FREEDOM OF ASSOCIATION AND THE PARTICIPATION OF WORKERS IN NATIONAL DEVELOPMENT

SUMMARY

Section 1 of the Decree provides that the Tripartite Committee on Freedom of Association and the Participation of Workers in National Development established by Legislative Decree No. 1484 of 30 August 1968 (*La Gaceta*, No. 222, of 28 September 1968),[1] shall be governed, *inter alia*, by these regulations.

Under section 3 the Minister of Labour, in setting up the Committee, shall issue a communication to the most representative democratic workers' organizations, requesting them to designate three candidates for each seat as employers' and workers' representative on the Committee and their respective substitutes, with a recommendation that at least one woman shall be included among the said candidates, and shall also request the minority party to nominate its representative on the Committee and his substitute.

As indicated in section 7, the Committee shall examine all the measures adopted or to be adopted in order to ensure trade union participation in the drawing up and execution of national development plans, especially with regard to those aspects of greatest interest to the workers.

The text of the Decree appears in *La Gaceta*, No. 92, of 28 April 1969. Translations thereof into English and French have been published by the International Labour Office as *Legislative Series* 1969—Nic. 2.

[1] Section 2 of the Legislative Decree states that the Tripartite Committee shall be composed of two governmental representatives, two representatives of the employers' organizations, two representatives of the workers' organizations and a member representing the minority party, with his substitute.

NIGER

ACT NO. 69-5 OF 18 FEBRUARY 1969 AMENDING THE CODE OF PENAL PROCEDURE [1]

...

Article 2. Articles 174, paragraphs 2 and 3; 451, paragraph 4; 497, paragraph 1; 526; 532; 535, paragraph 2; 588; 618; 619; 620 and 638, paragraph 1, of the Code of Penal Procedure shall be amended to read as follows:

...

"*Article 618.* With the exception of the cases referred to in articles 616 and 617, all conflicts of competence shall be brought before the Supreme Court by a written application by the *ministère public,* the accused or the civil claimant. When an appeal is brought before it, the Supreme Court may also rule, *ex officio* and even in advance which court shall hear the case in question. It may rule on all decisions taken by the court which it decides shall not hear the case.

"*Article 619.* Before determining which court shall hear the case, the Supreme Court may order that the written application be communicated to the parties. In that case, the documents relating to the proceedings shall be transmitted to it within the time-limit established by it, together with the observations of the parties concerned, and the proceedings shall be suspended.

"*Article 620.* The decision as to which court shall hear the case shall be communicated to the parties concerned. Except where communication of the written application was ordered, they may appeal against the decision by filing a notice of appeal with the office of the clerk to the court in the place where one of the courts in conflict sits, in accordance with the procedures and time-limit established for appeals to the Court of Cassation.

"The appeal shall have the effect of suspending the decision should the Supreme Court so rule.

"An appeal shall be ruled upon within fifteen days of receipt of the documents at the office of the clerk to the Supreme Court.

"*Article 638, paragraph 1.* Where a member of the judiciary, a prefect or a sub-prefect is liable to be accused of a crime or offence committed while he was performing his duties or at some other time, the *procureur de la République* to whom the case is referred shall transmit the file forthwith to the *procureur général* of the Supreme Court, which shall become competent to institute and carry out the public prosecution."

[1] *Journal officiel de la République de Niger*, No. 5, of 1 March 1969.

ACT NO. 69-41 OF 30 DECEMBER 1969 AUTHORIZING THE PRESIDENT OF THE REPUBLIC TO GRANT AMNESTY TO CERTAIN SENTENCED OFFENDERS [2]

Article 1. Persons prosecuted or sentenced for any crimes and offences against the security of the State committed prior to 1 January 1967 may, within a period of two years from the promulgation of this Act, ask to be granted an amnesty by decree.

Article 2. Amnesty shall entail the remission of all principal, accessory and supplementary penalties and the cancellation of all forfeitures, exclusions, disqualifications or deprivations of rights resulting from the penalty and all administrative sanctions.

[2] *Ibid.*, No. 20, of 15 October 1969.

NORWAY

NOTE [1]

A. STATUTES

1. *Act No. 6 of 7 February 1969 lowering the age of majority etc.*

The general age of majority has been lowered from 21 to 20 years.

2. *Act No. 7 of 7 February 1969 amending Act No. 2 of 31 May 1918 relating to contracting and dissolution of marriage etc.*

The Act alters, among other provisions, the conditions for contracting marriage:

(*a*) The marriage age for men has been lowered from 20 to 18 years, thereby establishing equal status between men and women in this respect. Persons who have not attained the statutory age require the consent (dispensation) of the public authorities for marriage, and the consent of their parents if they are under majority age—20 years.

(*b*) Mental deficiency (IQ under 55) has now been equated more closely with insanity as a bar to marriage. The amendment provides a right to grant dispensation both for insane persons and to a higher degree for mentally deficient persons.

(*c*) Contagious syphilis has been omitted as a bar to marriage, but the obligation to inform the other party of any contagious venereal disease has been maintained. The obligation to inform the other party about epilepsy and leprosy has been abolished.

(*d*) The amendment provides a broader right to grant permission for marriage between persons already related by marriage in direct line of ascent or descent.

3. *Act No. 8 of 7 February 1969 amending Act No. 9 of 21 December 1956 relating to children born in wedlock*

The amendment restricts the mother's preferential right to have custody of the children when the parents live apart. Moreover, the amendment gives the child an independent right to visit both parents when the parents live apart.

4. *Act No. 9 of 14 February 1969 amending the Civil Procedure Code etc.*

The Act amends certain rules concerning the resumption of enforceable judgements. The amendments aim at making it possible to reopen a case which has been concluded by a Norwegian judgement when the latter is presumably based directly or indirectly on an interpretation of international law or a treaty which differs from the interpretation which an international court subsequently and in a similar case establishes as binding on Norway, and this interpretation would presumably lead to a different decision.

5. *Act No. 18 of 6 June 1969 amending Act No. 1 of 17 December 1920 concerning Parliamentary elections.*

The amendment aims at facilitating the casting of votes by persons who are sick, disabled etc.

6. *Act No. 24 of 13 June 1969 relating to the primary school*

The Act introduces the nine-year compulsory school as a nationwide system. Previously, the normal compulsory school period was seven years.

7. *Act No. 25 of 13 June 1969 relating to religious denominations etc.*

The Norwegian Constitution of 1814 provides for an Established Church based on the Evangelical-Lutheran religion, but everybody has liberty of religious worship. Other denominations can achieve certain benefits through registration.

A new Act of 1969 contains general rules regarding membership in religious denominations and concerning registration etc. of denominations outside the Norwegian Established Church. By virtue of the registration, preachers and principals of registered religious denominations are entitled to perform certain functions of public law, among them the solemnization of marriages. Registered religious denominations are entitled under the Act to an annual grant from the State and municipality corresponding approximately to the public expenses of the Established Church, in proportion to the membership. In addition, registered religious denominations are entitled to public grants for religious education of those of their children who are exempt from lessons in religion in the primary school.

8. *Act No. 52 of 18 June 1969 amending the Civil Procedure Code etc. as regards rules relating to judicial review of decisions for compulsory operations under the health laws etc.*

Under this amendment, the Civil Procedure Code of 13 August 1915 has been provided with a new chapter which is to apply when the courts review certain decisions for compulsory operations on persons under the health and social laws. These procedural rules are simpler than those normally applying, thus the action can be brought in a

[1] Note furnished by the Government of Norway.

more informal manner, and the rules can lead to more rapid proceedings. The court's review comprises not only the lawfulness of the decision, but also the discretionary questions which arise, i.e. whether the compulsory operation is expedient or reasonable. This wide reviewal authority differs from the otherwise applicable main rule, which authorizes the courts, in matters of administrative decisions, to test the lawfulness thereof only.

B. JUDICIAL DECISIONS

Supreme Court judgement of 1 November 1969—question of the validity of exclusion from a trade union

Three members who had been expelled from their trade union brought suit against the trade union for annulment of the expulsion which was, however, upheld both by the lower court and by the Supreme Court. The courts found that the expulsion had been decided by a competent instance, and that no error of procedure had been committed. There were also sufficiently strong grounds for the exclusion. The members' acts on which an exclusion can be based need not be explicitly specified in the by-laws. The decisive point was that membership in an organization is based on the assumption that the members, by joining the organization, intend to co-operate in promoting its lawfully adopted objectives. If a member acts in opposition thereto, for example by behaving disloyally towards the organization or in a manner tending to harm it, the organization must be justified in taking his membership up for consideration and terminating it if the assumptions on which it was based are not fulfilled. A subsidiary argument to the effect that the expulsion was an unreasonably strong reaction was also rejected, on the ground that only under extreme circumstances can the courts intervene in an organization's decision when exercising its right of exclusion.

C. INTERNATIONAL AGREEMENTS

Norway has not concluded in 1969 any international agreements of specific importance to human rights outside the auspices of the United Nations, the specialized agencies or the Council of Europe.

PAKISTAN

THE WEST PAKISTAN SHOPS AND ESTABLISHMENTS ORDINANCE, 1969

(Ordinance No. VIII of 3 July 1969)

SUMMARY

Section 4 provides that the Government may, by notification in the *Official Gazette,* exempt from the operation of all or any of the provisions of this Ordinance any establishment or any class thereof or any employer or employee or class of employers or employees on such conditions as it may think fit.

The Ordinance, as indicated in subsection (1) of section 5, is not applicable to the establishments and persons mentioned therein. In subsection (2) of section 5 are listed the establishments to which do not apply clause (*a*) of subsection (1) of section 6, which states that except as otherwise provided in this Ordinance, every establishment shall remain entirely closed for at least one day each week, and section 7, which specifies that no establishment shall on any day remain open after 8 p.m.

Under clause (*b*) of subsection 1 of section 6, every person employed in any establishment shall, in addition to such leave and holidays as may be admissible to him under sections 14, 15 and 16, dealing with annual leave, casual and sick leave and festival holidays respectively, be allowed as holiday, one day in each week, and such holiday may be on the day on which the establishment is closed under clause (*a*).

With regard to the saving of certain rights and privileges, section 33 provides that nothing in this ordinance shall affect any right or privilege to which an employee is entitled on the date of the commencement of the Ordinance, if such right or privilege is more favourable to him than any right or privilege conferred upon him by this Ordinance.

Other provisions of the Ordinance deal with opening and closing hours of establishments; daily, weekly hours and overtime; overtime wages; time and conditions of payment of wages; claims arising out of delay in payment of wages and penalty for malicious or vexatious claims; wages during leave or holiday period; termination of employment; prohibition of employment of children; and guarding of machinery.

The text of the Ordinance in English and a translation thereof into French have been published by the International Labour Office as *Legislative Series* 1969—Pak. 1.

PANAMA

CABINET DECREE NO. 141 OF 30 MAY 1969 [1]

Article 1. Article 2091 of the Judicial Code shall be replaced by the following:

"*Article 2091.* In the case of an offence punishable by rigorous imprisonment with forced labour *(reclusión)* or imprisonment, a trade union member shall be remanded in custody where any one of the following situations prevails: where he is incriminated by testimony given by a qualified witness, even if not yet submitted in writing; where there are strong indications that he is the perpetrator of, accomplice in, or concealer of the criminal act under investigation; where the official remanding him in custody saw him commit the act; or where he was caught *in flagrante delicto.* A trade union member shall, however, also be remanded in custody pending trial in the cases referred to in article 318 of the Penal Code, and shall be entitled to release therefrom in accordance with article 2099 and other relevant articles of this Code. In the cases referred to in article 322 of the Penal Code, a trade union member shall be remanded in custody pending trial and shall remain in custody until he has testified at a preliminary inquiry.

"When committing a person to custody, the examining official or court shall, where several alternatives are possible, take into account the maximum penalty applicable to the offence in question."

Article 2. Article 2099 of the Judicial Code shall be replaced by the following:

"*Article 2099.* Any trade union member or accused person may deposit bail to avoid being committed to custody or, after being remanded in custody, to obtain his liberty during the trial. Release on bail shall not be granted in cases of homicide by negligence until after the first eight days of the proceedings. By virtue of having secured the accused person's release from prison, the surety shall be required to guarantee his presence at a preliminary hearing within three working days of the order in question, unless the person concerned has already given preliminary testimony. The conditions of bail shall be deemed to have been fulfilled only if this requirement has been met."

Article 3. Article 318 of the Penal Code shall be replaced by the following:

"*Article 318.* A person who causes another's death through imprudence, negligence, professional incompetence or failure to observe regulations, orders or provisions shall be punished by detention for one to two years and, once the full sentence has been completed, shall be prohibited from exercising his profession for one to two years.

"Where the act causes the death of several persons or the death of one person and injury to one or several persons in the form of bodily harm, impairment of health or mental suffering, the perpetrator shall be punished by detention for two to five years and, once the full sentence has been completed, shall be prohibited from exercising his profession for two to five years."

The following shall be considered aggravating circumstances: proof that the accused was intoxicated at the time the act was committed, non-possession of a driver's licence and flight.

Article 4. Article 322 of the Penal Code shall be replaced by the following:

"*Article 322.* Anyone who causes injury to another person in the form of bodily harm, impairment of health or mental suffering, through imprudence, negligence, professional incompetence or failure to observe regulations, orders or provisions shall be liable to the following penalties:

"(*a*) Detention for three to six months or a fine of 90 to 180 balboas; proceedings may be initiated, however, only upon complaint by the injured party or his legal representative if he is a minor or incapacitated, in the case referred to in article 319, paragraph 1;

"(*b*) Detention for six months to one year or a fine not less than 180 balbaos nor exceeding 500 balbaos, in other cases."

Article 5. Paragraph 5.16 of article 25 of Act No. 11 of 1963 shall be replaced by the following:

"16. The following punishable activities: robbery, theft of one or more head of cattle, theft in cases where the penalty is more than two years; extortion and kidnapping; injury, in cases where the penalty is more than two years of rigorous imprisonment with forced labour or imprisonment; possession or use of, or traffic in, narcotic drugs; and homicide and fire caused by imprudence, negligence or professional incompetence."

Article 6. All provisions contrary to this Cabinet Decree are hereby repealed.

Article 7. This Cabinet Decree shall enter into force upon its promulgation.

[1] *Gaceta Oficial*, No. 16,391 of 26 June 1969.

PEOPLE'S REPUBLIC OF THE CONGO*

ORDINANCE NO. 22-69/CNR OF 10 NOVEMBER 1969 SETTING UP A COURT MARTIAL [1]

Article 1. A court martial shall be set up to try certain crimes connected with the security of the State.

This court shall belong to neither the judicial nor the administrative court system.

Article 2. The court martial shall be competent to try all persons accused of having committed, alone or with others, or of being accomplices in an attack against the internal or external security of the State.

It shall be competent to deal with conspiracies which are in the operational phase and have the aim either of overthrowing or changing the Government, or of inciting the citizens or population to take up arms against the constitutional authority.

The court martial shall be competent to try all ordinary crimes and offences which are related to those crimes and offences against the security of the State which are brought before it.

The following shall be considered as related to the crime of conspiracy against the internal security of the State: the crime of attempted murder of members of the security forces, the offence of illegal possession of weapons, ammunition or weapons stores, the offence of assault and battery against members of the security forces, when these crimes and offences are proved to be related to the crime of conspiracy and to have the aim of ensuring that the persons who committed them escape punishment.

Article 5. The court martial shall open proceedings *in camera* within not more than forty-eight hours.

The defendants shall be assisted by court-appointed defence counsel.

Article 6. The court martial shall impose the penalties laid down in the ordinary criminal law.

Article 7. The decisions of the court martial shall not be subject to appeal.

---

* Referred to in earlier editions as Congo (Brazzaville).

[1] *Journal officiel de la République du Congo*, No. 23, of 1 December 1969.

PHILIPPINES

CONSTITUTIONAL PROVISIONS, LEGISLATION, EXECUTIVE ORDERS, AND DECISIONS ON HUMAN RIGHTS IN THE PHILIPPINES FOR 1969 [1]

I. EXPLANATORY COMMENTS TO DESCRIBE TRENDS IN HUMAN RIGHTS

In the matter of human rights, it is predicted that the Philippine courts, as the alert guardians of personal liberty and the rule of law, will come to uphold the constitutional guarantees in the Bill of Rights. It seems that in view of the ruling in the case of *Gonzales* v. *Comelec, infra,* the landmark case for human rights for 1969, a denial or limitation of the vital rights of free speech and the press, freedoms of association and assembly, would be justified only by the "clear and present danger" rule. The Philippine Supreme Court seems to be veering away from the "dangerous tendency" rule to the "clear and present danger" rule, which is a good and healthy thrust for human rights.

However, as to the question whether the Supreme Court will still follow the general rule as to the presumption of constitutionality of a statute, it is believed it will do so, but only where the basic freedoms provided in the Constitution are not involved. This position of the Court is aptly stated in the case of *Vera* v. *Arca* (No. L-25721, 26 May 1969, 28 SCRA 351), where the Court stated: "Except in cases where the specific freedoms of belief, whether religious or secular, of expression, of assembly and of association are concerned, a domain where Congress is forbidden to trespass except under the clear and present danger doctrine, the need for introducing evidence to counteract the assumption that a statute is valid may be unavoidable." Of the same tenor is the ruling in the case of *City of Baguio* v. *Marcos* (No. L-26100, 28 February 1969, 27 SCRA 342), where the Court ruled: "Well-entrenched in constitutional law is the precept that constitutional questions will not be entertained by courts unless they are specifically raised, insisted upon and adequately argued."

But even with the deep concern of the Supreme Court for the preservation of human rights, it is safe to predict that the Court will still apply the balancing-of-interests rule, balancing individual liberties on one end of the scale and public interests and public welfare on the other. This was what happened in a very interesting and very recent case decided only on 26 February 1970 involving leaders and members of the Movement for a Democratic Philippines (MDP) who filed a *mandamus* suit to compel Mayor Antonio Villegas of Manila to issue a permit for a rally ("The People's Congress") at Plaza Miranda and not at Sunken Gardens as suggested by the Mayor. It was argued that to deny the use of a public place was to curtail the freedom of speech and assembly. The Supreme Court, however, voting eight to two, upheld the mayor's contention that a permit could be denied because the projected demonstration posed a clear and present danger of damage to property. The Court noted: "Experiences in connexion with present assemblies and demonstrations do not warrant the Court's disbelieving the Mayor's appraisal that a public rally at Plaza Miranda, as compared to one at Sunken Gardens, poses a clearer and more imminent danger of public disorders, breaches of the peace, criminal acts, and even bloodshed as an aftermath of such assemblies and the MDP has manifested that it has no means of preventing such disorders. Every time such assemblies are announced the community is placed in such a state of fear and tension that offices are closed early and employees dismissed, storefronts boarded up, classes suspended and transportation disrupted, to the general detriment of the public."

The process of reconciliation of individual rights and freedom with public welfare is, however, a difficult one and, as may be seen from a study of cases, the courts have changed their decision from time to time to adjust them to the variations of social values.

In the field of economic and social legislation, there is a tendency to involve the members of the community as well as the youth in formulating plans, programmes and projects as would lead to their own self-development and to the development of the community at large. Examples of this are Republic Act (R.A.) 5462 creating a National Manpower and Youth Council, R.A. 5708 providing for an integrated physical education and sports programme, R.A. 6054 etc. Executive Orders geared to this end are E.O. No. 169 creating a Youth and Student Affairs Board, E.O. No. 170 promulgating the manual of student rights and responsibilities, and E.O. No. 182 creating a National Social Action Council.

In the field of civil and political rights, there is a noteworthy trend to recognize the importance of extending a helping hand to indigent litigants. Examples of this are R.A. 6023 requiring courts

[1] Note furnished by the Government of the Philippines.

to give preference to criminal cases where the party or parties involved are indigents, R.A. 6024 providing transportation and other allowances for indigent litigants, R.A. 6035 requiring stenographers to give free transcripts of notes to indigent and low-income litigants and providing a penalty for violation. Another progressive legislation is R.A. 6028 which expressly aims to promote higher standards of efficiency and justice in the administration of the laws as well as to better secure the right of the people to petition the Government for redress of grievances by creating for this purpose the Office of the Citizens Counsellor.

These are healthy indications of a growing social consciousness for reform. These are just the beginning, however. Implementation is another thing. The healthy trend should be continuously pursued.

II. CONSTITUTIONAL PROVISIONS

The Constitution—the highest law of the land—guarantees fundamental rights to individuals and groups against excesses which the government may commit in the exercise of its powers. In the discussion of these rights they shall be divided into three categories, namely: A. Economic Rights; B. Civil and Political Rights; and C. Social and Cultural Rights.

A. Economic rights

The Philippine Constitution entrusts to the State the duty to promote social justice in order to ensure the well-being and economic security of all the people. This is embodied as part of the Philippine Declaration of Principles. (Section 5, article II.)

It is also a constitutional mandate that the State shall afford protection to labour, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labour and capital in industry and in agriculture. (Section 6, article XIV.)

B. Civil and political rights

(a) *Due process clause and equal protection of the laws clause*

These are guaranteed in article III of the Philippine Constitution, also called the Bill of Rights. The most fundamental of these are the due process clause and the equal protection of the laws clause: "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws." (Paragraph 1, section 1 of article III.)

The due process clause is very broad and covers fundamental principles of justice and liberty. It affords protection not only to the procedural, but also and particularly to the substantive rights of individuals.

The equal protection of laws clause, on the other hand, is designed to safeguard the individuals or persons against discriminatory acts of the State.

(b) *Freedom of speech and the press; right of assembly and petition; right of association*

"No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances." (Paragraph 8, section 1, article III.)

"The right to form associations or societies for purposes not contrary to law shall not be abriged." (Paragraph 6, section 1, article III.)

Freedom of speech and the press is so basic a right in a democracy that the framers of the Philippine Constitution thought of putting it in a separate provision although it is already adequately embraced in the general concept of liberty protected by the due process clause. It covers not only freedom from previous restraint or censorship, and freedom to circulate opinions, as in picketing, but also freedom from liability, as in the case of privileged communications like official utterances of executives and members of Congress in sessions, utterances of judges in the exercise of their functions and also statements of parties and counsel in a case or relevant testimony of witnesses.

Complementary to the freedom of speech and the press are the right of assembly and petition, and the right of association. The purpose of these additional constitutional safeguards is to encourage the formation of voluntary associations so that through the co-operative activities of individuals the welfare of the nation may be advanced and the Government may thereby receive assistance in its ever increasing public service activities.

(c) *Freedom of religion*

"No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise and enjoyment of religion, profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political right." (Paragraph 7, section 1, article III.)

Freedom of religion, like freedom of speech and the press, is already embraced in the concept of liberty in the due process of law clause. This involves two concepts: (1) it forestalls the compulsion by law of the acceptance of any creed or the practice of any form of worship, and (2) it safeguards the free exercise of the chosen form of religion. The provisions on religious freedom are found not only in the Bill of Rights, they are also found in other articles like section 22 of article VI, which ensures that cemeteries, churches and parsonages or convents and all lands, buildings, and improvements used exclusively for religious, charitable or educational purposes shall be exempt from taxation. Paragraph 3, section 23 of article VI likewise provides that no public money or property shall be used for the benefit of any sectarian organization or any religious minister as such except in the cases provided by the Constitution. Section 5 of article XIV also provides that religious instruction shall be optional in the public schools. Also, under the New Civil Code, religious freedom shall be observed in the

issuance of authorization to solemnize marriages (article 93, NCC). The Revised Penal Code punishes certain violations of religious freedom. (Articles 123 and 133, RPC.)

(d) *Other fundamental civil rights*

The Constitution also guarantees and protects the right to one's private property which shall not be taken without just compensation (paragraph 2, section 1, article III), the rights of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures (paragraph 3, section 1, article III), the liberty of abode and of changing the same within the limits prescribed by law (paragraph 4, section 1, article III), the privacy of communication and correspondence which shall remain inviolable except upon lawful order of the court or when public safety requires it (paragraph 5, section 1, article III), the non-impairment of contracts (paragraph 10, section 1, article III), the non-imprisonment for debt or for the failure to pay a poll tax (paragraph 12, section 1, article III), the right against involuntary servitude in any form except as a punishment for a crime whereof a person shall have been duly convicted (paragraph 13, section 1, article III), and the non-suspension of the privilege of the writ of *habeas corpus* except in cases of invasion, insurrection, or rebellion or when public safety requires it. (Paragraph 14, section 1, article III.)

(e) *Constitutional guarantees in criminal cases*

The Bill of Rights of the Constitution provides that "no person shall be held to answer for a criminal offence without due process of law" (paragraph 15, section 1, article III). This simply means that the accused must be tried before a competent court, must be given a fair trial, and must be allowed to use all legal means to defend himself. In addition to this guarantee, there are constitutional provisions particularly and directly dealing with the rights of the accused at the trial, namely: the right to be presumed innocent, to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to meet the witnesses face to face, to have a compulsory process to compel the attendance of witnesses in his behalf, and the right not to be compelled to be a witness against himself or the right against self-incrimination.

In addition, the Bill of Rights contains provisions designed for the benefit and protection of the accused. It is provided that the accused shall have a speedy and public trial (paragraph 17, section 1, article III) which has been legally construed to mean one which is conducted with reasonable promptness consistent with the due course of justice, and not that which would be tantamount to undue haste.

It is further provided that "all persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when the evidence of guilt is strong" and that "excessive bail shall not be required." (Paragraph 16, section 1, article III.)

It is noteworthy that in the Philippine Constitution we have the provision on double jeopardy. The pertinent provision of the Constitution declares: "No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." (Paragraph 20, section 1, article III.)

Under the rules obtaining in the Philippines, in a criminal case, the accused is not placed in jeopardy until the following conditions have occurred: (1) the existence of a valid indictment, (2) the presentation thereof before a competent court, (3) the arraignment of the defendant, and (4) the defendant's plea to the indictment.

The Constitution provides that no *ex post facto* law or bill of attainder shall be passed. An *ex post facto* law is one which makes an act which was not punishable when committed, punishable, or which increases the punishment of an act which was punishable when committed. A bill of attainder, on the other hand, is a legislative act which convicts persons of, and punishes them for, acts without a judicial trial.

Finally, it is provided in the Constitution that "free access to the courts shall not be denied to any person by reason of poverty". (Paragraph 21, section 1, article III.) This provision is said to be a finale in the Bill of Rights to breathe life to many of the constitutional rights not only of the accused but also other constitutional rights mentioned.

C. Social and cultural rights

Under the Constitution, all educational institutions are placed under the supervision of, and are subject to regulation by, the State. It is the duty of the Government to establish and maintain a complete and adequate system of public education, and to provide at least free public primary instruction and citizenship training to adult citizens (section 5, article XIV).

All schools are under obligation to develop moral character, personal discipline, civic conscience, and vocational efficiency, and to teach the duties of citizenship. (Section 5, article XIV.)

It is declared as a constitutional principle that the natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the Government. (Section 4, article II.)

The Constitution guarantees academic freedom to universities established by the State (section 5, article XIV). The State is under duty to promote scientific research and invention and to establish scholarships in science. (Sections 4 and 5, article XIV.)

The State shall also promote arts and letters and create scholarships in these fields for specially gifted citizens (sections 4 and 5, article XIV).

The Constitution provides for the exclusive right to writings and inventions for a limited period. (Section 4, article XIV.)

The Congress is under duty to provide for the development and adoption of a national language based on one of the existing native languages (section 3, article XIV).

III. LAWS ENACTED BY THE PHILIPPINE CONGRESS DURING THE PAST THREE YEARS (1967-1969) RELATING TO HUMAN RIGHTS AS DEFINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

1. Republic Act 4881—17 June 1967—An Act creating a council for the protection of children in every city and municipality of the Philippines and for other purposes.

The law declares it to be the policy of the State not only to assure that every family should be helped in bringing up their children to make them useful men and women but also to see that the proper direction, supervision, and guardianship in the training, education and other interests of its minor citizens be undertaken by it.

To implement this sacred duty of the State, the law provides for the creation of a council for the protection of children in every city and municipality including a municipal district. The council is to supervise and act as guardian for the health, education and well-being of all minors within the city or municipality.

2. Republic Act 5218—15 June 1968—An Act prohibiting the dismissal of any employee or laborer for refusing or failing to vote for any candidate of his employer, amending for the purpose the revised election code.

The law prohibits the dismissal of an employee or laborer for refusing or failing to vote for any candidate of his employer. Any employee or laborer so dismissed shall be reinstated and the salary or wage of the employee or laborer shall be given to the aggrieved party.

3. Republic Act 5416—15 June 1968—An Act providing for comprehensive social services for individuals and groups in need of assistance, creating for the purpose a department of social welfare.

The law declares it to be the responsibility of the Government to provide a comprehensive programme of social welfare services designed to ameliorate the living conditions of distressed Filipinos, particularly those who are handicapped by reason of poverty, youth, physical and mental disability, illness and old age, or who are victims of natural calamities including assistance to members of the cultural minorities to facilitate their integration into the body politic.

The law creates a Department of Social Welfare which is charged with developing and implementing a comprehensive social welfare programme consisting of:

(1) Preventive and remedial programmes and services for individuals, families, and communities;

(2) Protective, remedial, and developmental welfare services for children and youth;

(3) Vocational rehabilitation and related services for the physically handicapped, ex-convict and individuals with special needs.

4. Republic Act 6111—4 August 1969—An Act establishing the Philippine Medical Care Plan and creating the Philippine Medical Care Commission, prescribing its duties, powers and functions.

Otherwise known as the "Philippine Medical Care Act of 1969", the law declares it to be the policy of the Government gradually to provide total medical service for the people by adopting and implementing a comprehensive and co-ordinated medical care programme based on accepted concepts of health care, namely:

(*a*) That there shall be total coverage of medical services according to the needs of patients;

(*b*) That there shall be co-ordination and co-operation in the use of all medical facilities of both the government and private sector; and

(*c*) That the freedom of choice of physicians and hospitals and the family doctor-patient relationship shall be preserved.

The main purposes and objectives of the Act are the extension of medical care to all residents in an evolutionary way within the economic means and capability of the nation; and providing the people of the country a practical means of helping themselves pay for adequate medical care.

5. Republic Act 6014—4 August 1969—An Act creating the Students' Loan Fund Authority, prescribing its powers, functions and duties.

It is a declared national policy under this law, to give equal opportunity to all persons who desire to pursue higher education by extending financial assistance and promoting scholarship grants-in-aid to deserving students to the end that no person shall be deprived of the benefits of education on account of poverty.

To carry out such declared policy, the law creates a Students' Loan Fund Authority under the Department of Education whose functions, among others, are:

(1) To establish and adopt a program of generating funds for educational loans and scholarship grants-in-aid to students who qualify under the Act;

(2) To plan and implement a program of financing the education of needy and deserving students;

(3) To conduct studies and researches on the extent poverty deprives students of pursuing college education or other forms of higher education after graduation from secondary schools and to recommend appropriate solutions for legislative action;

(4) To solicit and receive donations, legacies, grants-in-aid and other forms of contribution, whether in cash here and abroad, which shall accrue to the special fund created in this Act.

6. Republic Act 6028—4 August 1969—An Act to promote higher standards of efficiency and justice in the administration of the laws as well as to better secure the right of the people to petition the Government for redress of grievances, creating therefor the Office of the Citizens' Counsellor.

The purposes of this Act are:

(1) To protect and better safeguard the Constitutional right of the people to petition the government for redress of grievances; and

(2) To promote higher standards of efficiency in the conduct of government business and in the administration of justice for better services to the citizens.

For the purpose of implementing the Act, the creation of an Office of the Citizens' Counsellor

is provided for in the Act. The said Office has jurisdiction to investigate, on a complaint by any person or on his own motion, any administrative act of a government agency when he has reasons to believe that such act may be:

(1) Unreasonable, unjust, oppressive, or improperly discriminatory, even though in accordance with law;

(2) Under a mistake of law or fact, partly or wholly;

(3) Without adequate statement of reasons;

(4) Based on grounds that are improper and irrelevant;

(5) Done inefficiently;

(6) In conflict with law, or

(7) Otherwise erroneous.

7. Republic Act 6026—4 August 1969—An Act providing for the social and economic uplift of dislocated families relocated from the Greater Manila area to resettlement projects.

The law declares to be a concern of the Government, the social and economic uplift of the dislocated families relocated from the Greater Manila area to resettlement projects at the outskirts of the area. In the achievement of this aim, the law directs certain agencies of the Government such as Social Welfare, Health, Education, National Defense, the Presidential Arm on Community Development, and the People's Homesite and Housing Corporation, to extend services and assistance to such families.

The People's Homesite and Housing Corporation specifically has been directed to subdivide the unsubdivided portion of the land constituting the said resettlement project into home lots for sale to settlers on very liberal terms.

8. Republic Act 6035—4 August 1969—An Act requiring stenographers to give free transcripts of notes to indigent and low-income litigants.

The law directs a stenographer who has attended a hearing before an investigating fiscal or trial judge or hearing commissioner of any quasi-judicial body or administrative tribunal and has officially taken notes of the proceeding thereof, to give upon written request of an indigent or low-income litigant, his counsel or duly authorized representative in the case concerned, a free certified transcript of notes taken by him on the case. The law directs the stenographer concerned to provide the transcript within a reasonable time to be determined by the fiscal, judge, commissioner or tribunal hearing the case.

9. Republic Act 6034—4 August 1969—An Act providing transportation and other allowances for indigent litigants.

An indigent litigant, under this law, has the right to petition the Court for adequate travel allowance to enable him and his indigent witnesses to attend the hearing of a criminal case commenced by his complaint or filed against him. The allowance shall cover actual transportation expenses by the cheapest means from his place of residence to the court and back. When the hearing of the case requires the presence of the indigent litigant and/or indigent witnesses in court the whole day or for two or more consecutive days, allowances may, in the discretion of the Court, also cover reasonable expenses for meal and travel.

10. Republic Act 6033—4 August 1969—An Act requiring courts to give preference to criminal cases where the party or parties involved are indigent.

Except in case of *habeas corpus* and election cases and cases involving detention prisoners, or where the offended party in a criminal case is about to depart the Philippines with no definite date of return, all courts shall give preference to the hearing and/or disposition of criminal cases where an indigent is involved either as the offended party or accused. The law provides that the trial in these cases shall commence within three days from date of arraignment and no postponement of the hearing shall be granted except on the grounds of illness of the accused or other similar justifiable grounds. City and provincial fiscals and courts shall forthwith conduct the preliminary investigation of a criminal case involving an indigent within three days after its filing and shall terminate the same within two weeks.

11. Republic Act 6036—4 August 1969—An Act providing that bail shall not, with certain exceptions, be required in case of violations of municipal or city ordinances and in criminal offenses when the prescribed penalty for such offenses is not higher than *arresto mayor* and/or a fine of two thousand pesos or both.

To avail himself of this no-bail privilege, the accused has to establish to the satisfaction of the court or any other appropriate authority hearing his case that he is unable to post the required cash or bail bond. In lieu of the bond, the accused is made to report to the clerk of the court hearing his case, periodically every two weeks.

12. Republic Act 5901—21 June 1969—An Act prescribing forty hours a week of labor for Government and private hospitals or clinic personnel.

The law further provides for an automatic increase in salary equal to the diminution which such employees may suffer through the reduction of the number of working hours per week.

13. Republic Act 5462 of 11 April 1969 which establishes a national policy on manpower and out-of-school youth planning and development, and creates a national manpower and youth council. This is a social legislation intended to take care of, train and develop human resources and to establish institutions and formulate integrated plans, programmes and projects as will ensure efficient and proper allocation, accelerated development and optimum utilization of the nation's manpower and out-of-school youth and thereby develop civic efficiency and strengthen family life. It has as one of its duties and functions to evaluate the output of human resource development programmes, to gear educational and training objectives to the requirements of the annual investment priorities plan and of rapid economic development, and to study levels of wages and incentives for the utilization of manpower in critical occupations.

A National Manpower and Youth Council is created under the Office of the President with the Secretary of Labour as *ex officio* Chairman, the Secretary of Education as *ex officio* Vice Chairman, and the chairmen of NEC and NSDB, the Secretary of Agriculture and Natural Resources, the Secretary of Social Welfare, and the Secretary of Community Development as *ex officio* members. Two representatives each of national organizations of industry, national labour organizations and national family and youth organizations also sit as members of the Council.

14. Republic Act 5549 which creates a system of scholarships to be awarded on the basis of annual competitive examinations.

15. Republic Act 5708, known as the "School Physical Education and Sports Development Act of 1969", which requires the Department of Education to undertake an integrated physical education and sports development programme in all schools based on the following principles:

(1) The goal of physical education is to instil in young citizens a proper appreciation of the importance of physical development going hand in hand with the mental development in individual and social activities;

(2) The sports and other activities in a physical education programme should provide opportunities for the athletic development of children and youth who have the competitive spirit as well as grace, co-ordination, stamina and strength; and

(3) A well-rounded physical education programme must be addressed to physical growth, social training, and personal discipline for all students, as well as superior athletic achievement for those who are psychologically inclined and physically gifted.

16. Republic Act 5871—An Act creating the National Commission on Culture and providing funds therefor.

17. Republic Act 6026—which provides for the social and economic uplift of dislocated families relocated from the Greater Manila area to resettlement projects.

18. Republic Act 6054—provides for the establishment of more high schools in outlying regions. It declares a national policy to make possible equal opportunites for high school education for all children of all the people of the Philippines regardless of the place of birth, or of the economic condition of their parents. Pursuant to this policy, *barrio* high schools may be organized in the *barrio* at the instance of the *barrio* council whenever at least forty students in the *barrio* are available to constitute a class. The *barrio* high school shall be supported primarily by tuition fees paid by students and secondarily by an amount equal to 5 per cent of the real estate tax collected within the *barrio* and by five million pesos appropriated by Republic Act 5447 as aid to *barrio* high schools. This appropriated amount was constitued as a special trust fund, to be administered by the Secretary of Education, the proceeds of which shall be used exclusively as national contribution to the *barrio* high school.

19. House Joint Resolution No. 2 establishing basic policies to achieve economic development and attain social justice.

20. Republic Act 4670—"the Magna Carta for Public School Teachers".

It is provided in the declaration of policy of the above law that it is the policy of the Act to promote and improve the social and economic status of public school teachers, their living and working conditions, their terms of employment and career prospects in order that they may compare favorably with existing opportunities in other walks of life.

To implement this policy, the law fixes the teaching hours, and provides for salaries and equality of salary scales. In addition, costs of living and special hardship allowances are also provided for.

21. Agreement between the Government of the Republic of the Philippines and the Government of the United States of America relating to the employment of Philippine nationals in the United States military bases in the Philippines.

Among the provisions in this Agreement, which under the Constitution constitutes part of the law of the land, is that in cases where certain activities or services in the bases are contracted out, the United States Armed Forces shall require the contractor or concessionaire to give priority consideration to affected employees for employment or re-employment at the bases without loss of seniority.

Right of everyone who works to just and favorable remuneration ensuring a decent living for himself and his family

22. Republic Act 4657—An Act increasing the minimum annual compensation of physicians, dentists, nurses, and pharmacists employed by the Government-owned or -controlled corporations in positions requiring the knowledge of medicine, dentistry, nursing or pharmacy.

Right of everyone, without discrimination of any kind, to equal pay for equal work

23. Agreement between the Government of the Republic of the Philippines and the Government of the United States of America relating to the employment of Philippine nationals in the United States military bases in the Philippines.

A notable provision in this agreement is that providing for uniform standard of employment for all employees regardless of nationality.

24. Republic Act 6485—An Act to standardize the salaries of bureau directors and other officials under the Department of Health.

Right to form trade unions and to join the trade union of one's choice

25. Republic Act 4670—The Magna Carta for public school teachers gives public school teachers the freedom to organize.

26. Agreement between the Government of the Republic of the Philippines and the Government of the United States of America relating to the employment of Philippine nationals in the United States military bases in the Philippines.

Under this agreement, Philippine nationals employed in United States military bases in the Philippines are granted the right to self-organization and collective bargaining.

The right to social security, including social insurance in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond one's control

27. Republic Act 5095—An Act providing for retirement benefits of municipal and city judges.

This law amends the former retirement law for justices of the Supreme Court and Court of Appeals. The present law provides for retirement benefits of justices of the Supreme Court and Court of Appeals, judges of the court of first instance, industrial relations, agrarian relations, tax appeals, juvenile and domestic relations, and city or municipal judges. Under its provisions, a justice or judge who has rendered at least twenty years' service in the judiciary or any other branch of the Government or in both, retires for having attained the age of seventy years, or resigns by reason of his incapacity to discharge the duties of his office, shall receive during the residue of his natural life, the salary which he was receiving at the time of his retirement or resignation.

In case the justice or judge dies while in actual service, his heirs shall receive a lump sum equivalent to five years' salary based upon the salary that said justice or judge was receiving at the time of his demise. The law also provides that upon retirement, a justice or judge of a court of record shall be automatically entitled to a lump-sum payment of five years, salary based upon the highest annual salary that said justice or judge has received and thereafter, upon survival after the expiration of five years, to a further annuity payable monthly during the residue of his natural life, equivalent to the amount of salary he was receiving on the date of his retirement.

28. Republic Act 4670—The Magna Carta for public school teachers. The law grants salary increases upon retirement, for purposes of pension computation.

29. Agreement between the Government of the Republic of the Philippines and the Government of the United States of America relating to the recruitment and employment of Philippine citizens by the United States military and civilian agencies of the United States Government in certain areas of the Pacific and Southeast Asia.

The Agreement provides for severance pay, workmen's compensation and social security to employees of United States military and civilian agencies of the United States Government in certain areas of the Pacific and Southeast Asia. This agreement was concluded on 28 December 1968.

30. Agreement between the Government of the Republic of the Philippines and the Government of the United States of America relating to the employment of Philippine nationals in the United States military bases in the Philippines.

The Agreement provides for social security benefits and severance pay where separation is for cause.

31. Republic Act 4670—The Magna Carta for public school teachers—provides for cost of living and special hardship allowances to improve the living and working conditions of public school teachers.

32. Agreement between the Government of the Republic of the Philippines and the Government of the United States of America relating to the recruitment and employment of Philippine citizens by the United States military and civilian agencies of the United States Government in certain areas of the Pacific and Southeast Asia.

The agreement provides for health insurance and medical and dental care, board and laundry allowance, and quarters allowance.

The right to necessary social services

33. Republic Act 5250—An Act establishing a ten-year training programme for teachers of special and exceptional children in the Philippines.

The law defines "special and exceptional children" to include the mentally retarded, the crippled, the deaf and hard of hearing, the speech handicapped, the socially and emotionally disturbed, and the gifted. The programme is to include, as far as practicable, the setting up of pilot classes for special and exceptional children in regular schools with the end in view of integrating said children into the regular school programme and of encouraging socialization. The programme also is to set up projects in such a way that special education shall be conducted within the facilities of regular schools. Furthermore, it is to set up research and survey projects to identify and locate exceptional children in need of its service.

34. Republic Act 5215—An Act providing for the establishment of the University of the Philippines in the municipality of Ilagan, province of Isabela.

35. Republic Act 5232—An Act establishing a teachers' college in Lallo, Cagayan.

36. Republic Act 4911—An Act making the College of Public Administration of the University of the Philippines a more effective training institution.

37. Republic Act 5169—An Act empowering the President of the Philippines to sell government properties for the purpose of raising funds to pay for the Government's subscription to the Land Bank and to finance the Agricultural Credit Administration.

38. Republic Act 5174—An Act establishing the Institute of Social Work and Community Development in the University of the Philippines.

39. Republic Act 5447—An Act creating a special education fund to be constituted from the proceeds of an additional real property tax and a portion of the taxes on cigarettes of the Virginia type and duties on imported leaf tobacco, defining the activities to be financed, and creating school board for the purpose.

Right to continuous improvement of living conditions

40. Agreement between the Government of the Republic of the Philippines and the Government of the United States of America relating to the recruitment and employment of Philippine citizens by the United States military and civilian agen-

cies of the United States Government in certain areas of the Pacific and Southeast Asia.

The agreement provides for additional benefits in the form of premium pay, overseas differential, Christmas bonus and war risk allowance.

41. Agreement between the Government of the Republic of the Philippines and the Government of the United States of America relating to the employment of Philippine nationals in the United States military bases in the Philippines.

The agreement grants overtime compensation to employees who are Philippine nationals.

Right to equal access to higher education on the basis of capacity or merit, including technical, vocational and professional education

42. Republic Act 4670—The Magna Carta for public school teachers—grants study leaves to improve the teachers, career prospects.

43. Republic Act 4725—An Act prohibiting the collection of contributions from school children of public, primary, intermediate and high schools.

The law prohibits the collection of contributions for anti-tuberculosis, parent associations, school athletic fees, medical and dental services or for any other project or purpose, whether voluntary or otherwise, from school children and teachers of public primary, intermediate and high schools. This prohibition is to prevent the law granting free primary and intermediate education in public schools from being rendered nugatory. This prohibition does not cover membership fees of school children in the Red Cross, the Girl Scouts of the Philippines or the Boy Scouts of the Philippines.

Right to protection of the moral and material interests arising out of scientific, literary or artistic work

44. Republic Act No. 5207—An Act providing for the licensing and regulation of atomic energy facilities and materials and establishing the rules on liability for nuclear damage.

Through this law, it is declared to be the policy of the Philippine Government to encourage, promote, and assist the development and use of atomic energy for peaceful purposes, as a means to improve the health and prosperity of the inhabitants of the Philippines, contribute to the general welfare, and accelerate scientific, technological, agricultural, commercial and industrial progress.

The production and use of atomic energy facilities and atomic energy materials shall be subject to control by the state in order to achieve the forgoing purposes, to assure fulfillment of the international obligations of the State, to protect the health and safety of workers and of the general public, and to protect against the use of such facilities and materials for unauthorized purposes.

In order to encourage the development and use of atomic energy for peaceful purposes and to provide proper protection of the public, it is also in the national interest to establish rules on liability for nuclear damage and to assure the availability of funds to satisfy liability claims.

IV. EXECUTIVE AND ADMINISTRATIVE ORDERS AND PROCLAMATIONS ON HUMAN RIGHTS, PROMULGATED BY THE PRESIDENT OF THE PHILIPPINES DURING 1969

(1) Executive Order No. 163, s. 1969—amending Executive Order No. 156 dated 5 November 1968, entitled, "constituting the fund for assistance to private education as an irrevocable trust fund, creating a private education assistance committee as trustee, and providing for the management thereof. (65 *Official Gazette* (O.G.) 231, No. 2, 13 January 1969.)

(2) Executive Order No. 168, s. 1969—creating a small farmers' commission (65 O.G. 1752, No. 8, 24 February 1969).

(3) Executive Order No. 169, s. 1969—creating a youth and student affairs board. (65 O.G. 2045, No. 9, 3 March 1969.)

The Board is composed of a representative each of 15 youth and student organizations, designated by the organization or association concerned; however, any youth or student organization not therein represented could send a duly authorized representative to attend meetings of the Board for the purpose of presenting any complaints, grievances or proposed plans or programmes of activity of his organization. The Board shall formulate and recommend policies relative to youth and/or student activities for consideration of the Government; initiate and formulate programmes and projects for the general well-being, benefit and welfare of youth and students. It shall be the Board's responsibility to act on complaints, grievances and other forms of demands and to make representations for their immediate redress or solution.

(4) Executive Order No. 170, s. 1969—promulgating the manual of student rights and responsibilities. (65 O.G. 2293, No. 10, 10 March 1969.)

(5) Executive Order No. 171, s. 1969—creating the Commission on Population. (65 O.G. 2296, No. 10, 10 March 1969.)

(6) Executive Order No. 173, s. 1969—abolishing the National Youth Co-ordinating Council. (65 O.G. 2547, No. 11, 17 March 1969.)

(5) Executive Order No. 171, s. 1969—creating a National Social Action Council. (65 O.G. 5809, No. 23, 9 June 1969.)

The President appoints eleven members of the Council, from among members of the Government, the Catholic Bishops Conference, the National Council of Churches, the Commission of National Integration and nationally-known private organizations. The Council is charged to conduct surveys and project studies in social action; plan and carry out short-term and long-range programmes; solicit from the public and conduct such shows or programs to carry out an integrated social action program; enlist the support of any government office; and perform such other duties as may be necessary for the performance of its mission.

(8) Executive Order No. 200 dated 5 December 1969—promulgating a manual of student rights and responsibilities.

STUDENT RIGHTS

(*a*) The right to organize a free student government that can administer, legislate and adjudicate within its approved constitutional jurisdiction;

(*b*) The right to be represented on all policy-determining bodies of the educational institution, through the duly authorized student government representative, whenever policies relating to curriculum, student discipline and the use or collection of student fees, funds and contributions are considered for adoption or amendment. This right shall be exercised by participation in the discussion and by voting subject to the provisions of law; and

(*c*) The right to publish and issue within the bounds of law, good morals and school regulations and objectives, regular student-controlled publications free from censorship, or any pressure aimed at controlling editorial policy or staff appointments: *provided,* that the publication expenses shall be paid out from student funds.

STUDENT RESPONSIBILITIES

(*a*) The responsibility to fulfill the duties imposed upon him by his legally constituted student government or other legally constituted student officers or organizations to which he has voluntarily affiliated;

(*b*) The responsibility to recognize and comply with the policies and regulations concerning his school duties, campus activities and discipline within the school; and

(*c*) The responsibility, in his publications, to abide by the laws of the land, school regulations and the ethics of journalism.

(9) Administrative Order No. 164 dated 13 February 1969—creating a Special Committee for Student Affairs in the University of the Philippines.

The Special Committee is composed of a Chairman and three members appointed by the President, as well as the President of and three representatives selected by the student council of the University of the Philippines. The Committee is charged with the responsibility of meeting with the students to discuss problems of mutual concern, as well as national issues affecting the students, and study, propose, formulate and/or provide solutions therefor or recommendations thereon.

(10) Administrative Order No. 182 dated 31 October 1969 as amended and modified by Administrative Order No. 200 dated 13 January 1970—creating the Presidential Co-ordinating Committee for Social Justice and Agrarian Reforms.

The Co-ordinating Committee is headed by the chairman of the National Land Reform Council, with the following members: three under-secretaries of Departments, the Presidential Agency for Reforms and Government Operations, the Dean of the College of Agriculture, University of the Philippines, the Commissioner of the Small Farmers' Commission; the Chairman of the Philippine Press Institute, and three representatives of the Federated Movement for Social Justice and Reforms. Meeting at least twice a month, the Committee shall receive all complaints of the farmers, tenants, lessees, small owner-cultivators and agricultural workers belonging to and/or affiliated with the FMSJR group, and it shall forward and follow up such complaints and cases with the proper government offices for immediate appropriate action. Whenever necessary, the Committee may conduct a fact-finding investigation, including the taking of testimony, and may administer oaths and summon witnesses or require the production of documents under a *subpoena duces tecum* under Sections 71 and 580 of the Revised Administrative Code. For this purpose the PARGO may be utilized by the Committee in order to expedite the proceedings. The Committee may recommend the adoption of solutions to the problems brought out by such complaints.

(11) Proclamation No. 513 dated 20 January 1969, declaring Tuesday, 21 January 1969, as Civil Liberties Day.

V. IMPORTANT OPINIONS RENDERED BY THE SUPREME COURT OF THE PHILIPPINES DURING THE PAST THREE YEARS (1967-1969) RELATING TO HUMAN RIGHTS AS DEFINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

1. Free access to the courts—*Acar* v. *Rosa,* 19 SCRA, 625

"The right to sue in *forma pauperis* should be broadly interpreted. An applicant for leave to litigate in *forma pauperis* need not be literally a pauper. The fact that he is able-bodied and may earn the necessary money is no answer to his statement that he has not sufficient means to prosecute the action or to secure the costs. It suffices that the plaintiff is indigent, though not a public charge."

2. Right of party to a hearing—*Santos* v. *Sec. of Public Works and Communications,* 19 SCRA 638.

"A party in an administrative investigation has a cardinal primary right to have a decision rendered on the evidence presented at the hearing or at least contained in the record and disclosed to the parties affected."

3. Right to equal protection of the law—(a) *Viray* v. *City of Caloocan,* 20 CSRA 791.

"An ordinance imposing a cadaver transfer fee in the case of corpses coming from one place outside of Caloocan City for burial in private cemeteries within that city discriminates unjustifiably against private cemeteries within that city. It is contrary to the equal protection clause of the Constitution. It cannot be justified solely on the basis of police power."

(b) *Ormoc Sugar Co., Inc.,* v. *the Treasurer of Ormoc City*

"When the taxing ordinance was enacted, Ormoc Sugar Co., Inc., was the only sugar central in the city, a reasonable classification should be in terms applicable to future conditions as well.

The taxing ordinance should not be singular and exclusive as to exclude any subsequently established sugar central from the coverage of the tax. A subsequently established sugar central cannot be subject to the tax because the ordinance expressly points to the Ormoc Sugar Co., Inc., as the entity to be levied upon."

4. Right to due process: standard of legal infirmity—*Ermita-Malate Hotel and Motel Operators Association, Inc.*, v. *City Mayor of Manila*, 20 CSRA 849

"There is no controlling and precise definition of due process. It furnishes, though, a standard to which governmental action should conform in order that deprivation of life, liberty, or property, in each appropriate case, be valid. The standard of due process which must exist both as a procedural and as a substantive requisite to free the challenged ordinance, or any governmental action of the matter, from imputation of legal infirmity, is responsiveness to the supremacy of reason, obedience to the dictates of justice. It would be an affront to reason to stigmatize an ordinance enacted precisely to correct what a municipal lawmaking body sees as an evil of rather serious proportions as an arbitrary and capricious exercise of authority. What should be deemed unreasonable and would amount to abdication of the power to govern is inaction in the face of an admitted deterioration of the state of public morals."

In the case of *Apurillo* v. *Garciano* (G.R. No. L-23683, 30 July 1969, 28 SCRA 1054) it was contended by the petitioner that he was not given "an opportunity for a fair hearing." The Court dismissed his contention and said that he was fully accorded due process of law because all the requisites of due process were present:

(1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it;

(2) Jurisdiction must be lawfully acquired over the person of the defendant, or over the property which is the subject of the proceeding;

(3) The defendant must be given an opportunity to be heard; and

(4) Judgement must be rendered upon lawful hearing.

In another case it was pointed out in a forceful dissenting opinion for human rights by Justice Enrique M. Fernando that where the petitioners have continuously been detained for more than eighteen years, after the penalty for the crime they were charged with had been reduced to ten years' imprisonment, the matter can be viewed as a grave infraction of the due process clause. (*Baking* v. *Director of Prisons*, No. L-30364, 28 July 1969, 28 SCRA 851.)

The dissenting opinion also pointed out that article 29 of the Revised Penal Code, which provides that "offenders who have undergone preventive imprisonment shall be credited in the services of their sentence consisting of deprivation of liberty, with one half of the time during which they have undergone preventive imprisonment. . ." is repugnant to the liberty and equal protection enshrined in the fundamental law. (*Baking* v. *Director of Prisons supra.*)

The need for notice and hearing can be dispensed with in certain cases. In the case of *Algabre* v. *Court of Appeals* (G.R. No. L-24458-64, 31 July 1969, 28 SCRA 1131) the Court ruled: "When both parties who could be potential adversaries come together to the court and seek the imprimatur thereof of a written agreement signed by them, the need for notice and hearing loses completely its significance. The essence of due process is the requirement of notice and hearing."

The requirement of due process is also met where, in a workmen's compensation case, the employer was given notice of the claim with a request that the accompanying forms be submitted to the Bureau of Labor. In this case, the procedural requirement of due process is met because the procedure was fair and reasonable and due process is identified with fairness and reasonableness. (*Victorias Milling Co., Inc.*, v. *Workmen's Compensation Commission*, No. L-25665, 22 May 1969, 28 SCRA 285.)

In the case of *Esquillo* v. *Subido* (No. L-30341, 22 August 1969, 29 SCRA 31) the Court ruled that the "due process requirement does not apply to temporary appointments".

5. Right against unreasonable searches and seizures—*Central Bank* v. *Morfe*, 20 SCRA 507

Reasonableness of search and seizures—"It cannot be gainsaid that the constitutional injunction against unreasonable searches and seizures seeks to forestall, not purely abstract or imaginary evils, but specific and concrete ones. In the very nature of things, unreasonableness is a condition dependent upon circumstances surrounding each case."

6. Protection against arbitrary treatment—*Neria* v. *Vino*, 29 SCRA 701

"No warrant of arrest can be issued by immigration authorities before a final order of deportation is made. For until it is established that an alien lawfully admitted gained entry into the country through illegal means and his expulsion is finally decreed, his arrest cannot be odered."

7. Freedom from arbitrary detention—(a) *Tinagan* v. *Perlas, Jr.*, 22 SCRA 394

"The power to punish for contempt should be used sparingly, with caution, deliberation and with due regard to the provision of the law and the constitutional rights of the individuals. Courts should be slow in jailing people for non-compliance with their orders. Only in cases of clear and contumacious refusal should said power be exercised."

(b) *Doce* v. *CFI of Quezon*, 22 SCRA 1028

Irregular issuance of warrants of arrest—Section 878 the Judiciary Act as amended by RA 3828 requires that the municipal judges issuing the same personally examine under oath the witnesses, and by searching questions and answers which are to be reduced to writing. Affidavits of respondent and her witness cannot take place of explicit procedure as defined by law.

8. Right to a fair hearing—*People of the Philippines* v. *Solacito*, 29 SCRA 61

"It is well settled that, in all cases, especially those involving capital offences, the Court should be sure that the defendant fully understands the nature of the charges preferred against him and the character of the punishments to be imposed before sentencing him. While there is no requiring it, yet, in every case under the plea of guilty, where the penalty may be death, it is advisable for the court to call witnesses for the purpose of establishing the guilt and the degree of the culpability of the defendant."

9. Right to a fair hearing—(a) *People* v. *Alto,* 26 SCRA 342

(a) "When the threat or promise was made by, or in the presence of, a person in authority, who has, or is supposed by the accused to have, power or authority to fulfill the threat or promise, the confession of the accused will be presumed inadmissible. A confession made under the influence of threat or promise or reward of leniency is inadmissible."

(b) *People* v. *Maisug,* 27 SCRA 743

Confessions requiring translation may be unsafe as a basis of conviction for capital offence. Such a multiple process of reading and translating the questions and translating and typing the answers and reading and translating the answers again is naturally pregnant with possibilities of human, if unintentional, inadequacies and incompleteness which render the said confession unsafe as basis of conviction for capital offence, unless sufficiently corroborated. In this particular case, the defendant was an unschooled farmer.

(c) *People* v. *Arpa,* 27 SCRA 1037

"The proper and prudent courses to follow where the accused enters a plea of 'Guilty' to a capital offence, specially where he is an ignorant person with little or no education, is to take testimony not only to satisfy the trial judge himself but to aid the Supreme Court in determining whether the accused really and truly understood and comprehended the meaning of his plea."

(d) *People* v. *Chaw,* 23 SCRA 127

Extrajudicial confession obtained by torture or violence, not admissible in evidence—"It is now settled that a confession induced or extracted by torturing the accused, or by personal violence or abuse directed against the accused for the purpose of obtaining a confession, is an involuntary one and is not admissible in evidence against him, unless found to be true."

10. Right against double jeopardy—*People* v. *Jose Buan,* 22 SCRA 1383

Once convicted or acquitted of a specific act of reckless imprudence, the accused may not be prosecuted again for that same act. The gravity of the consequence is only taken into account to determine the penalty; it does not qualify the substance of the offence. As the careless act is single, whether the injurious result should affect one person or several persons, the offence remains one and the same. It cannot be split into different crimes and prosecution.

11. Right to dignity of work; Unfair Labor Practices—*Philippine Education Institution* v. *MLQSEA Faculty Association,* 26 SCRA 272

"It is now well settled that the full protection of the Industrial Peace Act may be availed of by faculty members of educational institutions... there can be no question as to the power of the Court of Industrial Relations to inquire into alleged unfair labour practice attributed to the Philippine Education Institution."

12. Right to peaceful picketing—Extent to which one can be carried out—*Associated Labor Union* v. *Borromeo,* 26 SCRA 89

Picketing may be carried on not only against the manufacturer but also against a non-union product sold by one in unity of interest with the manufacturer who is in the same business for the profit.

13. Right to form labour unions—Right to select officers of union—*Pan American World Airways, Inc.* v. *Pan American Employees Association,* 27 SCRA 1202

"There is both a Constitutional and statutory recognition that laborers have the right to form unions to take care of their interests vis-à-vis their employers. Their freedom to form organizations would be rendered nugatory if they could not choose their own leaders to speak on their behalf and to bargain for them."

14. Right to protection against unemployment—*Insular Lumber Company* v. *Court of Appeals,* 29 SCRA 371

"By Constitutional precept, the State shall afford protection to labor and shall regulate the relations between labor and capital in industry and agriculture. Republic Act 1787 (Termination Pay Law) then should be interpreted with the aim in view of advancing the beneficent purpose thereof to give justifiable protection to the laborers so dismissed and their families."

15. Right to protection against unemployment

(a) *Teodoro* v. *Macaraeg and Court of Agrarian Relations,* GR No. L-20700, 27 February 1969

In agricultural tenancy, the mere fact that the parties fixed and limited the duration of their lease contract to one agricultural year, does not remove the relationship which they created from the purview of leasehold tenancy, considering the general impact of the agreement which irreversibly leads to and clearly justified tenancy coverage. It is fundamental, proceeds the Supreme Court, that the tenant-lessee's security of tenure subsists notwithstanding the termination of the contract which initially established the tenancy relation.

As to the objection that the above holding of the Court would amount to restriction of the freedom to contract, the Court says:

"Needless to stress, this Court frowns upon and rejects any attempt to nullify the legitimate exercise of the right to contract. We agree that a landholder has full liberty to enter into a civil lease contract covering his property. What we want to indelibly impress, however, is that once a landowner enters into a contract of lease whereby his land is to be devoted to agricultural production and said landholding is susceptible of personal cultivation by the lessee, solely or with the help of labor coming from his immediate farm household,

then such contract is of the very essence of a leasehold agreement, and perforce comes under the direct coverage of the tenancy laws."

Still a part of the decision of the Court is the holding that the earnings of a dispossessed tenant during the period of time that he was dispossessed of his landholding cannot be deducted from the damages which the tenant may recover from the landlord who wrongfully dispossessed him of his holding.

(b) *Luzon Stevedoring Corporation* v. *Social Security System,* GR No. L-20088, 22 January 1966

The ruling of the Court in this case is to the effect that the benefits under the Social Security System extend to temporary employees regardless of the fact that they are employed and paid on a day to day basis. From the moment an employee is reported for membership, he is entitled to the death and disability benefits of the Social Security Act. The number of monthly contributions mentioned in the Act is not a prerequisite to the enjoyment of death or disability benefits but is merely a basis in determining the amount of benefits to be paid.

In the words of the Court: the coverage in the Social Security System of the employees in question, temporary though their employment may be, is in line with the declared policy of Congress to develop, establish gradually, and perfect a social security system which shall be suitable to the needs of the laborers throughout the Philippines, and shall provide protection against hazards of disability, sickness, old age and death.

16. The right of everyone, without discrimination of any kind, to equal pay for equal work—*Rivera* v. *San Miguel Brewery Corporation,* GR No. L-26197, 20 July 1968

When a collective bargaining contract is entered into by the union representing the employees and the employer, even the non-member employees are entitled to the benefits of the contract. To accord its benefits only to members of the union without any valid reasons would constitute undue discrimination against non-members.

17. Right to form trade unions and to join the union of one's choice

(a) *Coronel* v. *Court of Industrial Relations,* GR No. L-22359, L-22524, L-22525, 30 August 1968

The act of an employer of transferring an employee who has affiliated with a labor union, to another phase of work where compensation is lower than his actual wage, is an act which tends to discourage membership with the union on his own choosing, and hence may be considered an act of unfair labor practice.

(b) *Pan American World Airways* v. *Pan Am Employees,* GR No. L-25094, 28 April 1969

There is both a Constitutional and statutory recognition that laborers have a right to form unions to take care of their interests vis-à-vis their employers. Their freedom to form organizations, according to the Court, would be rendered nugatory if they could not choose their own leaders to speak on their behalf and to bargain for them. To further secure this right to the workers, it is ruled that leaders of an illegal strike cannot be excluded from a return-to-work order.

(c) *Feati University* v. *Bautista,* GR L No. L-21278, L-21462, L-21500, 27 December 1966

The Court ruled that members of the faculty or teaching staff of private universities, colleges and schools in the Philippines regardless of whether the university, college or school is run for profit or not, are included in the term "employees" as contemplated in the Industrial Peace Act. Being so, it follows that they have a right to unionize in accordance with the provisions of the Magna Carta of Labour, which provides:

"Employees shall have the right to self-organization and to form or assist labor organizations of their own choosing for the purpose of collective bargaining through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid and protection."

18. Right to strike

(a) *Associated Labor Union* v. *Judge José C. Borromeo,* GR No. L-26461, 27 November 1968

The Supreme Court in this case affirmed the right of a striking labor union to picket any place where the company's business may be found. Citing foreign decisions as precedents, the Court ruled that the picketing may be carried on not only against the manufacturer but against a non-union product sold by one in unity of interest with the manufacturer who is in the same business for profit. Thus, a retail establishment may be picketed where products of the struck manufacturer are sold, where there is a unity of interest between the manufacturer and retailer.

(b) *Benguet Consolidated, Inc.* v. *BCI Employees and Workers Union*—PAFLU—GR No. L-24711, 30 April 1968

The ruling of the Supreme Court in this case is to the effect that, where a union representing the majority employees is replaced by another in a subsequent certification election, the new union cannot be bound to a no-strike, no-lock-out agreement entered into by the former union with the employer, and in which the new union is neither a signatory nor a participant.

(c) *Philippine Marine Officer's Guild* v. *Compañía Marítima,* GR No. L-20662, 20663, dated 19 March 1968

The decision of the Court in this case is but a reiteration of the Court's past rulings on the matter of legality or illegality of strikes, to wit:

"In cases not falling within the prohibition against strikes, the legality or illegality of a strike depends, first, upon the purpose for which it was maintained, second, upon the means employed in carrying it on. Thus, if the purpose which the laborers intend to accomplish by means of a strike is trivial, unreasonable or unjust, or if in carrying on the strike the strikers should commit violence or cause injuries to persons or damage to property, the strike, although not prohibited by injunction, may be declared by the court illegal with the adverse consequences to the strikers."

Also a reiteration of previous decisions of the Court is the ruling in the present case that if a strike is unjustified, the employer may not be compelled to reinstate the strikers to their employment.

(d) *Cebu Portland Cement* v. *Cement Workers Union,* GR No. L-20537-38, 19 October 1968

The Court rules that the striking employees are entitled to reinstatement whether or not the strike was the consequence of the employer's unfair labor practice, the only exception thereto being cases where the strike was not due to any unfair labor practice on the part of the employer and said employer has hired others to take the place of the strikers, or where the strikers have committed unlawful conduct or violence.

(e) *Security Bank Employees Union* v. *Security Bank,* GR No. L-28536, 30 April 1968

The Court has consistently made explicit its disapproval of an injunction against strikers, holding that "No court can issue a restraining order against union members who plan to hold a strike even if the same may be illegal." The Court holds that this is so in view of the unmistakable language employed in the Industrial Peace Act with reference to strikers. The Court further adds that: "The statutory command on picketing likewise calls for a similar declaration." "Also", continues the Court, "even without such a categorical mandate expressed in the Act, the recognition of peaceful picketing as a constitutional right embraced in the freedom of expression precludes the issuance by courts of blanket prohibitions against picketing or striking."

19. The right to social security, including social insurance in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond one's control

(a) *Merced* v. *Merced,* GR No. L-20445, 25 February 1967

The legitimate spouse, the legitimate, legitimated, acknowledged natural children and natural children by legal fiction and the legitimate descendants have a preferred right to social security benefits in case of the death of one insured under the Social Security System despite the fact that the insured has expressly designated the brothers and sisters as beneficiary. The right of choice of the insured as to his beneficiary is subject to the limitations imposed by Congress in enacting the law governing the Social Security System to the above effect.

(b) *National Minor Factory* v. *Isidra Sunda,* GR No. L-22007, 28 March 1969

The Court rules that any agreement as to Workmen's Compensation, in order to be valid, must have the following requisite imposed by the Workmen's Compensation Act:

(*a*) The amount agreed upon must at least be equal to that provided by the Workmen's Compensation Act;

(*b*) The agreement must be approved by the Workmen's Compensation Commissioner or his authorized representative.

This is to ensure the protection of the party at a disadvantage and to underline the purpose of the Workmen's Compensation Law which frowns upon any agreement, scheme, or device which seeks to exempt the employer from any liability under the Act, either totally or partially.

The Court further pointed out that any agreement regarding Workmen's Compensation which does not meet the above requisites will not put a laborer or his heirs in estoppel from filing additional claim for compensation. Whatever compensation may have been paid by the employer in such cases can only be considered as partial payment of his liability.

(c) *Victorias Milling Co., Inc.,* v. *Workmen's Compensation Commission and Julio Segovia,* GR No. L-25665, 22 May 1969

In an *obiter dictum,* the Supreme Court in this case declares that "there should be less hesitancy on the part of the employer to pay the just claim of the laborer for any illness or injury arising out of and in the course of employment." "Perhaps", the Court continues, "more than in other labor disputes, promptness in the discharge of obligation is of the essence. Otherwise, the necessitous laborer is placed at his mercy, when what he is entitled to is not charity but justice." The Court further pointed out that it is in the light of the above purpose that the constant interpretation of the Workmen's Compensation Act has been liberal, all doubts as to compensation being resolved in favor of the employees and all presumptions being indulged in their favor.

(d) *Rural Transit Employees Association* v. *Bachrach Transportation Company and the Social Security System*

The Court ruled that the payments of compensation under the Workmen's Compensation Act do not preclude recovery of benefits under the Social Security Act. The philosophy underlying the Workmen's Compensation Act is to make the payment of the benefits provided therein as a responsibility of industry, on the ground that it is industry which should bear the resulting death benefit or injury to employees engaged in the said industry. On the other hand, Social Security sickness benefits are not paid as a burden on the industry, but are paid to the members of the system as a matter of right wherever the hazards provided for in the law occur. To deny payment of social security benefits because the death or injury or confinement is compensable under the Workmen's Compensation Act would be to deprive the employee members of the System of the statutory benefits bought and paid for by them, since they contribute their money to the general common fund out of which benefits are paid.

20. The right to an adequate standard of living

(a) The right to adequate food, clothing and housing—*Nawasa* v. *Kaisahan,* GR No. L-25328, 11 October 1968

The payment of the cost of living allowance cannot be deferred since, according to the Court, the right to live and the increase in the cost of living is not subject to deferment by agreement between the parties.

(b) The right to necessary social services—*De la Paz* v. *Court of Agrarian Relations*—GR No. L-21488, 14 October 1968

The Supreme Court in this case reiterates its previous decisions upholding the constitutionality of a provision in the Agricultural Tenancy Act giving the tenant the right to change the tenancy contract from one of share tenancy to leasehold tenancy and *vice versa*, and from one crop-sharing arrangement to another in share tenancy.

21. The right of the family, motherhood, and childhood to protection and assistance

(a) The right of the family to protection and assistance—*Ermita-Malate Hotel and Motel Operators Association, Inc.*, v. *the Honorable City Mayor of Manila*, GR No. L-24693, 31 July 1967

The Court rules that it is within the police power of the state to enact ordinances aimed at minimizing "certain practices hurtful to public morals". In this particular case, it has been established in the stipulation of facts between the opposing parties that there has been an alarming increase in the rate of prostitution, adultery and fornication in Manila traceable in great part to the existence of motels, which "provide a necessary atmosphere for clandestine entry, presence and exit" and thus become the "ideal haven for prostitutes and thrill-seekers."

(b) *Gloria G. Jacson* v. *Ricardo R. Robles*, GR No. L-23433, 10 February 1968

In case for annulment of marriages, affidavits annexed to the petition for summary judgement which practically amounts to a stipulation of facts or a confession of judgement cannot be considered by the Court. This practice would still run counter to the Civil Code injunction against the rendition of a decree of annulment of a marriage upon a stipulation of facts or a confession of judgement.

(c) Right of children and young persons to special care and assistance

(1) *Chua* v. *Cabangbang*, GR No. L-23253, 28 March 1969. The Court affirms the power of courts as laid down in the Civil Code to deprive the parent of parental authority if the parent abandons the child. The court further rules that in a suit between a parent and a stranger, for the custody of a child, the court may award the custody of the child to a stranger if the court deems it to be in the best interest of the child.

(2) *Medina* v. *Makabali*, GR No. L-26953, 28 March 1969. The ruling in this case reiterates the Court's previous stand on the matter of custody of children. The Court said: "while our law recognizes the right of a parent to the custody of her child, Courts must not lose sight of the basic principle that. . .in all questions on the care, custody, education and property of children, the latter's welfare shall be paramount."

(3) *Santos, Jr.* v. *Republic of the Philippines*, GR No. L-22523, 29 September 1967. The interest and welfare of the child to be adopted should be of paramount consideration. Adoption statutes, being humane and salutary and designed to provide homes, care and education for unfortunate children, should be construed so as to encourage the adoption of such children by persons who can properly rear and educate them. Hence, relatives by blood or affinity may adopt one another for there is no provision in the law prohibiting such, and it cannot be stated as a general proposition that the adoption of blood relatives is contrary to the policy of the law.

22. Right of free speech and the press; freedom of association and assembly

The most significant case on human rights for 1969 is the case of *Gonzales* v. *Commission on Elections (COMELEC)* (GR No. L-27833, 18 April 1969, 27 SCRA 835).

Republic Act No. 4880 made it unlawful for any political party, political committee or political group to nominate candidates for any elective public office voted for at large earlier than 150 days immediately preceding an election, and for any other elective public office earlier than 90 days immediately preceding an election, and for any person, whether or not a voter or a candidate, or for any group or association of persons, whether or not a political party or political committee, to engage in an election campaign or partisan political activity except during the period of 120 days immediately preceding an election involving a public office voted for at large and 90 days immediately preceding an election for any other elective public office. This law was challenged as unconstitutional on the ground that it violated the rights of free speech and the press, freedom of assembly, and freedom of association. The Court in elucidating the rights of free speech and the press spoke of two tests that have been laid down in the case of *Cabansag* v. *Fernandez* (102 Phil. 151, 161) namely, the "clear and present danger" rule and the "dangerous tendency" rule. The first, as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be extremely serious and the degree of imminence extremely high before the utterance can be punished. The danger to be guarded against is the "substantive evil sought to be prevented". The second, as likewise interpreted in a number of cases, is explained thus: "If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfullness be advocated." The Court said: "The right of free speech is not to be limited, much less denied, except on a showing of a clear and present danger of a substantive evil that Congress has a right to prevent."

On the freedom of association, the Court said that "the stress of the freedom of association should be on its political significance. If such a right were non-existent, the likelihood of a one-party government is more than a possibility. Authoritarianism may become unavoidable. Political opposition will simply cease to exist, minority groups may be outlawed, constitutional democracy as intended by the Constitution may well become a thing of the past." The Court, however, pointed out that freedom of association is limited in that there could be abridgment of the freedom of association when their purposes are "contrary to law". The Court interpreted this to mean another

way of expressing the "clear and present danger" rule, for unless an association or society could be shown to create an imminent danger to public safety, there is no justification for abridging the right to form associations or societies". The Court said that the substantive evil sought to be prevented here is the debasement of the electoral process. The Court applied the "balancing-of-interest" test and noted "the far-from-satisfactory condition arising from the too-early nomination of candidates and the necessarily prolonged political campaigns. The direful consequences and the harmful effects on the public interests with the vital affairs of the country sacrificed many a time to purely partisan pursuits were known to all. Moreover, violence and even death did frequently occur because of the heat engendered by such political activities. Then, too, the opportunity for dishonesty and corruption, with the right to suffrage being bartered, was further magnified." Republic Act No. 4880 was a remedial legislation. The Court further said that under the police power, with its concern for the general welfare and with the commendable aim of safeguarding the right of suffrage, the legislative body must have felt impelled to impose the foregoing restrictions. Republic Act No. 4880 was held to be constitutional.

In the case of *Philippine Association of Free Labor Unions (PAFLU)* v. *Secretary of Labor* (GR No. L-22228, 27 February 1969, 27 SCRA 41) section 23 (*b*) of Republic Act 875 was challenged as violative of the freedom of assembly and association. Pursuant to said law, "a labour organization, association or union of workers, to be registered must file with the Department of Labor the following requirements: (1) copy of the constitution and by-laws; (2) sworn statement by the officers that they are not members of the Communist Party, and (3) the years of existence of the union and last annual financial report." The law was held to be constitutional. The Court explained that the registration prescribed in:

> the law is *not* a limitation to the right of assembly or association, which *may be* exercised with or *without* said registration. The latter is merely a condition *sine qua non* for the acquisition of legal personality by labor organizations, associations or unions and the possession of the "rights and privileges granted by law to legitimate labor organizations." The Constitution does not guarantee these rights and privileges, much less said personality, which are merely *statutory* creations, for the possession and exercise of which registration is required to protect both labor and the public against abuses, fraud or impostors who pose as organizers, although not truly accredited agents of the union they purport to represent. Such requirement is a valid exercise of the police power, because the activities in which labor organizations, associations, and unions of workers are engaged affect public interest, which should be protected.

23. Equal protection of laws

In *Luque* v. *Villegas* (No. L-22545, 28 November 1969, 30 SCRA 408) ordinance 4986 of the City of Manila re-routing traffic on roads and streets in the City of Manila was attacked as unconstitutional. It was argued that it violated the equal protection of laws clause in that it allowed inter-urban buses to enter the City of Manila, while provincial buses were not given the same privilege. The Supreme Court, however, unanimously upheld the validity of the ordinance as a valid exercise of police power in order to relieve the critical traffic congestion in the City of Manila in the best interest of public welfare and convenience. The Court ruled that there was no unjustified discrimination because "inter-urban buses are used for transporting passengers only. Provincial buses are used for passengers and freight. Provincial buses, because of the freight or baggage which the passengers usually bring along with them, take longer time to load or unload than inter-urban buses. Provincial buses generally travel along national highways and provincial roads, cover long distances, have fixed trip schedules. Provincial buses are greater in size and weight than inter-urban buses. The routes of inter-urban buses are short, covering contiguous municipalities and cities only. Inter-urban buses mainly use city and municipal streets."

24. Right against self-incrimination.

The constitutional guarantee against self-incrimination extends to administrative proceedings. Consequently, in an administrative hearing against a medical practitioner, for alleged malpractice, the Board of Medical Examiners cannot, consistently with the self-incrimination clause, compel the person proceeded against to take the witness stand without his consent. This is so because a proceeding for malpractice possesses a criminal or penal aspect in the sense that the respondent would suffer the revocation of his license as a medical practitioner which for some is an even greater deprivation than forfeiture of property. (*Pascual Jr.* v. *Board of Medical Examiners*, No. L-25018, 26 May 1969, 28 SCRA 344.)

25. Rights of the accused; right to be afforded time to prepare for defense; right against illegal search and seizure

Defendants cannot complain that they had been denied the time and freedom to prepare for their defense where they were all represented with counsel who all did their best to defend them during the several months of trial, and given the opportunity to present witnesses in their own defense. (*People* v. *Jose Lava* et al., No. L-4974-4978, 16 May 1969, 28 SCRA 72.)

Where search warrants were properly issued and secured before the raids and the documents seized were listed, inventoried and marked, and even certified to by the accused as properly taken from their possession, there is no violation of the constitutional right against illegal search and seizure. (*People* v. *Lava* et al., supra.)

VI. OPINIONS OF THE SECRETARY OF JUSTICE RENDERED DURING THE LAST THREE YEARS (1967-1969) RELATING TO HUMAN RIGHTS AS DEFINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

1. Opinion dated 3 August 1967—Right to stand for an elective office

There is no law in the Philippines today prohibiting or disqualifying the wife of a public officer from running for an elective office, provided that she has all the qualifications therefor, and is not otherwise disqualified on other grounds.

2. Opinion dated 18 August 1967—Operation of the Statute of Limitations

When the offense has not been concealed, as when it is evidenced, by public documents or is a matter of public record open to inspection, the State will not be permitted to plead ignorance of the act of the accused in order to evade the operation of the Statute of Limitations.

3. Opinion dated 30 January 1968—Right to Engage in Retail Trade

Under the Retail Trade Nationalization Law, one way by which an alien retailer may lose his right to continue engaging in the retail business is voluntary retirement. The Appellee in the case at bar continued to register his store and pay license fees after the business was razed when a conflagration hit the place. But because of his failure to resume actual business operations for some time after the conflagration, the Secretary of Commerce and Industry ruled that the Appellee has thereby lost the right to engage in Retail Trade, the Appellee having "voluntarily retired from the retail business". The Secretary of Justice ruled that retirement is a matter of intent or mental condition which may be inferred from his conduct or overt acts. It is of record that Appellee has been religiously paying his license fees and registering his store over the years, a clear manifestation of his intention to remain in—not to retire from—the retail business. Strictly speaking, his failure to actually reopen and operate a store is not a legal ground for losing his right under the circumstances.

4. Opinion dated 5 December 1968—Maternity Protection

Commonwealth Act No. 647 provides for a maternity leave law for married women employees in the Government or any of its branches, subdivisions, agencies or instrumentalities, including the corporations and enterprises owned or controlled by the Government, whereas Section 8 of Republic Act 679 provides for maternity leave law and protection for married women in private firms. The former law, however, does not provide for nursing privileges of working mothers which is provided for in the latter law. The Secretary of Justice, however, sees no compelling reason for not extending the benefits of the former to government-owned or controlled corporations performing proprietory functions considering that said entities are also subject to labor laws. There is no rule against the application of two different statutes to the same subject matter especially where, as in the instant case, they are cognate statutes.

5. Opinion of 18 December 1970—Right to Citizenship

This is a case of an illegitimate child of a Filipino father and Chinese mother. The child's status was subsequently legitimated by the marriage of the parents. Still later, the father became an American citizen by naturalization. The child, in the case at bar, is applying for registration as a Filipino citizen. The Secretary of Justice is of the opinion that the child retains her Philippine citizenship if under American law, the naturalization of an alien does not automatically result in the acquisition of American citizenship by his minor children. The father's acquisition of another citizenship is not one of the ways by which the child could lose the Philippine citizenship she acquired under the Constitution by birth and as a consequence of her legitimation.

6. Opinion dated 7 April 1969—Workmen's Compensation Coverage

By an amendatory law (DA 4119), the coverage of the Workmen's Compensation Act has been extended to include all employees in industrial, commercial and agricultural establishments and in religious, charitable and educational institutions.

POLAND

NOTE [1]

I. LEGISLATION

1. The legal act governing human rights in the area of executive procedure is the Criminal Executive Code Act of 19 April 1969 (*Law Gazette*, No. 13, item 98).

This Code deals with criminal executive procedure in an integrated and uniform manner and follows the principle that punishment should be administered in a humanitarian way with respect for the human dignity of the convicted person (article 7, section 3).

The enforcement of this principle is ensured through penitentiary supervision by a penitentiary judge (and prosecutor: article 27 and others) and the rights guaranteed to the convicted prisoner in the Code as regards both the filing of applications and appeals against decisions issued by the court in executive procedure and representation by counsel in executive procedure before the court (articles 8 and 9).

In connexion with this the necessary administrative measures have been taken and under Ministry of Justice Ordinance No. 75/69/P of 17 November 1969 penitentiary sections in charge of supervising the execution of court judgements have been set up in the voivodship courts.

Of great importance in the field of prevention is Ordinance No. 96 issued by the Chairman of the Council of Ministers on 30 September 1969 regarding the co-ordination and financing of post-penitentiary assistance with the object of ensuring conditions preventing persons discharged from penal establishments and detention centres for young offenders from returning to crime; this purpose will be served by, among other things, the funds obtained from the 5 per cent deductions from the prison earnings of adult and young offenders.

In addition, under the above-mentioned ordinance these funds will also be used for assistance to: (*a*) the families of convicted persons if they are in distressed material circumstances; (*b*) the victims of an offence or their families; and (*c*) for the maintenance of temporary residential centres for persons released from penal establishments or detention centres for young offenders who either through lack of a home or by reason of personal character have difficulties in returning to society or in finding employment.

At the same time this ordinance has set up an advisory body to the Minister of Justice in the form of a Council for Post-Penitentiary Assistance which is to co-ordinate the after-care services provided by the authorized organs.

In addition voivodship units for post-penitentiary assistance have also been set up locally.

Mention should also be made of certain accompanying implementing acts: the Ordinance of the Minister of Justice of 4 December 1969 concerning the statute of the Council and the Voivodship Units for post-penitentiary assistance and the Ordinance of the Minister of Justice of 4 December 1969 concerning the regulations for providing assistance in the field of crime prevention (*Ministry of Justice Gazette*, No. 7, items 46 and 47).

2. A number of matters pertaining to human rights have been regulated on a wider scale than hitherto by the Penal Code and the Criminal Procedure Code passed on 19 April 1969 (*Law Gazette*, No. 13, items 94 and 96). Specifically these concern:

(*a*) The penal code

(i) protection of life and physical and moral health (chapters XXI, XXII and XXIII of the Code);

(ii) protection guaranteed to the family and youth (chapter XXV of the Code and in particular article 186 regarding non-discharge of maintenance obligations);

(iii) special protection of employees' rights (chapter XXVII of the Code);

(iv) protection of the freedom of conscience and worship (chapter XXVIII of the Code).

(*b*) The criminal procedure code

(i) trial guarantees, and in particular extension of the right to counsel;

(ii) extension of the rights of injured parties in court actions;

(iii) presence of the lay factor in the administration of justice (broader participation of assessors in court judgements and the participation of representatives of the community at all stages of criminal procedure);

(iv) judicial control of remand detention.

3. In 1969 new regulations were issued regarding employees holiday leave:

(*a*) The Employees Holiday Leave Act of 29 April 1969 (*Law Gazette*, No. 12, item 85);

(*b*) The Ordinance of the Council of Ministers of 8 May 1969 regarding the implementation of

[1] Note furnished by the Government of Poland.

some of the regulations in the Employees Holiday Leave Act (*Law Gazette*, No. 14, item 100);

(*c*) The Ordinance of the Chairman of the Labour and Wages Committee concerning the specific principles for calculating and paying the remuneration due for the period of holiday leave (*Law Gazette*, No. 22, item 158).

The Act of 29 April 1969 has introduced a basic reform in the system of holiday leave by making the rights of manual and white-collar employees completely uniform and by increasing the average length of leave to which manual workers are entitled. Under the new Act each employee is entitled to 14 working days leave after one year of service, 17 days after three years of service, 20 days after six years of service, and 26 days after ten years of service. Under the terms of the Act "service" includes not only the period of actual employment, but also the period of education in schools above the primary level to a duration of from two to eight years.

The terms of the new Act are particularly advantageous to juveniles who are entitled to 12 working days leave after six months service and to 26 days after completing a year's service and in the following year, with a transitional allowance of 20 working days in the calendar in which they reach 18 years of age.

This uniform system of holiday leave does not, however, preclude allowance being made for the specific working conditions in certain branches of the national economy. Thus workers employed in injurious and arduous conditions remain entitled to extra leave. Longer periods of leave have also been retained for certain groups of employees such as miners, teachers, seamen and research and academic staff.

4. Some of the regulations that have been issued concern the right to health protection:

(*a*) The Ordinance of the Minister of Health and Social Welfare of 1 March 1969 regarding the provision of benefits by the social health service to local welfare officers (*Law Gazette*, No. 7, item 60);

(*b*) The Ordinance of the Council of Ministers of 20 March 1969 regarding social insurance for private taxi operators (*Law Gazette*, No. 9, item 66);

(*c*) The Ordinance of the Minister of Health and Social Welfare of 6 March 1969 regarding the methods of labelling drugs and sanitary articles (*Law Gazette*, No. 9, item 67).

II. SUPREME COURT RULINGS

A judgement of 9 January 1969 (III PRN 91/68) concerned the protection of employees in the field of labour safety and health and the consequent civil and material liability of the work-place. The Supreme Court ruled that the liability of the employer for the consequence of an occupational disease contracted by an employee is not contingent on its recognition as an occupational disease during the period of his employment.

A judgement of 3 July 1969 (II CR 208/69) concerned the liability of a mechanized work-place for the injurious side-effects of its operation (noise). The Supreme Court ruled that a claim to compensation for damage to health caused by the excessive noise of the installations of a plant is compatible with the rights of the citizen guaranteed by the law.

III. INTERNATIONAL CONVENTIONS

A convention between the Government of the Polish People's Republic and the Government of the United Kingdom on health services, signed in Warsaw on 21 July 1967, became effective on 26 December 1969 (*Law Gazette*, 1970, No. 1, item 1).

PORTUGAL

LEGISLATIVE DECREE NO. 49058 OF 14 JUNE 1969, TO AMEND CERTAIN PROVISIONS OF LEGISLATIVE DECREE NO. 23050 OF 23 SEPTEMBER 1933 TO REORGANIZE THE NATIONAL TRADE UNIONS

SUMMARY

The text of the Legislative Decree appears in the *Diário do Governo,* No. 138, of 14 June 1969. Translations thereof into English and French have been published by the International Labour Office as *Legislative Series* 1969—Por.1.

Section 1 of the Legislative Decree amends sections 1 to 5 inclusive, 10, 15, 20 and 21 of Legislative Decree No. 23050 of 23 September 1933.

As defined in the amended section 1 of Legislative Decree No. 23050, "trade union" means any organization representing workers, whether employed by others or self-employed, engaged in the same occupation or similar or allied trades, established on the initiative of those concerned and aimed exclusively at the study and protection of the said workers' occupational rights and interests from the moral, social and economic point of view.

The amended section 2 provides that every trade union shall adopt a title which is not likely to cause confusion with any other trade union already in existence, consisting of the name of the occupations it encompasses and the geographical area it covers.

Under the amended section 3, the organizational structure, occupational scope and geographical area of trade unions shall be those fixed in their statutes, in harmony with those of the other organizations belonging to the same corporation and in accordance with the needs of the occupations concerned.

As indicated in the amended section 10, trade unions shall carry on their activities at the national level while respecting the higher interest of the nation, the common good, the provisions of the law and the function which they are called upon to fulfil in the corporative organization.

The amended section 20 provides that a union may be dissolved either by resolutions adopted by its general assembly, or by decision of the Corporative Council if the organization deviates from the purposes for which it was established or is unable to comply with its legal obligations.

LEGISLATIVE DECREE NO. 49212 OF 28 AUGUST 1969, TO REGULATE AND STANDARDIZE THE FORM OF COLLECTIVE LABOUR AGREEMENTS AND THE MANNER OF MAKING AND PUBLISHING SUCH AGREEMENTS, AND TO LAY DOWN THE PRINCIPLES TO GOVERN THE CORRESPONDING COLLECTIVE CONTRACTS AND ARRANGEMENTS

SUMMARY

Section 1 of the Legislative Decree provides that the rules governing collective employment relations shall be established by collective agreement; that in exceptional cases, on condition that this is required by the higher interests of the national economy and social justice, and in the absence of corporative bodies representing a given sector of economic or occupational activity, the rules governing conditions of work shall be made through administrative channels; and that collective labour disputes shall be settled by conciliation and arbitration.

As stated in section 3, it shall be unlawful for collective agreements and arbitration awards to interfere in any way with the right reserved to the State to coordinate and have the over-all control of the economic life of the nation and ensure the observance of social legislation; to establish any kind of rules or regulations governing economic activities; to limit freedom of labour

and freedom of choice of occupation; and to impose any obligation to join a trade union.

Section 4 prescribes that collective agreements and the stipulations of employment rules shall fix minimum remunerations and in calculating them shall take into consideration, *inter alia,* the requirements of the worker, taking into account the cost of living, in particular with respect to food, clothing and housing.

Under section 6, collective labour agreements shall be concluded between corporative bodies representing management and workers respectively, and between untertakings and corporative bodies representing workers, while under section 7, collective agreements may be concluded by employers' trade associations representing managements or individual employers, or two or more employers' trade associations or managements jointly, and by trade unions, fishermen's associations and federations of rural workers' associations representing the workers.

Collective agreements, as indicated in section 11, shall contain, wherever possible, clauses respecting, *inter alia,* the territorial and general scope and period of validity of the agreement; admission to the occupation and career therein; the rights and obligations of the parties; the work to be performed; the minimum remuneration for work; the suspension of work; the termination of contract of employment; the employment of women, young persons, the elderly and handicapped persons; the organs of collaboration; welfare and family allowances; occupational health and safety; vocational training; and relations between the contracting parties.

By virtue of section 13, if the negotiation for a collective agreement fails, an attempt at conciliation may be made, and in the case of failure to reach an agreement by the conciliation procedure, section 15 provides that any of the parties may initiate arbitration proceedings, giving notice to this effect to the other party to enable the latter to nominate an arbitrator, informing them at the same time who is their own arbitrator.

Other provisions of the Legislative Decree deal with the arbitration award and the conditions resulting therefrom (section 20); the tasks of the National Institute of Labour (sections 24 and 25); directives regulating employment (section 26); and the power of the Minister of Corporations and Social Insurance to extend by directive all or part of any collective agreement or arbitration award in force, to cover identical or similar activities or occupations not covered by it (section 27).

The text of the Legislative Decree appears in the *Diário do Governo,* No. 201, of 28 August 1969. Translations thereof into English and French have been published by the International Labour Office as *Legislative Series* 1969—Por.2.

REPUBLIC OF VIET-NAM

REPORT ON DEVELOPMENTS AND THE PROGRESS ACHIEVED IN THE FIELD OF HUMAN RIGHTS IN VIET-NAM [1]

Although it is not yet a member of the United Nations, the Republic of Viet-Nam has consistently endeavoured, ever since regaining its independence, to respect the principles proclaimed in the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenant on Human Rights. Successive Governments have pursued a policy aimed at raising the people's level of living and based on social justice and democratic freedoms, thus eliminating all traces of colonial bondage. Appropriate measures have since been taken to bring about social reform and organize a new way of life, and in spite of many political and financial difficulties, the results achieved are extremely encouraging.

1. Respect for the principle of equality of treatment in employment

Article 15 of the Constitution of the Republic of Viet-Nam of 1 April 1967 provides that "Every citizen has the right and the duty to work and will receive fair remuneration enabling him and his family to live in dignity". This principle also applies to foreign workers resident in Viet-Nam. Article 107 of the Viet-Namese Labour Code also provides that "In any occupation, a worker offering his services must receive a wage at least equal to the minimum wage. Any provision in a written or oral labour contract for the payment to a man, woman or child of a wage lower than the minimum wage shall automatically be considered null and void".

2. Measures to promote the rights of women in the modern world

Women in Viet-Nam have long enjoyed the same rights and privileges as men. In the political, legal, economic, social and educational spheres women receive equal treatment with men. Accordingly, Viet-Namese women have held high posts in the private sector and important executive posts in the various governmental services. The Government has taken steps to give women and girls the opportunity for full development in the family at work and in public life:

In the family: Women have the right to own property acquired during and after marriage. Illiterate women are encouraged to attend literacy courses organized for them (Legislative Decree No. 15/64 of 23 March 1964). They enjoy equal rights with their husbands in the upbringing of children and the management of the home;

At work: Women have a right to remuneration equal to that paid to men for work done under the same conditions. They also have the right to paid leave and to social welfare benefits for illness and maternity (articles 54 and 168 of the Labour Code);

In educational institutions: Women and girls enjoy an equal opportunity to enter and study at educational institutions at all levels and have equal rights to scholarships and other study grants;

In public life: The Republic of Viet-Nam has abolished prostitution throughout its territory prohibiting all licensed brothels and establishing vocational guidance centres for the rehabilitation of their former inmates. It should also be mentioned that women and girls have long enjoyed the right to vote and to be elected on the same terms as men and the right to exercise all public functions.

3. Illiteracy

Despite the intensification of the war and the many financial difficulties it has to face, the Government has made great efforts to reduce illiteracy, both in population centres and in the sparsely populated hamlets. Literacy courses for adults are held regularly every evening in primary-school buildings. It is encouraging to note that over the past two years the number of literate adults has increased day by day and that within a short time most of them have acquired the basic knowledge essential for engaging in a trade.

4. United Nations Children's Fund (UNICEF)

Thanks to the diligence of public figures or political-religious groups, Social Committees have been carrying out social work of practical benefit to the masses. Under the direction of a Central Committee for Social Action each Committee is endeavouring, according to its means, to raise the standard of living of the people under its care and in particular to improve the situation of children who have no means of support. Institutions concerned with mother and child welfare, such as orphanages, day-care centres and kindergartens, milk stations and social welfare dispensaries, are expanding, thanks to the devotion of the members

[1] Report submitted by the Government of the Republic of Viet-Nam.

of the Social Committees. A fully equipped modern children's hospital has been opened at Cholon; it concerns itself exclusively with children's diseases and serves at the same time as a training and advanced training centre for staff and pediatric specialists. Similar arrangements, together with a children's clinic, have been established at the Hué and Dalat hospitals. In view of the close relationship between child health and pre-natal maternal welfare, a pre-natal service has been set up at the Midwives' Training Centre of the Tù-dû Maternity Hospital. Handicapped children have not been forgotten. In the capital, in addition to the State-assisted primary schools for blind boys and girls, there is a primary and secondary school for the blind maintained by the Brothers of the Christian Schools (founded by St. John Baptist de La Salle), and at Lai-Thiêu (Bình-Duong) a school for deaf-mute children has been maintained by nuns.

5. Education of youth in respect for human rights and fundamental freedoms

Aware of the role of youth in the task of social reconstruction and of its desire to eliminate all forms of violations of human rights, our Ministry of Education has included instruction concerning the United Nations and its specialized agencies in the third-year civic education curriculum and requires a thorough study of the Universal Declaration of Human Rights and of the Convention against Discrimination in Education. To inspire the young students of Viet-Nam with the fundamental ideas of democracy, Committees of Mutual Social Assistance have been set up in the schools. These are true "miniature democracies" which give pupils an apprenticeship in such aspects of their adult lives as the election of officials, teamwork and team play, love of one's neighbour and respect for human dignity and cultural diversity. The education of young people is oriented in a new direction, towards vocational training in keeping with the governing principles of the Republic and the democratic aspirations of the people. For this purpose, vocational courses have been established in the secondary and primary schools (tailoring, typing, engine and radio repairing, carpentry, etc.), while in the pilot community schools agricultural work shops have been set up for young farm workers. Finally, in order to acquaint young peasants with the aspirations of the modern world and enable them to appreciate human values and understand other peoples, a special organization has been established to distribute newspapers, magazines and books in rural centres and information rooms or stations have been opened everywhere, from provincial capitals to the smallest villages, in order to bring the news promptly to the peasants.

6. Accession to international instruments concerning human rights

Forty countries have extended *de jure* recognition to the Republic of Viet-Nam since it was proclaimed, and the Republic has strengthened its position on the world scene by becoming a member of more than thirty international organizations, the most important of which are:

The Economic Commission for Asia and the Far East (ECAFE);
The World Health Organization (WHO);
The International Union against the Venereal Diseases;
The International Union for Health Education;
The International Labour Organization (ILO);
The Food and Agriculture Organization of the United Nations (FAO);
The Universal Postal Union.

It should also be noted that Viet-Nam has acceded to the Convention on War Victims and the Convention against Discrimination in Education and provides facilities to persons engaged in educational, scientific and cultural activities.

7. Legal aid

The underlying concepts of Viet-Namese justice derive from the universally accepted principles that no one may be charged with an offence, arrested or detained except in the cases prescribed by law and that everyone is presumed innocent until he has been found guilty under the law. On the basis of these ideas, the Government has endeavoured first, to give the national judicial system full autonomy and sovereignty and, secondly, to reorganize it in the light of the aspirations of a free and independent people. The Government provides every facility for Viet-Namese retaining French nationality, ethnic minorities and aliens who have settled in Viet-Nam to opt for Viet-Namese nationality and live as good citizens within the national community. Lastly, the Government has taken appropriate steps to provide job opportunities for communists who have come over to the national cause, in order to make them self-sufficient and enable them to adapt to their new life. It should also be noted that in the legislative sphere the Government has codified and unified the laws, taking account of new concepts and the country's economic development.

8. Publicity given to the Universal Declaration of Human Rights

On 10 December of each year Viet-Nam celebrates the anniversary of the Universal Declaration of Human Rights. The thirty articles of the Declaration have been translated into the national language and distributed all over the country in industrial and commercial enterprises, educational institutions and densely populated areas. In secondary school classes in civic education the teachers read out the articles, together with explanatory comments. Special radio and television programmes are broadcast before, on and after 10 December to give extensive publicity to the Universal Declaration of Human Rights.

Viet-Nam has always been a faithful defender of the liberal concepts enshrined in its legal codes. It firmly condemns racial discrimination, dictatorship, colonialism in all its forms and the violation by any country of the sovereignty and territorial integrity of neighbouring countries. It has unceasingly encouraged and promoted respect for the human rights and fundamental freedoms of everyone, without distinction as to race, colour, sex or religion.

ROMANIA

EXTRACTS FROM NORMATIVE ACTS ADOPTED IN 1969 [1]

I. REGULATIONS CONCERNING CONTINUOUS IMPROVEMENTS OF LIVING CONDITIONS

(Article 25 (1) of the Universal Declaration of Human Rights)

The practical effects of the development of the economy and the more efficient utilization of material and human resources can be seen in the 7.3 increase in the national income in 1969, as compared with 1968.

Over-all industrial production in 1969 amounted to 265,000 million lei and agricultural production rose by 4.8 per cent over the 1968 level. The total volume of investments was 61,400 million lei.

The considerable increase in State expenditure on socio-cultural activities improved the opportunities for further developments in creation, culture, art, health care and social welfare.

The success in developing the national economy in 1969 and previous years means that it will be possible to increase savings and promote the well-being of the population.

Act No. 26 on the adoption of the State economic plan for 1969 published in *Official Gazette* No. 147, part 1, of 18 December 1969, contains the following provisions:

...

Article 2. Over-all production in socialist industrial enterprises in 1970 will amount to 295,000 million lei at 1963 prices.

...

Article 4. Over-all agricultural production for the whole country in 1970, given normal agricultural conditions, will amount to 86,000 million lei at 1963 prices.

...

Article 11. The total volume of centralized investments in 1970 will be 67,000 million lei. The main branches of the economy will be allocated the following investment funds, expressed in thousands of millions of lei:

Industry (including the funding of drilling concerns)	38.2
Construction industry	2.3
Agriculture	8.1
Transport and telecommunications	7.4
Commerce, public food service, hotels	2.3
Education, culture, health care	1.9
Science	0.5
Housing	2.9
Community administration	1.5

...

Article 15. In 1970 real wages will be 8.8 per cent higher than in 1969.

...

Article 19. The volume of retail sales in 1970 will be 93,800 million lei.

II. REGULATIONS CONCERNING THE ADMINISTRATION OF JUSTICE IN CIVIL CASES

(Article 8 of the Universal Declaration of Human Rights)

Decree No. 52 amending certain provisions of the Code of Civil Procedure, published in *Official Gazette* No. 16, part 1, of 31 January 1969, is as follows:

"*Article 1.* The courts shall try:

"1. In the first instance, all suits other than those which by law come within the jurisdiction of other judicial bodies or jurisdictional organs.

"2. Petitions against decisions of administrative or public organs with jurisdictional activities, in the cases provided by law;

"3. All other questions which by law come within their jurisdiction."

"*Article 2.* The court of the Municipality of Bucharest and the departmental courts shall try:

"1. In the first instance:

"(*a*) Suits involving a sum of more than 50,000 lei;

"(*b*) Suits for deprivation of legal capacity;

"(*c*) Suits concerning reparation for damage resulting from wrongful conviction of arrest;

"(*d*) Suits concerning nullity of marriage, amendment or termination of an adoption and suits concerning forfeiture of parental rights;

"(*e*) Suits concerning approval for the enforcement of judicial decisions rendered in foreign countries;

"(*f*) All other questions which by law come within their jurisdiction.

"2. Appeals against decisions rendered by the courts and appeals concerning other questions which by law come within their jurisdiction.

[1] Extracts transmitted by the Government of the Socialist Republic of Romania.

"3. Extraordinary appeals against decisions rendered by courts in the final instance."

"*Article 4.* The Supreme Court shall try:

"1. Appeals against decisions rendered in the first instance by the court of the Municipality of Bucharest and the departmental courts and by the civil section of the Supreme Court;

"2. Extraordinary appeals against final decisions by judicial organs other than those mentioned in article 2 (3);

"3. All other questions which by law come within its jurisdiction."

Article 109 [1] [to be inserted after article 109]. In cases for which the law requires a preliminary conciliation procedure to take place before a trial Commission *(comisie de judicata),* application for a trial by a judicial organ will be allowed only if the plantiff presents proof that no conciliation was achieved and the parties have not agreed that the case should be settled by the Commission or that the conciliation procedure has not been carried out within the time-limit established by law."

"*Article 329.* The Procurator General of the Socialist Republic of Romania or the Minister of Justice may lodge an extraordinary appeal against final legal decisions when he considers that such decisions entail a serious infringement of the law or are manifestly groundless.

"An extraordinary appeal may be lodged within a time-limit which shall not exceed one year from the date on which the decision became final. Once that decision has been contested, however, an extraordinary appeal may also be lodged against earlier decisions on the same case which have been final for more than one year if such decisions are so closely connected with the contested decision that unless they are quashed there can be no sound and legal settlement of the case."

"*Article 330.* The Procurator shall participate in the judgement of the extraordinary appeal, stating the reasons for the appeal and summing up the case. The provisions pertaining to appeals, which are supplemented by the provisions of this chapter, shall be applied with respect to the judgement and settlement of the extraordinary appeal."

Decree No. 52/1969 was designed to bring the regulations governing civil proceedings into harmony with the provisions of the new law on the organization of the judiciary and with those of the law on Trial Commissions and, at the same time, to improve certain provisions of the Code of Civil Procedure.

Under the new system for the organization of the judicial organs a departmental court and two or more tribunals *(judecatorii)* will operate in each administrative Department (judet). Furthermore, under the law on the organization of the judiciary the institution of the "supervisory appeal" *(recursul în suprareghere)* has been resorted in the form of an extraordinary appeal, a remedy which may be restricted to both by the Procurator General and the Minister of Justice in the case of a legal decision that has entailed a serious infringement of the law or a decision that is manifestly groundless.

The law also provides that extraordinary appeals against decisions rendered by a court in the final instance are to be judged by the departmental court.

These new legal provisions have made it necessary to amend some provisions of the Code of Civil Procedure relating to extraordinary appeals and the jurisdiction of the various courts, giving wider jurisdiction to the departmental courts in the first instance. *Inter alia,* these courts have been given the power to try lawsuits involving property with a value of over 50,000 lei, suits for deprivation of legal capacity, nullity of marriage, nullity or termination of an adoption, etc.

III. DIVORCE REGULATIONS

(Article 16 (1) and (3) of the Universal Declaration of Human Rights)

Decree No. 680, amending certain provisions of the Code of Civil Procedure and of Decree No. 779 of 1966 amending certain legal provisions concerning divorce, published in *Official Gazette* No. 106, part I, of 7 October 1969:

"*Article 613* [1] [to be inserted after article 613]. The provisions of article 613 (3) concerning the period for deliberation shall not apply; the President of the court shall set the time-limit for the hearing of the petition when divorce is requested on the grounds that the respondent

"(*a*) Is suffering from chronic mental derangement or chronic mental debility;

"(*b*) Has been declared missing by a final judicial decision;

"(*c*) Has been out of the country for at least two years, deserting his family;

"(*d*) Has been convicted of the attempted murder or of complicity in the attempted murder of the petitioner, instigation to the murder thereof, failure to report such offences or of abetting the persons who committed them or has been convicted of incest or of sexual relations with persons of the same sex;

"(*e*) Has been sentenced to a term of imprisonment of at least three years or has received several sentences totalling at least three years of penalty for offences against the security of the State, against peace and humanity, murder, infanticide, prostitution, theft, robbery, fraud, embezzlement or forgery.

"The provisions of the foregoing paragraph shall not apply if, by a final judicial decision, the petitioner has been found guilty of participating in the commission of any of the offences specified in sub-paragraph (*e*) or has been obliged to answer for benefits derived from any of those offences committed by the respondent."

IV. REGULATIONS GOVERNING THE RÉGIME FOR ALIENS IN THE SOCIALIST REPUBLIC OF ROMANIA

(Article 13 of the Universal Declaration of Human Rights)

Act No. 25 concerning the régime for aliens in the Socialist Republic of Romania, published

in *Official Gazette* No. 146, part 1, of 17 December 1969.

Article 1. In Romania aliens enjoy, in accordance with the law, the same fundamental rights as Romanian citizens, with the exception of political rights, and the same civil rights and all other rights recognized by law or by international agreements to which Romania is a party.

During their stay in Romania aliens are required to respect Romanian laws.

Article 2. For the purposes of this Act, aliens are persons who do not have Romanian citizenship, whether they have foreign citizenship or are stateless.

...

Article 5. The legal provisions concerning domicile and residence for Romanian citizens shall also apply, as appropriate, to aliens.

An alien entering Romania in order to establish his domicile or residence there for a period of more than ninety days shall report his arrival to the organ of the Ministry of the Interior at his place of domicile or residence within three days of crossing the frontier of the Romanian State so that he may register and obtain a Romanian identity document. The same requirement applies to aliens who pay several visits to the country, on private business, totalling over ninety days in one year.

In the case of a child under fourteen years of age, the parent or other legal representative or companion is responsible for reporting his arrival.

Aliens entering Romania for less than ninety days are not required to report to the organs of the Ministry of the Interior to declare their residence.

...

Article 15. Romanian identity documents issued to an alien shall be withdrawn by the competent authorities of the Ministry of the Interior if the alien: (*a*) Leaves the territory of the country; (*b*) is no longer entitled to stay in the country or is expelled; (*c*) acquires Romanian citizenship.

...

Article 17. An alien domiciled in Romania shall inform the organ of the Ministry of Foreign Affairs at the place where he is registered of any development or change in his civil status within the period prescribed by law for Romanian citizens. A development or change in civil status which takes place abroad shall be announced on the date on which the alien learns of it or on the date on which he returns to Romania.

V. REGULATIONS CONCERNING HOUSING CONSTRUCTION

(Article 25 (1) of the Universal Declaration of Human Rights)

1. Decision No. 2189 of the Council of Ministers approving the standard rules for co-operative associations for the construction of privately owned housing and establishing regulations for the application of Act No. 9 of 9 May 1968, published in *Official Gazette* No. 137, of 4 December 1969.

Article 2. Citizens may form co-operative associations for the construction of privately owned housing.

Such associations shall, as a rule, be composed of employees of the same enterprise or institution.

Citizens forming associations shall receive State support under the conditions laid down in Act No. 9 of 9 May 1968 and in Decision No. 1735/1968 of the Council of Ministers.

...

Article 5. Co-operative associations for the construction of privately owned housing shall acquire juridical personality on the date of their constitution, in accordance with the legal provisions in force.

The date of constitution of the association is the definitive date recorded by the State notary on the associations' statutes.

...

Article 8. Joint usufructuary rights over the land required for the construction of privately owned housing shall be granted in perpetuity at the request of the association. In decisions relating to the allocation of land, the executive committees of the people's councils shall specify each associate separately by name.

Article 9. The executive committees of the people's councils shall, at the request of the associations, support the latter's activities for the construction of privately owned housing and shall ensure that they comply with the provisions of Act No. 9 of 9 May 1968 and the legislative enactments relating to the implementation of that Act.

...

Article 12. Associations may likewise be formed by citizens wishing to build their own privately owned houses for holidays or tourism, without State funds, under the conditions laid down in Act No. 9 of 9 May 1968 and Decision No. 1735/1968 of the Council of Ministers.

2. Decision of the Council of Ministers concerning the granting of loans to members of the public for privately owned housing by the Savings and Loan Bank and establishment of the interest rate for certain credit operations, published in *Official Gazette*, No. 138, of 8 December 1969.

Article 1. The Savings and Loan Bank is authorized as of 1 January 1970 to grant, to members of the public, loans from its funds, for the minimum down-payment specified in Act No. 9 of 9 May 1968 for the development of housing construction, the sale of dwellings from the State housing inventory to the population and the construction of privately owned houses for holidays or tourism and for the purpose of making up the sum required to cover the total cost of contracting for priority housing.

Loans for the down-payment shall be granted for a maximum term of five years, and loans to make up the sum required to cover the total cost of the housing for a maximum term of ten years.

3. Decision No. 1678 of the Council of Ministers approving the standard rules for tenants' associations and establishing regulations governing the application of the provisions concerning

tenants' associations in Act No. 10/1968, published in *Official Gazette,* No. 94, part I of 27 August 1969.

Article 2. A tenants' association is a non-profit-making civil organization without the status of a public organization and has juridical personality under Act No. 10/1968.

In buildings with several apartments the tenants' association is constituted *de jure,* without any other formality if such buildings contain at least six apartments.

Tenants' associations may also be formed in buildings with less than six apartments if the principal tenants consider it necessary to form an association. In such cases, the association shall be formed without any other formality.

The tenants' association may be formed regardless of the form of ownership of the building.

All the principal tenants of the building, physical or juridical persons, shall belong to the tenants' association.

Article 3. The executive committees of the people's councils shall, at the request of the tenants' association, support the latter's activities in solving problems concerning the proper administration and the functioning of common facilities and installations, their financial and accounting activities and in the proper application of the legal provisions concerning the establishment and allocation of joint expenses.

. . .

Article 9. The tenants' association may hire, under contract, the staff required for the proper management of the jointly-used facilities and installations of the building.

VI. REGULATIONS RELATING TO EDUCATION

(Article 26 (1) and (2) of the Universal Declaration of Human Rights)

1. Decision No. 2105 of the Council of Ministers concerning qualification and further training courses for workers and employees with secondary studies, published in *Official Gazette,* No. 122, part I, of 6 November 1969.

Article 1. Qualification and further training courses for workers and employees with secondary studies shall be held in enterprises and other socialist organizations of the State, and in centres for the training of personnel required by various socialist organizations, in accordance with the provisions of the Act concerning education in the Socialist Republic of Romania.

. . .

Article 4. The organization of courses for the qualification and further training of workers and employees with secondary studies shall be approved by ministries, other central organs and the executive committees of the departmental people's councils and of the People's Council of the Municipality of Bucharest.

In the case of enterprises coming under the authority of the central industrial boards, the organization of courses at the place of work shall be approved by the management of the central industrial board, or of the trust, combine or group of enterprises.

Article 5. Qualification and further training courses for workers and employees with secondary studies shall be organized on the basis of the schooling plan approved in accordance with the provisions of the Act concerning education in the Socialist Republic of Romania, for the length of time established in the list of professions and within the framework of the funds allocated under the State plan. The units within which qualification or further training courses are held shall be responsible for the satisfactory operation of such courses.

. . .

Article 9. Workers and employees with secondary studies attending qualification or further training courses without leaving their place of work shall be entitled to receive, in addition to remuneration for their production work, the reading materials which are provided for their use during the courses.

Article 10. Workers and employees with secondary studies who leave their place of work to attend qualification or further training courses shall be entitled to receive, for the duration of the courses: (*a*) The reading materials in use; (*b*) A monthly allowance equal to the average wages earned during the three months preceding their admission to the courses, provided that they were gainfully employed during that period. . . .

. . .

Article 13. Staff teaching subjects at the qualification and further training courses for workers and employees with secondary studies shall be appointed, by the bodies instituting such courses, from among the best specialists in production or specialized teachers with higher studies at institutions of professional and technical education. Subject to the approval of the central and local organs referred to in article 4, teachers with intermediate studies may also be employed for qualification and further training courses for workers.

. . .

2. Act No. 6 concerning the statute for education personnel in the Socialist Republic of Romania, published in *Official Gazette,* No. 33, part 1, of 15 March 1969.

Article 1. Education personnel in the Socialist Republic of Romania have the noble mission and important social and patriotic responsibility of achieving the aims of education, the contributing to and all-round and harmonious formation of the human personality and the prosperity of our system and our socialist society.

Education personnel carry out the educational policies of the Romanian Communist Party and the Romanian State. They provide the young generations with a general or specialized education aimed at ensuring their active participation in the life of society, instil in them a scientific conception of nature and society and a boundless devotion to their country and people and dedication to the cause of socialism and to the ideals of peace, understanding among peoples and social progress.

In performing their tasks, education personnel are called upon to display high civic and professional awareness, to behave with dignity in the school, the family and society and to strive constantly to raise the level of their specialized, pedagogical and ideological training.

Article 2. This Statute shall lay down provisions concerning the various educational functions in teaching establishments and prescribe regulations concerning the occupation of such functions, as well as the transfer, secondment, termination, rights and duties of education personnel, their further training, salary scales, distinctions and prizes, disciplinary and material responsibilities and retirement pensions.

Article 3. The provisions of this Statute shall apply to teaching and assistant education personnel, to administrative and supervisory education personnel in the field of pre-school education, compulsory general education, secondary education, and professional and technical education and also to the education personnel of university departments and administrative personnel in higher education.

...

Article 12. Teaching posts may be filled by appointment, transfer from one school to another, secondment or temporary replacement.

Article 13. Educational appointments shall be made by the Ministry of Education to fill the vacant posts reported by the competent staffing organs, as follows:

(*a*) On the basis of the system for the allocation, within the educational field, of graduates of higher educational establishments, teacher-training schools and advanced teacher-training institutes;

(*b*) Upon request from the persons concerned for appointment or for transfer from other sectors of activity;

(*c*) On the basis of a transfer from other sectors of activity in the interests of education.

Appointments to posts for which a competitive examination is held shall be made on the basis of the results of that examination.

The assignment of education personnel to posts shall be made by the executive committees of the people's councils of the Departments and of the municipality of Bucharest, by school inspection boards, by ministries and other central organs of State administration or by the central organs of co-operative organizations with schools under their authority.

...

Article 20. The regular incumbents of teaching posts may, on request, be transferred from one school to another, to posts which have been advertised as vacant or which fall vacant in connexion with the transfer operations.

Transfers from one school to another, to posts for which a competitive examination is held, shall be made on the basis of the results of that examination.

A list of vacant posts shall be published each year up to 1 February, in the Bulletin of the Ministry of Education.

...

Article 24. In deciding upon transfer requests, precedence shall be given to applicants in the following order:

(*a*) Applicants wishing to be closer to a spouse in full-time employment and living at the place to which transfer is requested, priority being given to those who wish to be closer to a spouse working in education;

(*b*) Applicants wishing to be closer to parents living in a village;

(*c*) On health grounds, to an applicant who has been certified by the competent health agency as being in need of a protracted course of medical treatment which cannot be followed in the place of his employment, or requiring a change in the place or geographical area of his abode;

(*d*) Applicants wishing to be closer to parents living in a town;

(*e*) Applicants with other reasons.

If, in applying the order of precedence laid down in this article, two or more persons have the same entitlement to a transfer, the matter shall be settled by reference in the following order, to the applicants' professional grade, results obtained in instructional and educational work, length of service in education, family situation and state of health.

...

Article 40. Education personnel holding teaching posts, who have distinguished themselves in their professional activity and display organizational ability may be appointed to the posts of director and deputy-director.

In schools or sections which teach in the languages of the co-inhabiting nationalities, education personnel of those nationalities may also be appointed to administrative and supervisory posts.

...

Article 50. Education personnel shall enjoy the rights laid down in this statute, and also the rights held by virtue of their status as employees which are laid down by the labour laws.

Article 51. For the purpose of performing the tasks for which they are responsible, education personnel have the following main rights:

(*a*) To engage in a specialized activity in the field of education, in accordance with their professional training;

(*b*) To use the materials, facilities and libraries of educational establishments in preparing and carrying out educational and scientific activities;

(*c*) To publish textbooks, papers and other works;

(*d*) To benefit from organized forms of professional training and the privileges conferred on them by law as a consequence of that training;

(*e*) To belong to national and international professional organizations and cultural associations whose concerns are related to the development of education, engaging in activities in keeping with the statutes of such organizations;

(*f*) To use the facilities of the departmental centres for education personnel with a view to acquiring specialized scientific information and keeping up to date with developments in education

science or in order to exchange experience or to conduct scientific research.

Article 52. In order to promote scientific and methodological research, to raise scientific and professional standards and to make the best use of research data, education personnel shall be authorized to form scientific societies by branch of science.

...

The scientific societies may collaborate with other similar societies abroad; they may also be affiliated, in the conditions laid down by law, with international specialized organizations, and their members may belong to such organizations.

Article 53. Education personnel who have achieved praiseworthy results in instructional, educational, scientific or artistic work may be delegated by the Ministry of Education to attend congresses, specialized meetings or other cultural or scientific events, both national and international.

...

Article 55. Teaching staff and school administrative personnel shall be allowed regular paid leave of sixty-two days each year, to be taken as a rule between 1 July and 31 August.

The leave provided for in the foregoing paragraph shall be granted to education personnel who have been employed for the whole school year. In the event that the appointment was made after the start of the school year, the length of the leave shall be proportionate to the amount of time actually spent in teaching during that year, five working days being allowed for each month in employment.

...

Article 61. In the accomplishment of the social mission conferred on them under article 1, education personnel shall have the following main obligations with respect to the conduct of institutional and educational activities and further training: to instruct and educate pupils by means of lessons and practical work in laboratories or school workshops in accordance with the tasks comprised in their teaching schedule, and by organizing and conducting extra-curricular or out-of-school activities, in co-operation with children's and youth organizations; to improve their knowledge of their specialized subject and their teaching skills, taking an active part in various kinds of training provided for that purpose; to strive constantly to raise the level of their ideological training and to work for the implementation of the policies of the Party and the State; and to set an example of moral conduct in the school, society and the family and to display a dignified and civilized demeanour in all respects.

...

Article 74. Assessments concerning the manner in which education personnel fulfil their obligations shall be entered on the character reports prepared for this purpose every five years; account shall be taken of results obtained at work and participation in the courses of specialized scientific information which they have been scheduled to attend.

...

Article 75. The reports shall be brought to the notice of the persons concerned.

...

Article 76. The further training of education personnel shall be effected by the Ministry of Education through the higher educational establishments, the Central Institute for the Further Training of Education Personnel and its branches, the Pedagogical Research and Further Training Centre for Education Personnel in Professional and Technical Education and the school inspection boards. The scientific societies for education personnel shall also contribute to further training activities, in accordance with their statutes.

...

Article 101. In the contract of educational, methodological and scientific research activities, the following posts shall be established in university departments: professor, lecturer, work director (reader), assistant and temporary assistant.

...

Article 104. Vacancies for permanent posts of professor and lecturer shall be filled by qualified teachers, by means of competitive examination.

The posts of work director (reader) and assistant shall be filled by means of promotion or competitive examination.

Probationary assistant posts shall be filled by appointment on the basis of the system for the allocation of graduates of higher educational establishments for the completion of their probationary period prescribed by law, or by competitive examination.

...

Article 137. The discharge of education personnel from their functions in university departments by means of termination of employment contracts or transfer to another sector of activity, shall be effected in accordance with the conditions laid down in the labour laws by the organs which are competent to appoint them to their functions with the approval of or on the basis of a decision by the same organs as in the case of an appointment.

...

Article 140. The administrative staff in higher education shall consist of rectors, prorectors, deans, deputy deans, scientific secretaries to the academic councils, and heads of departments.

Article 141. The rector shall be the president of the Senate (the academic council of the higher educational establishment) and president of the Bureau of that Senate (Council).

The rector shall be responsible for the operational management of the higher educational establishment, dealing with problems relating to routine instructional, educational, scientific and administrative activity. For that purpose, the rector shall co-operate with the trade union organization and with the youth and student organizations of the institution concerned.

The procedure pertaining to the election and appointment of rectors, and their functions, shall be that prescribed by law.

...

Article 143. The dean shall be president of the academic council of the faculty and president of

the bureau of that council. The dean shall be responsible for the operational management of the faculty, regulating matters relating to current instructional, educational, and scientific activities.

The procedure for electing and appointing deans, and their functions, shall be laid down by law.

...

Article 146. The head of the department shall organize the activities of his department and shall take responsibility for the execution by its staff of the process of teaching the discipline or disciplines taught in the department, as well as for the accomplishment of the departments' tasks with regard to instructional, educational, and scientific research activities.

...

Article 170. The further training of education personnel for the purpose of improving their professional and scientific qualifications shall be carried out primarily through study within the doctorate system in accordance with the legal provisions governing the award of the academic degree of doctor.

Article 171. The further training of education personnel may also be carried out through:

(*a*) Participation in methodological-scientific activities organized by the departments, consisting of the analysis of lessons and courses, scientific papers, discussions on papers prepared by doctoral candidates and the analysis of the results of instructional, educational and scientific activities;

(*b*) Annual exchanges of experience, consisting in sending professors or lecturers who have obtained outstanding results in instructional, educational and scientific activities, to communicate their achievements to other academic teams, in the same field, in other faculties;

(*c*) Specialized in-service training in the country, for a period of three to six months, at university departments, research institutes or enterprises with a particularly high standard of material facilities and highly qualified personnel;

(*d*) Study and specialization trips abroad;

(*e*) Participation in specialized scientific events, such as conventions, meetings, symposiums, and congresses, organized in the country or abroad;

(*f*) Participation in specialized post-graduate courses organized in accordance with the relevant legal provisions.

...

Article 172. The salaries of teachers employed in pre-school education, compulsory general education, secondary, vocational and technical education shall be established on the basis of: the educational function performed; the training required for the performance of the educational function; the professional level attained; seniority (length of service) in education and the quality of the instructional and educational activities; the specific conditions in which the activities are carried out.

Article 173. The differentiation of the monthly salary paid to teachers on the basis of their seniority within the educational system and the quality of the instructional and educational work done, shall be effected by a system of salary steps.

...

Article 176. For outstanding results obtained in teaching activities, permanent staff with at least twenty-five years of service may, at the proposal of the school supervisory organs, be granted by the Ministry of Education the increment of merit, entitling them to an increase of two steps in the salary scale.

For the purposes of the application of the provisions of the foregoing paragraph, the conditions for the granting of the increment of merit shall be established by the Ministry of Education acting in consultation with the Ministry of Labour and the Union of Trade Unions of Educational and Cultural Institutions.

...

Article 188. The salaries of education personnel employed in higher education shall be established on the basis of: the function performed; the training required for the performance of the educational function ; seniority (length of service) in the educational system and the quality of the instructional, educational and scientific activities; the specific conditions in which the activities are carried out.

...

Article 196. For education activities carried out under special (harmful, difficult or dangerous) working conditions education personnel shall receive the increments provided by law.

...

Article 202. Incumbents of education posts who perform distinguished service in the instructional, educational, scientific and social and cultural fields may receive orders, medals, titles and prizes, in accordance with the legal provisions governing the award thereof and with the provisions of this Act.

...

Article 252. Save as otherwise provided in this Act, the provisions of the Labour Code and the other labour laws shall apply to education personnel of all grades.

VII. REGULATIONS CONCERNING THE MEDICAL CARE AND SOCIAL SERVICES NECESSARY FOR THE MAINTENANCE OF HEALTH

(Article 25 (1) of the Universal Declaration of Human Rights)

Decree No. 541 concerning the creation, organization and functioning of the Central Board of Health, published in *Official Gazette,* No. 81, part 1, of 24 July 1969.

Article 1. The Central Board of Health shall be established under the authority of the Ministry of Health.

The Central Board of Health shall have the task of analysing and discussing periodically general problems of health protection and of elaborating and proposing measures relating to the orientation of the development of medical activities in the Socialist Republic of Romania.

Article 2. The Central Board of Health shall be composed of a number of members appointed from among the most representative personalities in the fields of medical science and education, medical personnel with extensive experience and high qualifications from the health institutions, and delegates from certain State and public central organs and organizations concerned with the problems of the development of health protection.

The members of the Central Board of Health shall be appointed for a period of three years.

The chairman of the Central Board of Health shall be the Minister of Health, who shall be assisted in the discharge of his functions by vice-chairmen and a secretary-general. In the chairman's absence, his functions shall be discharged by a vice-chairman designated for that purpose by the Chairman.

The composition of the Central Board of Health shall be approved by a decision of the Council of Ministers.

Article 3. The meetings of the Central Board of Health shall be held once a year and shall be convened in due time by the chairman, or in his absence by the vice-chairman serving in his place. The Board may also be convened at the request of at least one third of its members.

...

Article 5. Delegates of certain State or public organs and organizations and specialists in the field of health protection may be invited to attend the meetings of the Central Board of Health.

VIII. REGULATIONS CONCERNING SCIENTIFIC RESEARCH

(Article 27 (1) of the Universal Declaration of Human Rights)

1. Decree No. 542 concerning the organization and functioning of the National Scientific Research Council, published in *Official Gazette*, No. 81, part 1, of 29 July 1969.

Article 1. The National Scientific Research Council shall be the central organ of the State administration responsible for the orientation and supervision of scientific research activities with a view to ensuring the application of Party and State policy in the field of the technical sciences and research directly connected with material production and shall be concerned on a continuing basis with the orientation of research and the evaluation of its results, in accordance with the requirements of the building of socialism and the country's economic and social and cultural progress.

In its activities, the National Scientific Research Council shall collaborate with the ministries and other central organs.

Article 2. The National Scientific Research Council shall have the following functions:

A. With respect to the orientation and supervision of scientific research activities and the utilization of research findings:

(*a*) To orient research activities towards the solution of vital problems of economic and social development;

(*b*) To initiate the elaboration of priority research programmes and, following approval thereof, to verify that they are properly carried out;

...

(*e*) To undertake, in co-operation with the ministries and other central organs concerned, the supervisory action with regard to the choice of research topics and the manner in which material and financial resources are used in scientific research activities and also with regard to the application and utilization of certain research findings;

(*f*) To initiate and elaborate methodological guidelines and, in co-operation with the ministries and other central organs, to prepare draft normative instruments on problems relating to scientific research;

(*g*) To organize, in association with the ministries and other central organs, the analysis of the technical standard of certain products, technological processes and operations, paying particular attention to production for export.

...

B. With respect to the planning, financing and use of scientific research facilities:

(*a*) To draw up, in co-operation with the ministries and other central organs, on the basis of studies and forecasts, long-range programmes laying down general guidelines for the development of scientific research, for submission to the Council of Ministers for approval; following such approval, to ensure that these programmes constitute the general framework for the orientation and planning of scientific activities;

...

(*c*) To draw up general norms for the autofinancing of research units on a contract basis and for the extension of the principle of economic self-management, and to supervise their application;

(*d*) To co-ordinate the development of the production of research apparatus and equipment, in co-operation with the ministries and other central organs concerned, and to prepare and submit to the Council of Ministers proposals for improvement in this field of activity;

...

C. With respect to research personnel and the research network:

(*a*) To draw up, in association with the State Planning Committee, the Ministry of Education, the Academy of the Socialist Republic of Romania, and the other central organs concerned, proposals concerning personnel requirements in the field of scientific research;

(*b*) To keep under review methods of recruitment, allocation, promotion and certification of scientific personnel and to draft proposals concerning the continuous improvement of the system for the participation of the latter on a partnership basis;

...

(*c*) To prepare, in association with the central organs concerned, annual and long-range programmes for areas of specialization for research personnel in the country and abroad, in accordance with research topic requirements, to submit them to the Council of Ministers for approval and to supervise their implementation and verify their effectiveness;

...

(*e*) To decide on proposals concerning the establishment of scientific research units, changes in type of research and the reorganization or discontinuation of existing units.

D. With respect to the co-ordination of information and documentation and the patenting and application of inventions:

(*a*) To co-ordinate and orient the scientific and technical information and documentation system;

(*b*) To organize activities for the supervision of the editing and publishing of scientific and technical works and to formulate proposals for the improvement of content and for greater efficiency in these sectors of activity;

(*c*) To co-ordinate the patenting and practical application of inventions.

E. With respect to co-operation and external scientific relations:

(*a*) To ensure, in co-operation with the Government Committee for Economic and Technical Co-operation, the Ministry of Foreign Affairs and the other ministries and central organs concerned, the co-ordination of activities relating to scientific co-operation with other countries;

(*b*) To formulate and submit for approval by the Council of Ministers programmes for national scientific events involving international participation and also for events not involving international participation which are of special interest;

...

Article 3. In the exercise of its functions, the National Scientific Research Council: shall ensure extensive consultation with scientists, scientific researchers, teachers with extensive professional experience, the administrative personnel of the central organs and projection and production specialists, by organizing discussions on the principal problems of the development of science and technology. It may request from the ministries, the other central organs and scientific research units any data and documents necessary for the performance of its functions.

Article 4. The National Scientific Research Council shall be composed of: the members of the Executive Bureau, chief officers of the central committees for the co-ordination of scientific research, and of the other organs for the co-ordination of scientific research by branch and field, chief officers of certain institutes, members of the Academy, representatives of certain central organs, university professional staff, and other scientists and specialists.

The members of the National Scientific Research Council shall be appointed for a term of four years by the Council of Ministers.

Article 5. ... The Executive Bureau shall be composed of the president, first vice-president and vice-presidents of the Council, scientists and researchers, heads of research units, representatives of certain central organs, and specialists permanently employed with the National Scientific Research Council.

The president of the National Scientific Research Council shall be a member of the Council of Ministers.

...

Article 8. For the purpose of carrying out the tasks of orientation, co-ordination and supervision of research activities, the National Scientific Research Council shall have a staff consisting of advisers, experts and specialists, divided into groups by scientific branch and sector, who shall constitute the permanent machinery of the National Scientific Research Council.

Article 9. The machinery of the National Scientific Research Council shall have the following organizational structure:

(*a*) The sector responsible for forecasts, the formulation of programmes for the orientation of research, résumés of research topics and supervision of research activities;

(*b*) The sector for the evaluation of scientific research;

(*c*) The sector responsible for facilities and the co-ordination of the importation of research equipment;

(*d*) The sector responsible for personnel and the research network;

(*e*) The sector for scientific co-operation and external relations;

(*f*) The sector responsible for studies and the co-ordination of activity concerning the editing and publishing of technical and scientific works;

(*g*) Groups of specialists by branch and field of science;

(*h*) The office in charge of economic, secretarial and administrative affairs;

(*i*) The legal office.

2. The Statute of the Academy of Medical Sciences, approved by Decision No. 1758 of the Council of Ministers, published in *Official Gazette*, No. 99, part I, of 8 September 1969.

Article 1. The Academy of Medical Sciences shall be the scientific organ responsible for contributing to the development of the medical sciences and for promoting health protection for the people of the Socialist Republic of Romania.

The Academy is a State institution having juridical personality, with its headquarters at Bucharest. The Academy shall function within the Ministry of Health and be answerable to that Ministry for all its activities.

Article 2. With a view to carrying out its tasks, the Academy of Medical Sciences shall have the following powers:

(*a*) To draft proposals to be submitted to the Ministry of Health for approval on the main guidelines for development and priority programmes for basic and applied medical research.

(*b*) To draft proposals to be submitted to the Ministry of Health for approval, concerning the

organization, functioning and development of scientific medical activities;

(*c*) To carry out, through its units, research in the field of medical theory and practice, paying close attention to public health needs;

(*d*) To organize, orient and supervise the scientific research activities of its subordinate scientific medical and pharmaceutical research units; to co-ordinate, orient and supervise medical research activities in higher institutes of medical learning and in research units outside its own system, and in medical and health assistance units, in collaboration with the Ministry of Education, with other ministries and with the central and local organs to which such units are subordinate. The co-ordination and orientation of scientific medical research activities shall be in conformity with the general norms laid down by the National Scientific Research Council, in accordance with the law;

(*e*) To organize discussions in which scientists and highly qualified professionals in the field of medicine and pharmacology may compare views on the most important and topical problems of medical science, the protection of public health and the training of medical and health personnel;

(*f*) To study the possibilities for utilizing medical scientific research and contributing to the application of scientific achievements in the practice of health protection;

(*g*) To propose to the Ministry of Health the organizational plan for national medical scientific events and for participation in international medical scientific events;

(*h*) To organize, orient and supervise activities relating to medical pharmaceutical information and documentation, and decide on the plan for publications in medical science;

(*i*) To be responsible for the technical and methodological orientation of medical-health units in the health protection work specified by the Ministry of Health;

(*j*) To organize, with the approval of the Ministry of Health or, as appropriate, the consent of the Ministry of Education, research teams to deal with certain problems in medical and health institutions or in medical and pharmaceutical institutes;

(*k*) To make proposals to the Ministry of Health concerning the number of graduates from higher educational and technical institutions of learning needed for its subordinate scientific research units;

(*l*) To draft proposals for the improvement of facilities in its subordinate scientific research units, with a view to equipping them with the necessary apparatus, materials and documentary and scientific information resources;

(*m*) To distribute among its subordinate scientific research units the facilities and funds made available to it for research; to verify and supervise the judicious use of such facilities and funds;

(*n*) To publish scientific periodicals, monographs and specialized papers; organize museums, exhibitions and other similar activities;

(*o*) To award prizes for the most outstanding work in the field of medical and pharmaceutical science;

(*p*) To maintain and develop relations of co-operation with similar scientific institutions in other countries, in accordance with existing rules.

Article 3. The Academy of Medical Science shall have honorary, regular and corresponding members.

The number of members shall be established by the Ministry of Health, on the recommendation of the Academy of Medical Sciences.

Article 4. The honorary members shall be elected from among scientists of exceptional merit in the field of medical and pharmaceutical science.

In addition to Romanian citizens, citizens of other States who are scientists of exceptional merit in the medical field and support scientific co-operation with the Socialist Republic of Romania, may also be elected honorary members.

. . .

Article 6. The members of the Academy of Medical Sciences shall be elected by the General Assembly of the Academy.

. . .

Article 8. The regular and corresponding members of the Academy of Medical Sciences shall have the following duties: to contribute, through their work, to the enrichment of medical theory and practice and the solution of major public health problems; to strive for the improvement of the qualifications of scientific research staff; to work continuously in the public field;

. . .

Article 18. The Academy of Medical Sciences shall carry out its scientific research activities through its scientific research units, which shall comprise: research institutes, research centres and research teams;

. . .

Article 20. The institutes and centres for medical scientific research of the Academy of Medical Sciences shall have the following tasks: to carry out research, thereby contributing to the development of medical science; to contribute to the solution of problems in specialized fields, in accordance with the needs of public health protection; to verify the practical utilization of scientific results obtained; to be responsible for methodological orientation and to give specialized technical assistance to medical and health institutions; to draw up and ensure the implementation of medical scientific research plans; to provide the socialist organizations with technical scientific assistance, and to provide expertise in accordance with existing rules.

. . .

Article 28. The supreme supervisory organ of the Academy of Medical Sciences is the General Assembly, which shall be composed of the regular and corresponding members of the Academy and of representatives from the research units and higher medical educational units. The ratio of members from various categories shall be laid down by the Ministry of Health, at the proposal of the Presidium of the Academy.

The General Assembly shall have the following powers:

(*a*) To discuss and approve the annual report and proposals for annual and long-term plans of activities;

(*b*) To analyse trends in scientific research and discuss developments in the various branches of medical research;

(*c*) To establish the most appropriate courses and methods for the practical utilization of scientific research findings;

(*d*) To discuss and adopt the proposals of the Presidium of the Academy, concerning the establishment or discontinuation of research institutes and centres subordinate to the Academy, which are to be submitted to the Ministry of Health;

(*e*) To elect by secret ballot the honorary, regular and corresponding members;

(*f*) To elect the President, vice-presidents and the other members of the Presidium of the Academy of Medical Sciences.

...

Article 31. Between sessions of the General Assembly, the chief organ of the Academy shall be the Presidium of the Academy of Medical Sciences.

Article 32. The Presidium of the Academy of Medical Sciences shall have the following powers:

(*a*) To make proposals to the Ministry of Health concerning research problems of nationwide or departmental interest, and approve research plans of medical scientific research institutions and centres;

(*b*) To analyse and orient all medical research activities;

(*c*) To take decisions on all scientific and organizational problems so as to ensure the accomplishment of the Academy's tasks;

(*d*) To take steps to utilize scientific achievements and research findings in the field of public health protection;

(*e*) To convene congresses, conferences and scientific discussions in accordance with the approved plan;

(*f*) To establish scientific co-operation with foreign medical scientific institutions;

(*g*) To award prizes for scientific work, with the approval of the Council of Ministers.

...

Article 38. The costs of the operation of the Academy of Medical Sciences shall be paid out of the State budget under the plan of expenditure of the Ministry of Health; the Academy's subordinate medical scientific research units shall be financed both from their own income and from the budget.

IX. REGULATIONS CONCERNING LABOUR PROTECTION

(Article 23 (1) of the Universal Declaration of Human Rights)

1. Decree No. 48 concerning the amendment of Act No. 5/1965 on labour protection, published in *Official Gazette* No. 15, of 30 January 1969:

Article 1. Act No. 5/1965 on labour protection shall be amended as follows: ... A chapter III bis, entitled "Offences", shall be inserted after article 20, and shall read as follows:

"*Article 20*[1]. Failure to take a measure prescribed by the laws on labour protection on the part of the person responsible for taking such a measure at a place of work presenting a particular danger, shall, if such failure creates the possibility of an industrial accident or occupational disease, be punishable by a term of imprisonment of three months to two years or by a fine.

"*Article 20*[2]. Failure to take a measure prescribed by the laws on labour protection on the part of the person responsible for taking such a measure at a place of work presenting a particular danger, shall, if such failure creates the possibility of an industrial accident or occupational disease, be punishable by a term of imprisonment of three months to three years.

"*Article 20*[3]. Failure by any person to observe the measures taken concerning labour protection shall, if such failure creates an immediate danger of an industrial accident or occupational disease, be punishable by a term of imprisonment of three months to one year, or by a fine.

"*Article 20*[4]. Failure by any person to observe the measures taken concerning labour protection at a place of work presenting a particular danger, if such failure creates the possibility of an industrial accident or occupational disease, shall be punishable by a term of imprisonment of three months to two years.

"*Article 20*[5]. If one of the offences referred to in art. 20[1], 20[2], 20[3] and 20[4], is committed without malicious intent the maximum penalty shall be reduced by half."

...

Article 11. The provisions of chapter III bis shall enter into force at the same time as the new Penal Code.

X. REGULATIONS CONCERNING THE PRACTICE OF THE PROFESSION OF ATTORNEY (AVOCAT)

(Articles 10 and 11 of the Universal Declaration of Human Rights)

Decree No. 681 amending Decree No. 281/1954 concerning the organization and practice of the profession of attorney, published in *Official Gazette,* No. 106, part 1, of 7 October 1969.

Single article. Decree No. 281/1954 concerning the organization and practice of the profession of attorney, republished in *Official Gazette,* No. 11, of 6 March 1958, and subsequently amended by Decree No. 276/1960 and No. 135/1968, shall be amended as follows:

"*Article 1.* Attorneys in the Socialist Republic of Romania shall have the task of granting legal assistance to persons for the purpose of defending their legitimate rights and interests, and strengthening socialist legality.

Legal assistance shall be given in accordance with the law, in the form of defence and representation, throughout the proceedings of the parties and other persons concerned, assistance and representation of interested persons before State notaries and local organs of State administration, and in the form of consultations, the preparation of applications and complaints and other legal briefs."

"*Article 27*[1] [to be inserted after article 27]. Any person who practises the profession of attorney without having the right to do so shall be liable to punishment in accordance with the criminal law."

...

"*Article 36*. The collective legal aid bureaux shall be required to provide legal assistance whenever the organs of criminal prosecution or the courts request, in accordance with the law, the appointment of defence counsel *ex officio* for suspects, defendants or other parties.

"The collective legal aid bureaux shall also be required to provide legal assistance, at the request of the organs of criminal prosecution or the courts, in cases other than those referred to in paragraph 1, when the organ of criminal prosecution or the court finds that the party, because of his financial situation, is unable to pay the fee required according to the established rates, and the circumstances of the case make it necessary that he should receive assistance."

"*Article 37* (*c*). For any other legal assistance activity, if the directors of the collective bureaux find that the persons requesting legal assistance are unable, because of their financial situation, to pay the fee required according to the established rates."

XI. RIGHT TO OLD AGE, SICKNESS, INVALIDITY AND SIMILAR INSURANCE

(Article 25, paragraph 1, of the Universal Declaration of Human Rights)

1. Decree No. 871 granting certain rights to war-disabled pensioners, published in *Official Gazette*, No. 155, part 1, of 30 December 1969.

Article 1. War-disabled and war-injured pensioners suffering from grade I invalidity or severe mutilation shall be entitled, in addition to the IOVR (disabled servicemen's) pension, to any other appropriate pension, in accordance with the law, for activities engaged in after becoming disabled.

Article 2. War-disabled and war-injured pensioners shall also be entitled to free medical and surgical requisites, also in the case of out-patient treatment, irrespective of the amount of their pension.

2. Decision No. 2466 of the Council of Ministers concerning free travel privileges granted to war-disabled and war-injured persons suffering from grade I invalidity or severe mutilation and persons acompanying them, published in *Official Gazette*, No. 155, part 1, of 30 December 1969.

Article 1. War-disabled and war-injured persons suffering from grade I invalidity or severe mutilation shall be entitled to travel free of charge on urban mass transit facilities in their place of residence.

Article 2. (1) Persons accompanying war-disabled and war-injured pensioners suffering from grade I invalidity or severe mutilation shall be entitled to two free round-trip train journeys per year when travelling with the pensioners whom they accompany.

3. Decree No. 545 amending Decree No. 60/1951 concerning the organization of the Attorneys' Insurance Fund, published in *Official Gazette*, No. 82, part 1, of 29 July 1969.

"*Article 1*. The Attorney's Insurance Fund shall have juridical personality and its headquarters shall be in the Municipality of Bucharest."

"*Article 3*. Probationary and qualified attorneys shall be *de jure* members of the Attorneys' Insurance Fund."

"*Article 4*. The Attorneys' Insurance Fund shall grant retirement and invalidity pensions and social assistance to its members and survivor's pensions to the families of its members. The surviving spouse and children of a deceased beneficiary of social assistance shall be entitled to survivor's social assistance if they fulfil the conditions for the granting of the survivor's pension and are unable to support themselves."

"*Article 5*. In addition to the pensions specified in article 4 there shall be a supplementary pension on the principle of mutual benefit among lawyers."

"*Article 6*. The provisions of the Act on State Social Insurance Pensions and supplementary pensions respecting age and length of service, certification and review of invalidity, adjustment of pensions for pensioners continuing to work in another sector, the granting of the survivor's pension and of social security and assistance in the event of death, suspension of payment and loss of entitlement to a pension and social assistance, those concerning non-transferability, imprescriptibility and non-taxability of the pension and social assistance, and exemption from stamp duty in respect of all documents establishing such entitlements and those relating to the supplementary pension shall also apply, as appropriate, in respect of pensions and social assistance granted under this Decree."

"*Article 7*. When establishing the amount of a pension, account shall be taken, depending on the type of pension, of the following factors:

(*a*) Length of service as an attorney and in other sectors of activity;

(*b*) Taxable earnings as an attorney and, when applicable, regulation base salary in other sectors of activity;

(*c*) The degree of invalidity and cause of invalidity."

...

"*Article 17*. Attached to the Attorneys' Insurance Fund there shall be a claims committee composed of a chairman, a vice-chairman and three members appointed by the Minister of Justice for a period of four years from among qualified attorneys. The claims committee, with a

quorum of three members and presided over by the chairman or vice-chairman, shall settle disputes concerning pension decisions.

XII. REGULATIONS CONCERNING AMNESTY FOR CERTAIN OFFENCES AND REMISSION OF CERTAIN PENALTIES

(Article 10 of the Universal Declaration of Human Rights)

Decree No. 591 concerning amnesty for certain offences and remission of certain penalties, published in *Official Gazette,* No. 90, of 21 August 1969.

Article 1. Amnesty shall be granted for offences punishable under the Penal Code or special laws by deprivation of liberty for three years or a fine.

Article 2. The following shall be remitted in full: (*a*) penalties entailing deprivation of liberty for up to one year and six months, and fines; (*b*) penalties entailing deprivation of liberty for up to three years served by persons over sixty years of age, by pregnant women or women with children under five years of age, and by minors.

Article 3. The following partial remissions shall be granted: (*a*) penalties entailing deprivation of liberty for period ranging from one year and six months to five years, shall be reduced by one sixth; (*b*) penalties entailing deprivation of liberty for more than five years shall be reduced by one fifth.

Article 4. Prison sentences for petty offences committed prior to the date of adoption of this Decree shall not be served.

Article 5. In cases concerning offences which are not amnestied under articles 1 and 7 and in respect of which are undergoing criminal prosecution or trial at the time of adoption of this Decree, the penal proceedings shall continue and after sentence has been passed the provisions concerning remission shall be applied.

. . .

Article 9. Recidivists and persons who have not begun to serve their sentence, because they have evaded it, shall not be entitled to an amnesty or remission.

Article 10. The provisions of articles 2 and 3 shall not apply to persons who, since 1 January 1967, have received a total or partial remission.

Article 11. The provisions of this Decree shall apply only to acts committed prior to its adoption.

Article 12. Persons who, within the three years following the date of application of the provisions of articles 2 and 3, commit a deliberate offence shall serve, in addition to the penalty specified for that offence, the penalty which was not served in application of the provisions of this Decree respecting remission.

XIII. REGULATIONS CONCERNING THE ENFORCEMENT OF PENALTIES

(Article 9 of the Universal Declaration of Human Rights)

Act No. 23 concerning the enforcement of penalties, published in *Official Gazette,* No. 132, of 18 November 1969.

Article 1. The penalty of imprisonment shall be enforced under an enforcement order issued on the basis of a final legal conviction.

Article 2. Convicted persons shall be admitted to penitentiaries after their identity has been established.

On admission they shall be informed of their duties and rights, the disciplinary measures to which they may be subjected and the rewards they may be granted while they are serving their sentence.

Both on admission and while serving the sentence, convicted persons shall be searched and subjected to health and hygiene measures.

Article 3. Convicted persons shall be assigned to detention quarters on the basis of the nature of the offence, the duration of the sentence and number of previous convictions, behaviour and receptiveness to re-education.

Women shall be detained separately from men and minors separately from adults or in special detention centres.

Article 4. The material and financial resources required for the detention, maintenance and re-education of convicted persons, and medical assistance, shall be provided by the State.

Article 5. The re-education of convicted persons shall be accomplished through work. Convicts shall be required to perform useful work for which they are suited.

Moreover, the re-education of convicts shall include training or retraining in an occupation, educational and cultural activities and incentives and rewards for those who are hard-working and who show definite signs of reforming.

Article 6. Convicted minors shall, while serving their sentences, undergo special education so that they may become useful members of society.

Minors who, at the time of their admission to the place of detention, still have a term of more than six months of imprisonment to serve shall continue their compulsory general education and they shall be guaranteed the possibility of receiving vocational training in keeping with their level of schooling and their aptitudes.

Minors who do not fulfil the conditions specified by law for attendance at vocational training courses shall be helped to acquire skills or further skills in a trade in accordance with the qualification standards of the place of work. The educational staff, textbooks and school materials will be made available by the Ministry of Education and the staff and equipment necessary for training in a trade will be provided by the penitentiaries.

Minors sentenced to prison terms of not more than six months shall be given an opportunity to improve their general culture, taking into account the level of their schooling.

Article 7. The work of convicts shall be organized in accordance with the work programme set by the director of the penitentiary and shall conform to labour protection regulations.

Pregnant women shall not be used for work during the period specified in the legal regulations

concerning leave granted to women employees before and after confinement or for work in a toxic or harmful environment. Women who have given birth and have children less than one year of age in the place of detention and minors shall likewise not be used for work in a toxic or harmful environment.

The use of all convicts for work shall be subject to the decision of the penitentiary doctor.

...

Article 10. Convicts who show definite signs of reforming and are hard-working and disciplined may work unguarded outside the penitentiary and may be used to supervise other convicts at the place of work after having served at least one fifth of their sentence, which shall include time counted as served in consideration of work performed.

The provisions of the foregoing paragraph shall not apply to persons sentenced for murder or for offences against peace and humanity or for offences against the security of the State or for offences which have resulted in serious damage to the national economy, or to recidivists.

Article 11. Convicts shall be remunerated for their work in accordance with the regulations and basic pay rates prescribed for the field of activity in which they are employed.

...

Article 14. A convict who has served his sentence shall, after his release, be assigned employment through the organs of the Ministry of Labour and the departmental offices for labour and social security problems attached to the executive committees of the departmental people's councils or the Municipality of Bucharest.

A convict who, while serving sentence, has totally lost his working capacity as the result of an industrial accident or occupational disease shall receive after his release, monthly assistance in accordance with the categories and amounts specified in the legal provisions relating to beneficiaries of invalidity pensions under the State social insurance scheme who have not previously had employee status.

Monthly assistance, in the conditions and at the rates specified in the pension laws shall also be granted to the survivors of persons who have died as the result of an industrial accident suffered or occupational disease contracted while serving sentence.

Monthly assistance may likewise be received by a convict who, at the time of his release, is suffering from grade I or II invalidity on account of an accident unconnected with work if he has been gainfully employed in any way for at least three years before beginning to serve sentence.

...

Monthly assistance shall be granted only if the person concerned does not fulfil the conditions for obtaining a pension or social assistance under the State social insurance scheme or under the individual insurance schemes of other sectors of activity and if he is unable to support himself.

...

Article 16. Convicts shall be entitled to the food they need, in consideration of the work they perform and their state of health, in accordance with the regulations established by law.

Pregnant women or women who have given birth while serving their sentence, as long as the child remains with its mother, children born in the penitentiary, up to the age of one year, and minors shall receive special food, in accordance with the regulations established by law for these categories.

Article 17. Convicts shall be entitled to leisure, exercise, medical care, to submit petitions, to receive visits, parcels containing food, clothing or medications, books, newspapers and magazines, cigarettes, and to receive and send correspondence and sums of money.

Article 18. The rights of convicts to receive visits, parcels and cigarettes, and to receive and send correspondence, shall be granted on the basis of the nature of the offence, the length of sentence, number of previous convictions, work performed, behaviour and receptiveness to re-education.

... Foreign convicts may be visited by consular officials attached to foreign diplomatic missions or consular offices with the authorization of the ministry having jurisdiction over the place of detention, save as otherwise provided in international conventions.

...

Article 23. Convicts who show definite signs of reforming, who are disciplined, work conscientiously and consistently fulfil or exceed the production norms or whose proposals for inventions, innovations and rationalizations are adopted by the competent organs may be granted the following rewards by the director of the penitentiary:

(*a*) Extended entitlement to parcels, visits and correspondence;

(*b*) Discontinuation of a disciplinary measure taken earlier.

...

Article 25. Convicts who are hard-working, disciplined and show definite signs of reforming and convicts who have never been used or are no longer being used for work but who show definite signs of discipline and of reforming, may, having regard to their criminal record, be conditionally released before serving the entire sentence in accordance with the conditions specified in articles 59 and 60 of the Penal Code.

RWANDA

ACT OF 19 MAY 1969 AMENDING THE ACT OF 5 JULY 1967 CONCERNING THE ELECTORAL SYSTEM [1]

...

Article 5

Article 26 is amended as follows:

A person shall be eligible for election to the communal council, without distinction of sex, if he:

1. Is of Rwandese nationality or has been nationalized Rwandese;

2. Has had his domicile for at least six months in the electoral district in which he wishes to offer himself as a candidate;

3. Is not less than twenty-one years of age;

4. Does not practise polygamy or live with a concubine;

5. Is able to read and write.

The requirements specified in sub-paragraph 4, however, shall apply only as from 24 November 1962.

These requirements shall be met on or before the final date for the nomination of candidates.

Article 6

Article 32 is amended as follows:

Without prejudice to any disqualifications which may be laid down in the legislation governing the holding of public office or to any authorizations required thereunder, a member of a communal council may not also be:

A judge of the Supreme Court;

A career judge, *magistrat auxiliaire* (judge of the second to lowest rank), *magistrat suppléant* (judge of the lowest rank);

An officer of the Public Prosecutor's Office;

An officer of the court;

A permanent or contractual employee of the Government or of a commune;

An officer, non-commissioned officer or soldier of the National Guard on the active list;

A member of the national or communal police force;

An officer of the para-statal services.

Members of the communal council may not be members of religious orders or ministers of religion.

No person shall be allowed to take the oath of office while there is cause for disqualification.

Judges, officers of the Public Prosecutor's Office, officers of the court, permanent or contractual employees of the Government, para-statal services and communes shall be eligible only after they have been released from such duties.

Article 7

Article 33 is amended as follows:

Candidatures shall be presented either individually or on the lists of political parties constituted in accordance with the laws on public freedoms.

The number of candidates on the lists may not exceed twice the number of seats to be assigned.

...

Article 15

Article 42 becomes article 63 and is amended as follows:

The vote shall be secret and shall be held at the place of domicile.

A voter who is illiterate or incapable of reading or writing may, however, be assisted by a literate person of his choice.

The voting shall take place on the basis of lists with proportional representation and preferential votes.

The seats won by each list shall be assigned to the candidates who have obtained the largest number of votes.

The Minister of the Interior shall prescribe for the benefit of the prefectoral and communal authorities, representatives of political parties and officials at the polling stations the necessary measures to guarantee secrecy and freedom of voting.

...

[1] *Journal officiel de la République rwandaise*, No. 11, of 1 June 1969.

SAN MARINO

NOTE [1]

The legislative texts promulgated in San Marino during 1969 which may be relevant to the Universal Declaration of Human Rights mainly concern:

With regard to article 13 (2)

Recognition of the identity card of San Marino nationals as a valid document for entering and sojourning in the territory of the Federal Republic of Germany for purposes of tourism (exchange of notes of 8 January 1968 between the Federal Republic of Germany and the Republic of San Marino).

With regard to articles 23 and 25

(A) Labour accident prevention and Labour hygiene (Act No. 40 of 2 July 1969), in particular, the prevention of labour accidents in the construction industry (Act No. 41 of 2 July 1969).

(B) The extension of the existing social security system to cover medical attention urgently required by residents of San Marino outside the territory of the Republic (Act No. 13 of 7 March 1969).

Under the existing social security system all citizens of San Marino and aliens residing in the territory of the Republic who have paid the social security tax are entitled to receive free medical and pharmaceutical care by general practitioners or specialists in local clinics and hospitals, or in establishments which have concluded agreements with the Social Security Institute.

(C) The extension of the social welfare system through an increase in minimum pensions (Act No. 31 of 9 July 1969) and through the introduction of a disability pension for disabled civilians (Act No. 38 of 2 July 1969).

(D) The improvement of the conditions of workers through the reduction of the working week for State employees from forty-five to forty-four hours, with no loss of pay (Act No. 30 of 9 June 1969).

With regard to article 26

Improvements in the scholarships granted to students of San Marino under Act No. 48 of 21 November 1963 (Decree No. 10 of 7 March 1969).

...

[1] Note furnished by the Government of San Marino.

SENEGAL

ACT NO. 69-29 OF 29 APRIL 1969 RELATING TO STATES OF EMERGENCY AND MARTIAL LAW [1]

TITLE I

STATES OF EMERGENCY

Article 2. A state of emergency may be proclaimed in respect of all or part of the territory of the Republic of Senegal in the event either of imminent danger resulting from serious breaches of the peace *(ordre public)* or of subversive activities jeopardizing internal security or of incidents which, because of their nature and seriousness, constitute a danger to the State.

The decree instituting the state of emergency shall specify the territorial area or areas within which it shall apply. The powers stipulated in articles 3 to 13 below may only be exercised within those territorial areas.

Article 3. In the event of a state of emergency being proclaimed, the competent administrative authority shall be empowered:

(1) To regulate or prohibit the movement of persons, vehicles or goods in certain places and at certain hours;

(2) To establish security zones where the presence of individuals shall be regulated or prohibited;

(3) To prohibit the presence in all or part of one or more of the areas referred to in article 2 of any person attempting in any way to impede the actions of the public authorities;

(4) To prohibit, either in general or in particular instances, any processions, parades, gatherings and demonstrations on the public highway.

Article 4. The competent administrative authority may establish security zones in the vicinity of land or sea boundaries and around airports. It shall regulate the conditions for entering or remaining in those zones.

The competent administrative authority shall also after consultation with the Ministers concerned, determine the authorized points of entry into or departure from the territory of the Republic of Senegal.

Article 5. The competent administrative authority may order the prescribed residence, within a particular territorial area or in a particular place, of any person whose activities clearly represent a danger to public safety and public order *(ordre public)*, or who is attempting to impede the actions of the public authorities.

Persons whose residence has been prescribed must be allowed to reside in a populated area or in the immediate vicinity thereof. Under no circumstances shall such persons be obliged to reside in a camp.

The administrative authority must take appropriate measures to meet the subsistence needs of persons whose residence has been prescribed and of their families.

Any person against whom an order for prescribed residence or local banishment has been issued may apply to have that order rescinded to an advisory control commission which shall be obligated to communicate its opinion to the competent administrative authority. The competent administrative authority must inform the applicant of its decisions within fifteen days. The membership and procedures of this commission, which shall be presided over by a judicial officer, shall be established by decree.

Article 6. The competent administrative authority may:

(1) Order the temporary closure of public places such as theatres, premises authorized to sell alcoholic beverages and meeting halls;

(2) Prohibit, either in general or in particular instances, public or private meetings of any kind which are likely to provoke or foster disorder.

Article 7. The competent administrative authority may:

(1) Order the search for, seizure and, where appropriate, surrender to the duly appointed authorities of weapons in classes 1, 2, 3 and 6, as specified in article 3 of Act No. 66-03 of 18 January 1966, together with the ammunition for such weapons, as well as explosives and all deadly or incendiary devices referred to in Act No. 64-52 of 10 July 1964, and the deposit of such weapons, ammunition, explosives and devices in specified places;

(2) Without prejudice to the application of Decree No. 61-442 of 22 November 1961, order the search for, seizure and, where appropriate, surrender and deposit of privately owned radio transmitters or receivers other than radio or television sets;

(3) Order the impounding of any vehicles whose drivers have attempted to elude police control.

[1] *Journal officiel de la République du Sénégal*, Special issue, No. 4029, of 10 May 1969.

Article 8. The competent administrative authority may prohibit, either in general or in particular instances, the movement of civil aircraft over all or part of the territory of the Republic of Senegal and its territorial waters and the movement of ships in all or part of its territorial waters.

The competent administrative authority shall also have the power to revoke all licences authorizing the civil, air or maritime activities.

Article 9. The proclamation of a state of emergency shall confer the right to requisition persons, property and services under the conditions and subject to the penalties prescribed by law.

Article 10. The decree instituting the state of emergency may expressly:

(1) Empower the competent judicial authorities, and also the Minister of the Interior, governors, prefects and, in case of prevention, their deputies, to order searches to be carried out, in any place and at any hour of the day or night;

(2) Authorize the competent administrative authority to take all appropriate steps to control the Press, publications of all kinds, radio or television broadcasts, film shows and stage productions.

Article 11. The decree instituting the state of emergency may expressly empower the competent administrative authority to order the preventive detention *(internement administratif)* of persons whose activities represent a threat to public safety. This order may order detention for a period not exceeding one month, and may be renewed once for an equal period of time. Persons against whom an order for preventive detention has been issued may apply to have their case reviewed by the advisory control commission referred to in article 5 under the conditions specified in that article.

Article 12. The decree instituting the state of emergency may expressly empower the competent administrative authority to take appropriate measures in connexion with the control of postal, telegraphic and telephonic communication.

Article 13. The decree instituting the state of emergency may expressly empower the competent administrative authority, by a decision which shall take immediate effect, to transfer or suspend from his duties any official or employee of the State or the regional authorities *(collectivités locales)*, and any employee of the public institutions or the public services of the State or the regional authorities, whether operated under State control or on a concessionary basis, whose activities are manifestly dangerous for public safety. Transfers effected under the provisions of this article may continue in force when the state of emergency is ended.

Article 14. The powers specified in articles 10, 11, 12 and 13 above may, if they have not been expressly provided for by the decree instituting the state of emergency, be conferred by another decree issued at a later date and while the state of emergency is still in force.

...

ACT NO. 69-30 OF 29 APRIL 1969 CONCERNING THE REQUISITIONING OF PERSONS, PROPERTY AND SERVICES [1]

Article 1. The purpose of this Act is to define the conditions governing the exercise of the right to requisition persons, property and services in those cases alone stipulated in the laws relating to the general organization of defence and to states of emergency.

TITLE I

PROCEDURES FOR EFFECTING REQUISITIONS

Article 2. With a view to exercising its right to requisition during those times when it is entitled to do so, the administrative authority may take an inventory of persons and property.

Article 3. Requisitioning shall be temporary or permanent, applied to an individual or collectively to a specific category of persons.

Any person who is required to furnish services or property shall be notified in writing, at his domicile, residence or place of work.

In case of *force majeure* or extreme emergency, notice of requisition shall be given by means of posters or radio broadcasts.

The order, signed by the competent administrative authority shall specify whether ownership or use of property or services is being requisitioned, and shall define the nature and quantity of the property or services being requisitioned.

Any person furnishing property or services shall be given a receipt stating the nature, quantity and condition thereof.

In the event of the use of movable or immovable property being requisitioned, both parties shall proceed, at the end of the period of the requisition, to establish what damage, changes or improvements have resulted from the requisition.

Section 1

REQUISITIONING OF SERVICES

Article 4. Within the context of the laws referred to in article 1 and subject to international conventions, the services of individuals and enterprises required to meet the needs of the country

[2] *Ibid.*

may be requisitioned in part, or throughout the whole of the territory, including the territorial waters.

Article 5. The right to strike shall be suspended for the duration of the requisition.

Individuals shall be required:

Either to continue in office or in their employment, even, if necessary, beyond retirement age;

Or, depending on their profession and abilities or aptitudes, to perform a specific activity in a public administration or establishment or in an enterprise or organization whose operation is in the public interest;

Of, as a matter of priority, individually or collectively to perform the prescribed services with their own resources or with any resources that may be made available to them.

Officials and employees of the State and of public organizations and establishments may be compulsorily transferred to any part of the territory when that is in the interest of the service.

Workers may be transferred without any requirement other than the prior consent of the administrative authority responsible for the direction of labour.

Requisitioning shall not confer entitlement to any compensation other than remuneration for the particular office or post or the normal cost of the service rendered.

Persons requisitioned to fill civil service posts on a temporary basis shall be paid the starting salary of the category or grade of officials or employees performing the same duties.

Except where otherwise decreed, persons who have been requisitioned shall be covered by the social legislation applicable to officials and workers performing the same duties.

Section II

REQUISITIONING OF PROPERTY

Article 7. Within the context of the laws referred to in article 1, the property necessary to meet the country's needs may be requisitioned, in the absence of an amicable agreement.

The use or ownership of any movable or immovable property may be requisitioned with the exception of the ownership of buildings *per se* the obligatory transfer of which remains subject to the procedure for expropriation for public purposes and that of universal movables *(universalités mobilières)* such as firms or businesses.

Article 8. Premises which are actually used as a residence may not be requisitioned with the exception of those parts which are available and are not indispensable to the life of the regular occupants.

However, the State may requisition an entire building that is used as a residence and is occupied when that is necessary in order to meet the requirements of security or to ward off an imminent danger, particularly when, because of its location or the danger to its occupants, the building must be in the control of the defence or security forces or completely evacuated. Habitable accommodation shall be made available without delay to persons thus evicted.

Article 9. When the requisitioning of the use of an enterprise or establishment involves a temporary take-over, the State shall have the power to utilize the enterprise or establishment for any purpose justified by the country's needs.

Unless otherwise stipulated, such take-over shall entail the requisitioning of the head of the enterprise or establishment and of the entire personnel.

TITLE II

COMPENSATION AND REPARATION FOR DAMAGES

Article 10. The compensation payable to the person furnishing property or services shall cover direct proven property damage resulting from requisition but shall not cover loss of profits or earnings. Only actual and necessary expenditure and remuneration for labour and capital and for amortization calculated on a normal basis shall be taken into account.

Compensation shall be payable with effect from the take-over of the property or from the time when the prescribed services begin to be performed. However, when damage resulting directly from the requisition occurs between the date of notification of the requisition and the date on which the requisition is effected, reparation shall be paid upon presentation of proof of such damage.

In the absence of any fixed rate for prices and rents, compensation in respect of permanent or temporary dispossession shall be determined by taking all the factors into consideration, including the normal use made of the property prior to its requisition.

Temporary dispossession shall confer entitlement to periodic compensation for deprivation of possession.

When the person furnishing the property is the tenant or subtenant of the requisitioned property, he shall be held responsible only for the amount of rent equal to the compensation paid to him for being dispossessed of the property.

ACT NO. 69-31 OF 29 APRIL 1969 CONCERNING CONTROL OF POLITICAL PROPAGANDA MATERIAL OF FOREIGN ORIGIN [3]

Article 1. The introduction into or dissemination in Senegal, whether for valuable consideration or not, of brochures, leaflets, placards, insignia, sound or visual recordings or material of any kind of foreign origin or provenance, whether produced in Senegal or not, of a political propaganda nature shall be subject to prior administrative authorization.

Article 2. Anyone who imports or disseminates any of the material referred to in article 1 without prior administrative authorization shall be liable to imprisonment for not less than one year and not more than three years or to a fine of not less than 100,000 francs and not more than 2,500,000 francs or to both of these penalties.

This material shall be obligatorily confiscated; the court shall decide whether it is to be destroyed or handed over to the archives department, depending on the case.

Article 3. The criminal police officers and sworn customs officials may seize the material referred to in article 1 before proceedings are instituted.

The procedure for *flagrante delicto* shall apply in all cases, even if no order has been issued committing the accused to prison.

Article 4. Notwithstanding any provision to the contrary, the criminal police officers may submit a written request to the postal administration for parcels to be opened in their presence, when there is grave and precise evidence or presumptive evidence that parcels contain material which is being irregularly imported or disseminated.

If the measure proves to have been unjustified, the addressee may claim compensation if he has suffered real damage.

No fact revealed, nor information gathered in the course of unsuccessful proceedings under this act may be used as evidence in court or be divulged by anyone on pain of the penalties provided for in article 363 of the Penal Code.

[3] *Ibid.*

SIERRA LEONE

THE NON-CITIZENS (TRADE AND BUSINESS) ACT, 1969

Act No. 9 of 1969, assented to on 20 August 1969 and entered into force on 21 August 1969 [1]

...

2. Every non-citizen shall within such period as the Minister may permit being not less than three months nor more than six months cease to operate or participate in the retail trade of such goods as the Minister may by Order in the *Gazette* specify.

3. (1) As from the commencement of this Act no non-citizen shall engage in any new business or retail trade or open a new branch of an existing business or retail trade without the prior approval of the Minister in writing.

(2) Any business or retail trade conducted by any non-citizen in premises other than those occupied by him on the date of commencement of this Act shall be deemed to be a new branch for the purposes of subsection (1).

(3) As from the commencement of this Act any business or retail trade extended or transferred from one premises to another shall be deemed to be a new business or retail trade for the purposes of subsection (1).

(4) If any question arises as to whether any person is carrying on a new business or retail trade or whether or not premises have or have not been extended the matter may be referred to the Minister whose decision on such matter shall not be questioned by any court.

4. (1) (*a*) No non-citizen shall operate any new supermarket after the commencement of this Act.

(*b*) For the purpose of this subsection "new supermarket" means any supermarket which was not in operation before the commencement of this Act.

(2) No non-citizen shall—

(*a*) Extend the business of any supermarket operated by him before the commencement of this Act.

(*b*) Without the prior written consent of the Minister transfer such a business from one premises to another.

(3) No non-citizen who was operating a supermarket before the commencement of this Act may continue to do so after the expiration of six months from that date unless he first obtains a valid licence issued for that purpose by the Minister.

(4) A licence issued under subsection (3) shall be subject to such terms and conditions, including a licence fee which shall not be less than one thousand leones per annum, as the Minister shall by Order specify.

5. (1) Every non-citizen shall within a period of six months from the commencement of this Act, except where the Minister may permit a further period not exceeding three months, cease to operate or participate in any of the following businesses or retail trades—[listed are twenty kinds of businesses].

(2) In this section "transport undertaking" means the operation of any vehicle or vessel for hire or for the transport of passengers or goods not employed by or belonging to the owner of such vehicle or vessel and for the purpose of this subsection "owner" has the meaning assigned to it in section 2 of the Road Traffic Act, 1964.

(3) No non-citizen shall transfer any of the businesses specified in subsection (1) except with the written approval of the Minister.

(4) No non-citizen shall directly or indirectly conduct any trade or business from any vehicle or vessel.

6. (1) Every non-citizen who receives approval which may be given under this Act or exemption from any Orders made by the Minister under this Act shall obtain a licence and shall pay such fee on the issue of the licence as the Minister *may* by Order prescribe.

(2) Every such licence shall be valid for twelve months calculated from the date it was issued and renewable annually, on such conditions and subject to such restrictions, if any, as the Minister may specify.

7. (1) Any person aggrieved by any decision taken under the provisions of this Act may appeal to the Governor-General against such decision not later than three months from the date on which the decision was made.

(2) Every such appeal shall be in writing specifying the grounds and reasons upon which the appeal is made.

(3) The Governor-General, acting in accordance with the advice of the Cabinet, may entertain and determine any appeal made in accordance with the provisions of subsections (1) and (2) and his decision upon the same shall not be questioned by any Court of Law.

[1] *Supplement to the Sierra Leone Gazette*, Vol. C, No. 71, of 21 August 1969.

(4) Pending the decision of the Governor-General upon any appeal under this section the decision shall remain in full force and effect.

8. In any case where the Minister is satisfied that it is desirable in the national interest for the protection or encouragement of any business operated by citizens of Sierra Leone he may advise the Governor-General who acting in accordance with such advice shall exercise the powers conferred upon him by subsection (4) of section 9 of the Income Tax Act, sections 27 and 37 of the Customs Act and section 14 of the Customs Tariff Act for the benefit of such business to such extent as the Minister may deem expedient.

9. Any non-citizen who contravenes or fails to comply with the provisions of sections 2, 3, 4, 5 or 6 shall be guilty of an offence against this Act and liable to a fine not exceeding ten thousand leones and in the case of a continuing offence to a further penalty recoverable at the instance of the Attorney-General not exceeding fifty leones per day for each day after written notice of the offence has been served on him or to imprisonment for a period not exceeding three years and in addition to any of the foregoing penalties the Court by whom such person is convicted may recommend that an Expulsion Order be made against him under section 21 of the Non-Citizens (Registration, Immigration and Expulsion) Act, 1965.

10. Any person who aids, abets or conspires with any non-citizen to commit any of the offences in this Act shall be guilty of an offence and liable on conviction thereof to imprisonment for a period not exceeding seven years or to a fine not exceeding fifteen thousand leones or to both such fine and imprisonment.

11. This Act shall not apply to places of entertainment or refreshment and such other facilities provided exclusively for the benefit of the employees of any non-citizen and not run or managed for profit.

SINGAPORE

HUMAN RIGHTS IN SINGAPORE IN 1969[1]

I. STATUTES

The year 1969 witnessed the passing of the Constitution (Amendment) Act, 1969,[2] which establishes a Presidential Council, an institution for the preservation of the basic civil rights of the individuals as well as the interests of minority groups.

The Presidential Council consists of a Chairman, appointed for a period of three years, ten permanent members appointed for life and ten other members appointed for a period of three years. All appointments to the Council are made by the President on the advice of the Cabinet.

The Council has two functions, one of a general and the other of a particular nature. The general function of the Council is to consider and report on such matters affecting persons of any racial or religious community in Singapore as may be referred to the Council by Parliament or the Government. A reference to the Council by Parliament may be made by the Speaker and a reference to the Council by the Government may be made by a Minister. The particular function of the Council is to draw attention to any Bill or to any subsidiary legislation if that Bill or subsidiary legislation is in the opinion of the Council a differentiating measure or otherwise inconsistent with the fundamental liberties of the subject. It is important to note the definitions of the expressions "differentiating measure" and "inconsistent with the fundamental liberties of the subject". The first expression is defined to mean any measure which is, or is likely in its practical application to be disadvantageous to persons of any racial or religious community and not equally advantageous to persons of other such communities, either directly by prejudicing persons of that community or indirectly by giving advantage to persons of another community. The second expression is defined to mean inconsistent with or in contravention of any fundamental liberties contained in Part II of the Constitution of Malaysia as is applicable to Singapore. (What these are, are set out in our contribution for the year 1965.)[3]

Generally, if an adverse report is made by the Council on a Bill, that Bill will be amended by Parliament before it is submitted again to the Council. In this way it is assured, as far as possible, that Bills passed by Parliament are not differentiating measures or inconsistent with the fundamental liberties of the subject. The Presidential Council may therefore be said to be an institution for the protection and promotion of human rights in Singapore.

Another law passed in 1969, which is of general interest from the point of view of human rights, is the Supreme Court of Judicature Act, 1969.[4] This Act amends and consolidates the law relating to the Constitution and powers of the Superior Courts of Singapore. In this connexion it may be of relevance to refer to the Constitution (Amendment) Act, 1969 which amends the Constitution of Singapore to bring into operation an entirely new Part IIA relating to Judiciary. Certain of the provisions of the new Part IIA of the Constitution may be noted. Under article 52F Judges of the Supreme Court enjoy security of tenure and may only be removed subject to an elaborate procedure. The remuneration and other terms of office (including pension rights) of a Supreme Court judge shall not be altered to his disadvantage after his appointment. Furthermore, his conduct shall not be discussed in Parliament except on a substantive motion of which notice has been given by not less than one-quarter of the total number of Members of Parliament.

II. DECISIONS OF COURT

Regarding the administration of justice, the courts have in two cases once again upheld the rules of natural justice:

Attorney-General v. *Ling How Doong* (1969) 1 MLJ 154.

Chief Building Surveyor v. *Makhanlall & Co.* (1969) 2 MLJ 118.

The first case was referred to in our contribution for 1968.[5] It had since been taken up on appeal to the Court of Appeal, which confirmed the decision of the High Court judge.

---

[1] Note furnished by the Government of Singapore.

[2] Act No. 19 of 1969, published in *Government Gazette, Acts Supplement*, No. 6, of 2 January 1970.

[3] See *Yearbook on Human Rights for 1965*, pp. 265-267.

[4] Act No. 24 of 1969, published in *Government Gazette, Acts Supplement*, No. 7, of 2 January 1970.

[5] See *Yearbook on Human Rights for 1968*, p. 352.

SOMALIA

LEGISLATIVE DECREE NO. 5 OF 10 AUGUST 1969, TO PROMULGATE THE LABOUR CODE

SUMMARY

As stated in article 2, the provisions of this Code or regulations made hereunder shall apply to all employers and workers including those employed in the public service or public institutions, in so far as any of their terms and conditions of service are not governed by any other law but shall not apply to armed forces, police forces and para-military forces of the State.

Article 3 provides that every person has the right to follow any occupation he chooses; has the right to equality of opportunity and treatment in respect of employment and occupation without discrimination on the basis of language, race, colour, sex, religion, political opinion, national extraction or social origin; has the duty to afford such equality to other persons; and has the duty, in following his or her occupation, to contribute to the material and moral progress of the nation.

Under article 4, the State shall protect labour in all its forms and applications, whether organizational or executive, intellectual, technical or manual, and shall also promote such conditions as permit the effective exercise of the rights and discharge of the duties, proclaimed in article 3.

Article 5 forbids forced or compulsory labour in any form and article 6 provides that workers' rights shall not be subject to renunciation.

As indicated in article 7, disputes to which no provision of this Code or of any contract of employment is applicable shall be decided according to the principles of equity, general principles of labour legislation, the Conventions or Recommendations of the International Labour Organisation ratified by the Republic, the principles of the ordinary law which are not contrary to those of labour legislation, legal doctrine, case law and local custom or usage, provided that, where there is doubt as to the interpretation or application of any provision concerning labour matters, the interpretation or application which is more favourable to the workers shall be adopted.

Other provisions of the Code deal with trade unions, employers' associations, federations and confederations; contracts of employment; apprenticeship; remuneration, conditions of work; occupational health and safety; administering authorities and method of implementation; settlement of labour disputes; and strikes, go-slow or lockouts.

The text of the Code in English and a translation thereof into French have been published by the International Labour Office as *Legislative Series* 1969—Som.1.

SPAIN

NOTE [1]

In 1969, the human rights proclaimed in the Declaration adopted by the General Assembly of the United Nations on 10 December 1948 were accorded the highest respect by the Spanish legislature and Government. As in earlier years, a brief summary of some of the more important legislation enacted during that year demonstrates that concern for these fundamental rights has had a perceptible effect on general legislation.

I. RIGHTS TO EQUALITY, FREEDOM AND SAFETY OF THE PERSON AND SOCIETY

1. The Second Economic and Social Development Plan was approved by Act 1/69, of 11 February. The new Plan, which in part follows the general lines of the First Plan, exhibits a marked concern for broad social advancement, laying particular stress on education and the agricultural sector.

2. Act 50/69, of 26 April, the basic Act on national mobilization, established the basic provisions for the participation of Spaniards in national defence, in accordance with the principle of equality.[2]

3. Act 116/69, of 30 December, specifically regulates the special social security régime for seamen, thus taking a further step towards the achievement of justice in making the full range of social security benefits available to all Spanish workers.

4. Act 117/69, of 30 December, regulates the issue of private insurance, on which sound policy in a matter of such great economic and social importance is largely dependent.

5. With complete prescriptive authority, Act 118/69, of 30 December, provides at the highest legislative level, for Philippine and Ibero-American workers to be accorded absolute parity with Spanish workers.

6. Act 119/69, of 30 December, extended to the courts the procedural rules introduced into the Act on Criminal Procedure by Act 8 of April 1967, which made a significant improvement in our procedural legislation.

7. Under Legislative Decree 10/69, of 31 March, statutory limitation was made applicable to all offences committed before 1 April 1939, the date on which the Spanish Civil War ended, with a view to disposing finally of any isolated problems which might require a court declaration of statutory limitation, inasmuch as the limitation applies automatically under the law.

8. In Decree 462/69, of 27 March, measures were adopted to repair the damage caused by an earthquake in Seville and Huelva.

9. In Decree 486/69, of 6 March, new compulsory travel insurance regulations were approved, with significant improvements in benefits.

II. FAMILY LAW

In the field of family welfare, the regulations implementing the Agreement on Social Security with Belgium were issued and the Agreement was revised and improved on 29 July.

Several provisions of regulations (Order of the Ministry of Labour of 22 February and Circular of 25 February) dealt with improved assistance for retarded children. Improvements were also made in benefits under the special social security régime for domestic service (Decree 2346/69, of 25 September, on this special régime).

Regarding the legal capacity of married women, with a view to giving them equal rights with men under the special régimes of the Municipalities of Madrid and Barcelona, the right of married women to elect and to be elected as members of the Councils of those Municipalities was proclaimed in Legislative Decree 17/69, of 9 October.

III. THE RIGHT TO WORK

One important provision is the Order of the Ministry of Labour of 2 October, approving the General Ordinance on Agricultural Labour. Also of interest is the Order of 29 July, which established a special scheme of temporary emigration called "Volunteers for the Americas", under which skilled personnel co-operate in Latin American development.

Decree 546/69, of 27 March, established an Office of International Social Co-operation, which centralizes all the international activities of the Ministry of Labour.

It should be noted that during 1969, over fifty new collective labour contracts were approved, some of them of enormous importance in terms of the improvements they introduced in their sectors.

[1] Note furnished by the Government of Spain.

[2] The Spanish Government recently submitted to the Cortes a bill concerning military service regulations for conscientious objectors.

Lastly, mention should be made of the activities of the Labour Welfare Fund; its investment plan was approved by the Council of Ministers on 10 January, and it has invested the sum of 2,329 million pesetas in its welfare activities.

IV. THE RIGHT TO EDUCATION

The instrument of ratification of the Convention against Discrimination in Education of 15 December 1960 was deposited on 20 August of this year; the Convention entered into force for Spain on 20 November. Moreover, cultural co-operation agreements were signed with Algeria, Chile, Greece, Tunisia and France.

The work of establishing educational centres has been pursued and new secondary education institutes have been set up at Alçalá la Real, Navalmoral de la Mata, Olot, Soria, Valencia, Villanueva y Geltrú, Basauri, Utrera, and elsewhere. One was also established at Casablanca (Morocco), by upgrading the existing co-educational centre there.

The task of educational reform has culminated in the Government's submission to the Cortes of a general bill on education, which is being considered in the Cortes this year and is to be enacted shortly.

SUDAN

THE JUDICIARY ACT, 1969

(1969 Act No. 23) [1]

4. (1) The administration of justice in the Sudan shall be performed by an independent body called "the Judiciary."

(2) The Judiciary shall be directly responsible to the Council of the Revolution for the performance of its functions.

(3) The Minister of Justice shall represent the Judiciary on the Council of Ministers.

5. The Judiciary shall consist of two divisions, the Civil division and the Sharia division, of which the Chief Justice and the Grand Kadi shall be the respective Presidents and judicial heads.

6. The Civil division shall comprise the Courts and shall exercise the jurisdiction specified in the Civil Justice Ordinance, the Penal Code, the Code of Criminal Procedure, the chiefs' Courts Ordinance 1931 and the Native Courts Ordinance 1932, or any amendment of the same, and such other courts and jurisdiction as may from time to time be conferred upon it by law.

7. The Sharia division shall comprise the Courts, and shall exercise the jurisdiction, specific in the Sharia Courts Act, 1967 or any law amending or substituted for the same.

8. In the event of any conflict of jurisdiction arising between the Civil and Sharia divisions, the same shall be referred for decision to a Court of Jurisdiction which shall consist of the Chief Justice as President, the Grand Kadi, two judges of the Civil High Court and one judge of the Sharia High Court.

...

[1] *The Democratic Republic of the Sudan Gazette*, No. 1080, of 1 July 1969, Special Legislative Supplement, Supplement No. 1: General Legislations.

THE PUNISHMENT OF CORRUPTION ACT, 1969

(SPECIAL ENACTMENT)

(1969 Act No. 31) [2]

Chapter I

PRELIMINARY PROVISIONS

1. This Act may be cited as "The Punishment of Corruption Act, 1969" and shall be deemed to have come into force as from the 10th of June, 1965.

2. (1) The provisions of this Act shall apply to any person who, during the period from 10.6.1965 to 25.5.1969, was President of the Supreme Commission or a member thereof or a Minister or a Speaker of the Constituent Assembly or a member thereof or a member of an Executive Council or of any Local Government Council established under the Local Government Ordinance 1951 or a public servant in the Central or Local Government or in any corporation or organisation or committee established by law or a chairman or a member of the Board of Directors of such corporation or organisation or an owner of a newspaper magazine or a press agency or an editor in such newspaper magazine or press agency; and generally to any person who was entrusted with or holding an office of a public nature or had a representative public capacity.

...

Chapter II

OFFENCES OF CORRUPTION IN POLITICS, IN THE ADMINISTRATION AND IN THE PRESS

3. A person shall be guilty of the offence of corruption in politics if he committed an act to

[2] *Ibid.*, No. 1081, of 15 July 1969, Legislative Supplement, Supplement No. 1: General Legislations.

corrupt the system of Government or the political life by causing damage to the economic or financial or social interests of the country, or by contravening any law or by exploiting religion, to obtain political gain whether directly or indirectly; and without prejudice to the generality of the foregoing, such person shall include any person who:

(*a*) Amended or caused to amend the Constitution in violation of the will of any sector of the electorate, or

(*b*) Paid any money or rendered any assistance or made any promise or threat to a representative in the Constituent Assembly in circumstances which suggested that his aim was to restrict the freedom of such representative in discharging his parliamentary duties, or

(*c*) Oppressed or attempted to oppress the popular opposition by creating an atmosphere of terror or intimidation or by inciting religious sentiments or by the use or demonstration of force whether by words spoken or written or by procession or by any other means, or

(*d*) Violated or caused to violate the independence of the Judiciary or caused disrespect to or non-compliance with the judgements of the Courts or criticised the courts whether by words spoken or written or by demonstration or by any other means which ridiculed the Judiciary or violated the principle of independence of the Judiciary, or

(*e*) Caused or attempted to cause the liquidation of the public ownership of the means of production in any form, or

(*f*) Abused the power to grant free or conditional pardon, or

(*g*) Accepted or obtained or attempted to obtain financial assistance or any other assistance for the benefit of any party:

(i) from an imperialist source or a source related thereto, or

(ii) from any other source, provided that the person who rendered the assistance is guilty of an offence under this Act.

4. A person shall be guilty of the offence of corruption in the administration if he committed an act to corrupt the system of Government or the administration or caused to damage the economic, financial or social interests of the country by violating any law or by misuse or abuse of power whether or not he obtained any benefit for himself or for others; and without prejudice to the generality of the foregoing such person shall include any person who:

(*a*) Squandered or caused to squander public moneys whether by squandering foreign or local currency or by any other means, or

(*b*) Committed an act which was likely to cause direct or indirect increase or decrease in the prices of commodities, crops, estates or any other things to obtain benefit or privilege for himself or for others, or

(*c*) Obtained any benefit or privilege for himself or for others from any person whether natural or corporate without being sanctioned by law or in contravention of the prescribed rules, or

(*d*) Interfered to the detriment of the public interest in the functions of any public office without having authority to do so.

5. A person shall be guilty of the offence of corruption in the press if such person accepted or obtained or attempted to obtain financial or any other assistance for himself or for a newspaper or a magazine or a press agency:

(*a*) From any imperialist source or a source related thereto, or

(*b*) From any other source provided that the person who rendered the assistance is guilty of an offence under this Act.

6. (1) Every person who committed an offence under this Act shall be punished:

(*a*) With imprisonment for life or for any shorter period, and

(*b*) With deprivation of his political rights for life.

(2) Without prejudice to the punishments provided for in the preceding subsection, the court may in addition award all or any of the following punishments:

(*a*) Forfeiture of private property whether movable or immovable,

(*b*) Fine,

(*c*) Prohibition to hold any public office for such period as the court may deem suitable,

(*d*) Disqualification from membership of the Boards of Directors of corporations or companies or other bodies which are under the control of the public authorities for such period as the court may deem suitable.

Chapter III

The prosecution council

7. (1) The prosecution for the offences committed under this Act shall be conducted by a prosecution council to be appointed in each case by the Minister of Justice. The Council shall consist of a Chairman and a number or members to be specified by the Minister of Justice.

...

13. (1) The investigation shall be conducted in complete secrecy.

(2) The advocate for the accused shall not be present during the course of investigation and neither the accused nor his advocate shall have access to the records of the investigation.

...

THE REGULATION OF TRADE DISPUTES (AMENDMENT) ACT, 1969

(1969 Act No. 36) [3]

...

2. The Trade Dispute Act, 1966 [4] shall be amended by substituting the following new section for Section 27:

"No worker shall stop partially or completely or go slow and no employer shall lock-out his place of work wholly or partially unless he acquires the approval of the Ministry of Labour."

[3] *Ibid.*, No. 1081, of 26 July 1969.

[4] For a summary of the Trade Dispute Act, see *Yearbook on Human Rights for 1966*, p. 348.

THE PUBLIC PREMISES EVICTION ACT, 1969

(1969 Act No. 37) [5]

...

3. (1) The competent authority may at any time give notice to any person in occupation of any public premises to vacate such premises within such period as may be specified therein.

If, on the expiration of such period, the public premises is not vacated the Minister of the Interior may, on an application made to him by the competent authority and notwithstanding any provisions to the contrary contained in any other law, order the police authorities to effect the vacation of such premises and to use such force as may be necessary for that purpose.

(2) The competent authority shall make the application referred to in subsection (1) through the Solicitor General.

(3) Any notice given or action taken before the commencement of this Act shall be deemed to have been given or taken in accordance with the provisions of this Act.

4. Any order or action made or taken or deemed to have been made or taken under this Act shall not be called into question before any court.

[5] *The Democratic Republic of the Sudan Gazette*, No. 1081, of 26 July 1969, Special Legislative Supplement, Supplement No. 1: General Legislations.

RATIFICATION OF AGREEMENTS

During 1969 the Sudan, by Acts Nos. 49 to 57 respectively,[6] ratified:

1. The Cultural Agreement between the Democratic Republic of the Sudan and the Lebanese Republic, signed in Khartoum on 10 January 1968;

2. The Cultural, Scientific and Technical Co-operation Agreement between the Government of the Democratic Republic of the Sudan and the Government of the People's Republic of Poland, signed in Warsaw on 17 October 1967;

3. The Agreement for the Cultural and Scientific Co-operation between the Democratic Republic of the Sudan and the People's Republic of Hungary signed in Budapest on 14 October 1967;

4. The Cultural and Scientific Co-operation Agreement between the Government of the Democratic Republic of the Sudan and the Government of the Union of Soviet Socialist Republics, signed in Moscow on 3 October 1967;

[6] *Legislative Supplement to the Democratic Republic of the Sudan Gazette*, No. 1086, of 15 September 1969, Supplement No. 1: General Legislations.

5. The Agreement for Cultural Co-operation between the Government of the Democratic Republic of the Sudan and the Government of the Syrian Arab Republic, signed in Khartoum on 21 December 1967;

6. The Cultural and Scientific Co-operation Agreement between the Government of the Democratic Republic of the Sudan and the Government of the Democratic Republic of Germany, signed in Berlin on 6 October 1967;

7. The Cultural and Scientific Co-operation Agreement between the Government of the Democratic Republic of the Sudan and the Government of the Socialist Republic of Czechoslovakia, signed in Prague on 11 October 1967; and

8. The Agreement for Cultural Co-operation between the Democratic Republic of the Sudan and the Government of the Socialist Republic of Romania, signed in Bucharest on 25 October 1967.

SWAZILAND

THE PUBLIC HEALTH ACT, 1969

Act No. 5 of 1969, assented to on 16 April 1969 [1]

...

PART II

COMMUNICABLE DISEASES

...

Occupier's duty to notify disease

4. (1) If a case of notifiable disease occurs in or in the vicinity of a building in an urban area, the occupier thereof shall notify the local authority of the case in writing not later than twenty-four hours after the occurrence becomes known to him, giving—

(*a*) The full name and the sex, age, and address of the affected person,

(*b*) The name of the notifiable disease, and

(*c*) The date of its occurence.

(2) The occupier shall furnish such additional particulars relating to the case as the local authority may require.

(3) Upon receiving a notification in accordance with this section, the local authority shall forthwith inform the nearest medical officer of health of the case.

(4) A person who, without reasonable excuse, contravenes subsection (1) or (2) shall be guilty of an offence and liable, on conviction, to a fine of fifty rand or, in default of payment, one month's imprisonment.

Notification by medical practitioner

5. (1) Where a medical practitioner attends, or is called upon to attend, a person suffering from a notifiable disease, the medical practitioner shall not later than twenty-four hours after becoming aware of the nature of the disease, forward a certificate in the prescribed form specifying the kind of notifiable disease which he considers such person to have to the nearest medical officer of health.

(2) A medical practitioner who, without reasonable excuse contravenes subsection (1) shall be guilty of an offence and liable, on conviction, to a fine not exceeding one hundred rand or, in default of payment, three months' imprisonment.

Regulations relating to communicable diseases

6. The Minister may make regulations applicable to all communicable diseases or only to such communicable diseases as may be specified therein ....

Power to administer treatment, etc.

7. (1) Where, under any regulation the Minister has given power to a prescribed officer to administer any vaccination, inoculation, or treatment to, or to take any sample from, any person, such officer shall before administering such vaccination, inoculation or treatment or taking such sample, request such person to consent to such vaccination, inoculation or treatment or taking, and if such person does not so consent he may report the matter to a magistrate.

(2) Upon receipt of such report the magistrate shall after enquiry make such order as he may deem necessary for the proper enforcement of the provisions and for the attainment of the objects of this Part.

(3) Notwithstanding the provisions of subsection (2) where the Minister has declared by notice in the *Gazette* that in his opinion a formidable epidemic exists or may be apprehended by such vaccination, inoculation or treatment or sample may be obtained upon the order of a medical officer without recourse to a magistrate.

(4) Any person who fails to comply with an order made under subsections (2) or (3) shall be guilty of an offence.

PART III

NUISANCES

Nuisance prohibited

8. No person shall cause a nuisance, or shall suffer to exist on any land or premises owned or occupied by him or of which he is in charge, any nuisance or other condition liable to be injurious or dangerous to health.

...

Author of a nuisance

12. The author of a nuisance means the person by whose act, default, or sufferance the nuisance

[1] *Supplement to the Swaziland Government Gazette*, No. 349, of 25 April 1969, Part B—Acts.

is caused, exists or is continued, whether he is the owner or occupier or both owner and occupier or any other person.

Notice to remove nuisance

13. A local authority or a medical officer of health, if satisfied of the existence of a nuisance, may serve a notice on the author of the nuisance, or, if he cannot be found, then on the occupier or owner of the dwelling or premises on which the nuisance arises or continues requiring him to remove it within the time specified in the notice and to execute such works and do such things as may be necessary for that purpose and if the local authority or medical officer of health thinks it desirable, but not otherwise, specifying any works to be executed to prevent a recurrence of the said nuisance:

Provided that—

(*a*) Where the nuisance arises from any want or defect of a structural character, or where the dwelling or premises are unoccupied, the notice shall be served on the owner;

(*b*) Where the author of the nuisance cannot be found or it is clear that the nuisance does not arise or continue by the act or default or sufferance of the occupier or owner of the dwelling or premises, the local authority shall remove the nuisance, and may do what is necessary to prevent the recurrence thereof.

...

PART IV

GENERAL PROVISIONS

...

Powers of entry and inspection, etc.

25. (1) For the purpose of making an inspection or doing the work or other thing necessary for, or incidental to, the carrying out of his functions under this Act—

(*a*) A medical officer of health or an officer or person to whom he has delegated his powers under this Act in writing; or

(*b*) A health inspector; or

(*c*) An administrative officer; or

(*d*) A local authority or an officer or a person to whom it has delegated its powers under this Act in writing;

may, at any reasonable time when the inspection, work or other thing may be properly carried out, enter any land or premises.

(2) A person empowered under subsection (1) to enter any land or premises may do so by force if necessary.

...

THE URBAN GOVERNMENT ACT, 1969

Act No. 8 of 1969, assented to on 7 May 1969 [2]

...

PART II

CONSTITUTION OF TOWN COUNCILS

Declaration of municipalities

4. (1) Subject to the provisions of this section the Minister may by notice in the *Gazette*—

(*a*) Declare any area to be a municipality;

...

(*d*) Declare that any area shall cease to be a municipality.

(2) The Minister shall not publish a notice under sub-section (1) without first—

(*a*) Publishing a notification in the *Gazette* and a newspaper circulating in the area concerned advising the public of the details of the notice he intends to publish and the reasons therefor, and inviting any person to submit any representations he may wish to make to the Minister by a time to be specified in such notification; ...

Municipal or town councils

5. (1) In every municipality there shall be constituted by the Minister, by notice published in the *Gazette*, a municipal or town council which shall perform such duties and may exercise such powers as are imposed or conferred on a council by this or any other law, and it shall generally assist in the maintenance of order and good government within the area of its authority.

...

Composition of councils

6. (1) The Minister may from time to time by notice published in the *Gazette*—

(*a*) Prescribe the composition of a council and the number of councillors;

(*b*) Provide for the election and appointment of councillors;

...

Election regulations

8. The Minister shall make regulations for the regulation and conduct of elections to be held under the provisions of this Act, and without prejudice to the generality of the foregoing, may by such regulations prescribe—

(*a*) The qualifications and disqualifications of voters;

(*b*) The enrolment of voters in any municipality or in any territorial ward of any municipality, and the framing of voters' rolls for a municipality;

[2] *Ibid.*, No. 352, of 16 May 1969, Part B—Acts.

(*c*) The method of making and disposing of claims and objections, including appeals, in connection with the enrolment of voters;

(*d*) The qualifications and disqualifications of candidates for election as councillors;

(*e*) The ascertainment of the qualifications of voters and candidates for election;

(*f*) The procedure for nomination of candidates for election as councillors;

(*g*) The method of election in any municipality or in any territorial ward of any municipality, and the appointment of a returning officer and other persons to conduct the election;

...

THE FUGITIVE OFFENDERS (COMMONWEALTH) ACT, 1969

Act No. 9 of 1969, assented to on 7 May 1969 [3]

...

PART II

RETURN OF OFFENDERS

Persons liable to be returned

3. (1) Subject to the provisions of this Act, a person found in Swaziland who is accused of a relevant offence in any other country to which this section applies, or who is alleged to be unlawfully at large after conviction of such an offence in such a country, may be arrested and returned to that country as provided by this Act.

(2) The countries to which this section applies are countries that have been designated for the purposes of this section under sub-section (1) of section *four*.

Designated countries

4. (1) The Prime Minister may designate any country for the purposes of section *three* of this Act, and may revoke such a designation.

(2) The Prime Minister may direct that this Act shall have effect in relation to the return of persons to, or in relation to persons returned from, a designated country subject to such exceptions, adaptations or modifications as may be specified in the directions. The Prime Minister many revoke such a direction.

(3) A designation under subsection (1), and a direction under subsection (2), shall be laid before Parliament within fourteen days after it is made if Parliament is then sitting or, if Parliament is not then sitting, within fourteen days after the commencement of the next meeting. Such a designation or such a direction remains in force subject to subsection (4) until it is revoked, unless before then a resolution is passed by both Houses of Parliament disapproving that designation or direction, which shall thereupon cease to have effect to the extent of the disapproval expressed in the resolution.

(4) A designation and a direction made under the preceding subsection shall be published in the *Gazette*.

(5) For so long as a designation is in force under this section—

(*a*) This Act applies in relation to the country to which the designation refers; and

(*b*) That country is a designated country for the purposes of this Act;

subject to the provisions of any direction that may have been given under subsection (2) in respect of that country.

Relevant offences

5. (1) For the purposes of this Act an offence of which a person is accused or has been convicted in a designated country is a relevant offence if—

(*a*) It is an offence against the law of a designated country, ... and is punishable under that law with imprisonment for a period of twelve months or any greater punishment;

(*b*) In any case, the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Swaziland if it took place within Swaziland or, in the case of an extra-territorial offence, in corresponding circumstances outside Swaziland.

...

General restrictions on return

6. (1) A person shall not be returned under this Act to a designated country, or committed to or kept in custody for the purposes of such return, if it appears to the Minister, to the court of committal or to the High Court in an action for the redress of a contravention of that person's right to personal liberty or for the review of the order of committal—

(*a*) That the offence of which that person is accused or was convicted is an offence of a political character;

(*b*) That the request for his return (though purporting to be made on account of a relevant offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions;

(*c*) That he might, if returned, 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 person accused of an offence shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, if it appears as aforesaid that if

[3] *Ibid.*

charged with that offence in Swaziland he would be entitled to be discharged under any rule of law relating to previous acquittal or conviction.

(3) A person shall not be returned under this Act to any country, or committed to or kept in custody for the purpose of such return, 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 Swaziland, be dealt with in that country for or in respect of any offence committed before his return under this Act other than—

(*a*) The offence in respect of which his return under this Act is requested;

(*b*) Any lesser offence established by the facts proved before the court of committal; or

(*c*) Any other offence being a relevant offence in respect of which the Minister may consent to his being so dealt with.

(4) Any such arrangement as is 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 purpose of that subsection a certificate issued by or under the authority of the Minister confirming the existence of an arrangement with any country and stating its terms shall be conclusive evidence of the matters contained in the certificate.

PART III

PROCEEDINGS FOR RETURN

Authority to proceed

7. (1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with thereunder except in pursuance of an order by the Minister (in this Act referred to as an authority to proceed), issued in pursuance of a request made to the Minister by or on behalf of the Government of the designated country in which the person to be returned is accused or was convicted.

(2) There shall be furnished with any request made for the purposes of this section on behalf of any country—

(*a*) In the case of a person accused of an offence, a warrant for his arrest issued in that country;

(*b*) In the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence in that country, and a statement of the amount of that sentence, if any, which has been served;

together (in each case) with particulars of the person whose return is requested 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 for his arrest under section *eight*.

(3) On receipt of such a request the Minister may issue an authority to proceed unless it appears to him that an order for the return of the person concerned could not lawfully be made or would not in fact be made, in accordance with the provisions of this Act.

Arrest for purposes of committal

8. (1) A warrant for the arrest of a person accused of a relevant offence, or alleged to be unlawfully at large after conviction of such an offence, may be issued—

(*a*) On the receipt of an authority to proceed, by a magistrate;

(*b*) Without such an authority, by a magistrate upon information that the person is or is believed to be in or on his way to Swaziland;

and a warrant issued by virtue of paragraph (*b*) above is in this Act referred to as a provisional warrant.

(2) A warrant of arrest under this section 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, within the jurisdiction of the magistrate.

(3) Where a provisional warrant is issued under this section, the authority by whom it is issued shall forthwith give notice to the Minister and transmit to him the information and evidence, or certified copies of the information and evidence, upon which it was issued; and the Minister may in any case, and shall if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested thereunder, discharge him from custody.

(4) A warrant of arrest issued under this section may, without being backed, be executed in any part of Swaziland, and may be so executed by any person to whom it is directed or by any member of the police force.

(5) Where a warrant is issued under this section for the arrest of a person accused of an offence of stealing or receiving stolen property or any other offence in respect of property, a judicial officer shall have the like power to issue a warrant to search for the property as if the offence had been committed within Swaziland.

Proceedings for committal

9. (1) A person arrested in pursuance of a warrant under section *eight* of this Act shall (unless previously discharged under subsection (3) of that section) be brought as soon as practicable before a court presided over by a magistrate (in this Act referred to as the court of committal).

(2) For the purposes of proceedings under this section a court of committal shall have the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as a magistrate conducting a preparatory examination.

(3) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a reasonable period (of which the court shall give notice to the

Minister) after which he will be discharged from custody unless such an authority has been received.

(4) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any evidence tendered in support of the request for the return of that person or on behalf of that person, that the offence to which the authority relates is a relevant offence and is further satisfied—

(*a*) Where that person is accused of the offence that the evidence would be sufficient to warrant his trial for that offence if it had been committed within the jurisdiction of the court;

(*b*) Where that person 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 return hereunder; but if the court is not satisfied or if the committal of that person is so prohibited, the court shall discharge him from custody.

(5) A person against whom an order has been issued in terms of this section may, within fifteen days after the issue thereof, appeal against such order to the High Court, and on appeal, the High Court may make such order in the matter as it may deem fit.

Review and habeas corpus

10. (1) Where a person is committed to custody under section *nine*, the court shall inform him in ordinary language of his right to make application to the High Court for *habeas corpus* or for review of the order of committal, and shall forthwith give notice of the committal to the Minister.

(2) A person committed to custody under section *nine* shall not be returned under this Act—

(*a*) In any case, until the expiration of fifteen days beginning with the day on which the order for his committal is made;

(*b*) If an application for *habeas corpus* or for review of the order of committal has been instituted in the High Court, so long as the proceedings in that action are pending.

(3) On any such application the High Court may, without prejudice to any other jurisdiction of the court, order the person committed to be discharged from custody if it appears to the 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 it 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 return him.

(4) In any such action the High Court may receive additional evidence relevant to the exercise of its jurisdiction under section *six* or under subsection (3) of this section.

(5) For the purposes of this section an application for *habeas corpus* or for review of an order shall be treated as pending until any appeal in those proceedings is disposed of; and an appeal shall be treated as disposed of at the expiration of the time within which the appeal may be brought or, where leave to appeal is required, within which the application for leave is made, if the appeal is not brought or the application made within that time.

Order for return to requesting country

11. (1) Where a person is committed to await his return and is not discharged by order of the High Court, the Minister may by warrant order him to be returned to the country by which the request for his return was made unless the return of that person is prohibited, or prohibited for the time being, by section *six* or this section, or the Minister decides under this section to make no such order in his case.

(2) An order shall not be made under this section in the case of a person who is serving a sentence of imprisonment or detention, or is charged with as offence, in Swaziland—

(*a*) In the case of a person serving such a sentence, until the sentence has been served;

(*b*) In the case of a person charged with an offence, until the charge is disposed of or withdrawn and, if it results in a sentence of imprisonment (not being a suspended sentence) until the sentence has been served.

(3) The Minister shall not make an order under this section in the case of any person if it appears to the Minister on the grounds mentioned in subsection (3) of section *ten* that it would be unjust or oppressive to return that person.

(4) The Minister may decide to make no order under this section in the case of a person accused or convicted of a relevant offence not punishable with death in Swaziland if that person could be or has been sentenced to death for that offence in the country by which the request for his return is made.

(5) The Minister may decide to make no order under this section for the return of a person committed in consequence of a request made on behalf of any country if another request for his return under this Act, or a requisition for his surrender under any other law relating to extradition or the return of fugitive offenders, has been made on behalf of another country and it appears to the Minister having regard to all the circumstances of the case and in particular—

(*a*) The relative seriousness of the offence in question;

(*b*) The date on which each such request or requisition was made; or

(*c*) The nationality or citizenship of the person concerned and his ordinary residence;

that preference should be given to the other request or requisition.

(6) Notice of the issue of a warrant under this section shall forthwith be given to the person to be returned thereunder.

Discharge in case of delay in returning

12. (1) If any person committed to await his return is in custody in Swaziland under this Act after the expiration of the following period, that is to say—

(*a*) In any case, the period of two months beginning with the first day on which, having regard to subsection (2) of section *ten*, he could have been returned;

(*b*) Where a warrant for his return has been issued under section *eleven*, the period of one month beginning with the day on which that warrant was issued;

he may apply to the High Court for his discharge.

(2) If upon any such application the court is satisfied that reasonable notice of the proposed application has been given to the Minister, the court may, unless sufficient cause is shown to the contrary, by order direct the applicant to be discharged from custody and, if a warrant for his return has been issued under section *eleven*, quash that warrant.

Evidence

13. (1) In any proceedings under this Act, including proceedings on an application for *habeas corpus* or for the review of an order in respect of a person in custody under this Act—

(*a*) A document, duly authenticated, which purports to set out evidence given on oath in a designated country shall be admissible as evidence of the matters stated therein;

(*b*) A document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, in any proceeding in any such country shall be admissible in evidence;

(*c*) A document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of, or of a part of, any such country shall be admissible as evidence of the fact and date of the conviction.

. . .

Custody

14. (1) Any person remanded or committed to custody under section *nine* shall be committed to the like institution as a person charged with an offence before the court of committal.

(2) If any person who is in custody by virtue of a warrant under this Act escapes out of custody, he may be retaken in any part of Swaziland in like manner as a person escaping from custody under a warrant for his arrest issued in that part in respect of an offence committed therein.

(3) Where a person, being in custody in any part of Swaziland whether under this Act or otherwise, is required to be removed in custody under this Act to another part of Swaziland and is so removed by any means, including conveyance by air, he shall be deemed to continue in legal custody until he reaches the place to which he is required to be removed.

(4) A warrant under section *eleven* for the return of any person to any country shall be sufficient authority for all persons to whom it is directed and all members of the police force to receive that person, keep him in custody and convey him into the jurisdiction of that country.

. . .

PART IV

TREATMENT OF PERSONS RETURNED FROM DESIGNATED COUNTRIES

Restriction upon proceedings for other offences

16. (1) This section applies to any person accused or convicted of an offence under the law of, or any part of, Swaziland who is returned to Swaziland from any designated country under any law of that country corresponding with this Act.

(2) A person to whom this section applies shall not, during the period described in subsection (3) of this section, be dealt with in Swaziland for or in respect of any offence committed before he was returned to Swaziland other than—

(*a*) The offence in respect of which he was returned;

(*b*) Any lesser offence proved by the facts 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.

(3) The period referred to in subsection (2) in relation to a person to whom this section applies is the period beginning with the day of his arrival in Swaziland on his return as mentioned in subsection (1) and ending forty-five days after the first subsequent day on which he has the opportunity to leave Swaziland.

Restoration of persons not tried, or acquitted

17. (1) This section applies to any person accused of an offence under the law of Swaziland who is returned to Swaziland as mentioned in subsection (1) of section *sixteen*.

(2) If in the case of a person to whom this section applies, 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 Swaziland on being returned; or

(*b*) On his trial for that offence, he is acquitted or discharged;

the Minister may, if he thinks fit, on the request of that person, arrange for him to be sent back free of charge and with as little delay as possible to the country from which he was returned.

. . .

SWEDEN

NOTE [1]

1. A law about sanctions against Rhodesia was introduced on 29 May 1969. The purpose of this law is to implement in Sweden the decision taken in this matter by the Security Council of the United Nations.

2. On 7 March 1969, a law was introduced which permits the authorities to wire-tap telephone conversations in connexion with preliminary investigations of offences involving the possession, manufacture, trade or smuggling of narcotics. Such wire-tapping is, in principle, subject to the general restrictions on wire-tapping laid down in the Swedish Code of Procedure, *inter alia,* authorization by court. According to the general rules of the Code of Procedure wire-tapping may only be used in connexion with preliminary investigations of very serious offences, i.e., offences for which a minimum penalty of two years' imprisonment is prescribed.

According to the new law wire-tapping can, however, be used in connexion with narcotics offences even if the minimum penalty prescribed is less than two years' imprisonment. The law will remain in force until the end of June 1970, but can be renewed.

The Swedish Minister of Justice when submitting the proposal on the new law to the *Riksdag* (The Swedish Parliament) emphasized that wire-tapping in his opinion constituted a grave interference with the individual's personal integrity and that the use of this method of investigation therefore should be as restricted as possible.

3. By a law of 29 May 1969, a previous law prohibiting persons with a duty of maintenance towards children under the age of 16 to leave the country was abolished. In the Government Bill on the repeal of the law it was observed that the right to leave one's country of residence, including the country of one's origin, was one of the fundamental rights of a democratic society.

4. In June 1969, a specially appointed Committee submitted a draft legislation on abolition of censorship of films for adult exhibition. The Committee has, however, recommended that the censorship of films intended to be shown to children is retained.

5. In June 1969, a Committee submitted a proposal on amendments of the rules of the Penal Code relating to the offence of inciting rebellion. The proposal aims at extending the freedom of expression in connexion, *inter alia,* with demonstrations.

6. The same Committee in October 1969 submitted a proposal on amendments of the provisions of the Penal Code about breach of religious peace and offending morality and decency. Also this proposal aims at furthering the freedom of expression.

7. A proposal made in a memorandum of October 1969 by the Ministry of Justice had the same general aim. This memorandum, which concerns certain offences against the freedom of expression, proposes an abolition of the provisions of the Penal Code concerning insulting a symbol of the realm and insulting a foreign national symbol.

8. A further increase in the national basic pensions became effective on 1 July 1969. The annual pension—apart from municipal rent allowances—is, as from July 1969, Sw.Kr. 5,580 for a single pensioner or a total of Sw.Kr. 8,760 for two spouses entitled to a pension.

By a decision of the *Riksdag* in 1969, a uniform fee for medical care given at public hospitals or by district medical officers has been introduced as from 1 January 1970. This fee also covers X-ray and laboratory examinations. The authority responsible for the medical care is subsequently reimbursed Sw.Kr. 31 for each consultation directly from the local social health insurance office. For visits by the doctor at the home of the patient the fee is Sw.Kr. 15.

A proposal aiming at the introduction of a similar system with regard to medical care by private practitioners is at present under consideration.

10. By a decision of the *Riksdag* in 1969 the protection afforded by the national health insurance system to pensioners has been further improved. Thus the period under which sickness benefits are granted to pensioners will be extended from 180 days to 365 days as from 1 January 1970.

11. Since 1 January 1969, about 400,000 families have received increased financial support by means of new governmental and municipal housing subsidies. Through these subsidies low-income families and families with children have been given better possibilities to raise their standard of housing. Simultaneously, the maintenance advances for about 111,000 mothers or fathers in sole custody of children have been increased. The

[1] Note furnished by the Government of Sweden.

sum annually granted per child was Sw.Kr. 1,800 in January 1970.

Another aspect of the policy of assistance to families with children is the development of the day nursery services organized by the society. The aim is to increase the number of accommodations at day nurseries and recreation homes by about 10,000 annually. The accommodations at homes where the house-mother takes care of children during the day, under municipal auspices, will also be increased.

12. The policy of improving the situation of handicapped persons continues. The possibilities of obtaining suitable technical aids have been increased. The establishment of a central comprehensive school including a gymnasium, a continuation school and a vocational school for seriously handicapped persons has been proposed. The instruction for mentally handicapped is continuously being expanded.

13. During 1969 a campaign against narcotics has ben carried out. The campaign which has included preventive measures as well as care and treatment, has given substantial results. A Committee on the treatment of drug addicts has submitted a report which contains proposals on further measures against the use of narcotics.

14. A co-ordinating committee on social research has been attached to the Ministry of Health and Social Affairs. This Committee consists of representatives of scientific institutions and central and municipal administration. Its task will be to consider questions of general interest in the socio-political field and to further the co-operation in such matters between the administration and the scientific research.

SWITZERLAND

FEDERAL AND CANTONAL LEGISLATIVE TEXTS AND ORDERS OF THE FEDERAL TRIBUNAL CONCERNING HUMAN RIGHTS [1]

A. FEDERAL LAW

I. Provision of the Federal Constitution

Federal Order of 11 December 1969 concerning the result of the popular vote of 14 September 1969 supplementing the Constitution by articles 22 *ter* and 22 *quater* (constitutional provisions on the land law) provides as follows in article 2:

"The new provisions are set forth as follows:

"*Article 22* ter

"1. Ownership of property is guaranteed.

"2. Within the limits of their constitutional powers, the Confederation and the cantons may, through legislation and for reasons of public interest, make provision for expropriation and restrictions upon ownership of property.

"3. In the event of expropriation or of a restriction upon ownership of property which is tantamount to expropriation, fair compensation shall be payable."

"*Article 22* quater

"1. The Confederation shall formulate through legislation principles to be applied to any development plans which the cantons are obliged to draw up in order to ensure a judicious use of land and a rational distribution of population within the territory.

"2. It shall encourage and co-ordinate the efforts made by the cantons and shall co-operate with them.

"3. In performing its tasks it shall take into account the development needs of the territory at the national, regional and local levels."

II. Legislation

1. *Protection of life and health*

Federal Council Order of 2 July 1969 concerning driving instructors and driving schools.

Federal Council Order of 27 August 1969 incorporating the administrative provisions adopted pursuant to the Road Traffic Act.

Ordinance of the Federal Department of the Interior of 12 September 1969 concerning protection against radiation in nuclear research institutes.

Regulations of 9 June 1969 on the examination of chiropractors with reference to protection against radiation, issued by the Federal Department of the Interior.

Federal Council Ordinance III of 26 March 1969 concerning the execution of the Federal Act respecting work in industry, handicrafts and commerce (Labour Act) (hygiene and accident prevention in industrial undertakings).

2. *Social welfare*

Federal Act of 4 October 1968 to amend the Act respecting old-age and survivor's insurance.

Federal Council Order of 10 January 1969 to amend the provisions giving effect to the Federal Act respecting old-age and survivors' insurance.

Federal Act of 18 December 1968 to amend the Act respecting loss-of-earnings allowances for persons on military service (loss-of-earnings allowances scheme).

Federal Council Order of 1 April 1969 to amend the regulation giving effect to the Act respecting loss-of-earnings allowances for persons on military service (loss-of-earnings allowances scheme).

Federal Council Order of 23 June 1969 to amend the regulation giving effect to the Federal Act on unemployment insurance.

3. *Protection of privacy*

Federal Act of 20 December 1968 strengthening the protection under penal law of personal privacy.

4. *Legal protection*

Federal Act of 20 December 1968 on administrative procedure.

Federal Act of 20 December 1968 to amend the Federal Act on the judicial system.

B. CANTONAL LAW

I. Constitutional provision (education)

Article 47 (revised) of the Constitution of the Canton of Solothurn, which, in particular, abolishes compulsory attendance at public schools in so far as it existed.

[1] Collected by the Justice Division of the Federal Department of Justice and Police of Switzerland.

II. Legislation

1. *Protection of life and health*

Order of the Council of State of the Canton of Schaffhausen, dated 6 February 1969, respecting vermin control agents containing persistent chlorinated hydrocarbons.

Order of the Council of State of the Canton of Lucerne, dated 10 January 1969, concerning immunization against infantile paralysis in 1969.

Order of the Council of State of the Canton of Vaud, dated 7 March 1969, concerning house physicians in cantonal hospital institutions.

Ordinance of the Executive Council of the Canton of Berne, dated 1 July 1969, concerning chiropractors.

Decree of the Grand Council of the Canton of Vaud, dated 3 September 1969, granting an appropriation for the establishment of an Institute of Social and Preventive Medicine.

2. *Social welfare*

Zurich Act of 1 June 1969 concerning supplementary benefits under the federal old-age, survivors' and disability insurance schemes.

3. *Measures relating to education and culture*

Ordinance of the Council of State of the Canton of Zurich, dated 10 March 1969, concerning the granting of scholarships for vocational training and further training.

Education Act for the Canton of Zug, dated 31 October 1968.

Aargau Act of 16 October 1968 concerning the promotion of cultural life and Ordinance of 25 April 1969 giving effect to it.

Order of the Council of State of the Canton of Solothurn, dated 13 May 1969, entitled "Defrayal of school fees of Solothurn pupils at the Central Swiss Technical School. Lucerne."

4. *Rest and leisure*

Act of the Canton of Basle-County, dated 26 September 1968, concerning public holidays and Ordinance of 26 September 1968 giving effect to it.

5. *Legal protection*

Aargau Act of 9 July 1968 concerning proceedings under administrative law.

C. ORDERS OF THE FEDERAL TRIBUNAL

1. *Freedom of commerce and industry*

Federal Tribunal Order 95 I 12

In dealing with an action concerning a violation of freedom of commerce and industry, the Federal Tribunal shall freely review the interpretation and application of cantonal provisions relating to the regulation of commerce when a particularly serious case of interference with economic freedom is involved (consideration 3).

Federal Tribunal Order 95 I 336

Under a system of free competition it is contrary to article 31 of the Constitution to refuse permission for an electrician to instal indoor electrical fixtures at a place situated only 5 km. from his place of business (confirmation of decision; consideration 4).

2. *Social welfare*

Federal Tribunal Order 95 I 89

Linemen who, in the service of their employers, convey to work-sites, by means of heavy lorries, materials for the construction of power-lines are subject to the Federal Council Ordinance of 18 January 1966 respecting the hours of work and rest of professional motor-vehicle drivers (consideration 3).

3. *Legal protection*

Federal Tribunal Order 95 I 103

The principle of equal treatment does not imply merely the right to consult the documents in a pending case. It also requires that every citizen should be able to safeguard his rights by all the means that the law places at his disposal. A safeguard of this kind presupposes in certain cases the right to consult the documents in a closed case (correction of decision). This right is recognized, however, only if the applicant credibly pleads the existence of an interest that merits protection.

Federal Tribunal Order 95 I 356

It is not unreasonable to consider that no right of the public to photograph or make sound recordings of the proceedings can be deduced from the principle that the proceedings are public (consideration 2).

Federal Tribunal Order 95 I 144

Any administrative authority which bases its decision on an expert opinion given in evidence by one party without affording the other party an opportunity to state its views in regard to that expert opinion violates article 4 of the Constitution (consideration 2).

4. *Guarantee of ownership*

Federal Tribunal Order 95 I 302

When a partially expropriated tenement no longer has adequate means of access as a result of the elimination or re-siting of a public highway, and its value is thereby diminished, the expropriator is in principle required to make good the loss (consideration 5).

The same rule applies in the event of the depreciation, from the same cause, of a parcel of land which is not affected by the expropriation but which is economically linked with an expropriated tenement belonging to the same owner (consideration 6).

Federal Tribunal Order 95 I 308

The compensation payable to tenants and farmers is required to cover only the loss arising from the premature termination of the lease of the house or farm. The expropriator is not required to make good also the loss resulting, after

the expiry of the said agreement, from the non-use of equipment and the loss of "goodwill".

Federal Tribunal Order 95 I 366

When parcels of land are reorganized the landowners affected are entitled, by virtue of the guarantee of ownership, to recover the equivalent of their former property in kind (consideration 4).

5. Freedom of conscience and belief

Federal Tribunal Order 95 I 350

Bodies corporate which themselves have religious or ecclesiastical aims may not be compelled to pay the public worship tax or the church tax to other religious communities such as the national churches.

SYRIA

PROVISIONAL CONSTITUTION OF THE SYRIAN ARAB REPUBLIC OF 1 MAY 1969 [1]

PREAMBLE

The main object of drafting a constitution for any State at a given time is to provide an exact guide which will organize its people's march towards the future and regulate the acts of the State and of its different institutions. That constitution is the source of the State's laws and regulations.

In relation to the existence of a constitution for any of the lands *(contrées, aqtâr)* of the Arab fatherland, this task is made a special and gradual one by the state of division of the Arab nation. The constitution will fulfil the desire of the Arab masses in so far as it defines their aims, sets their course and reinforces their struggle to unite the Arab nation.

The Arab nation has struggled for generations past and is still struggling to build up a unified State free from all forms of exploitation, division and colonialist domination; for only such a unified State can provide the proper setting for the full development of the Arab nation's personality and determine the path it must take to play its own active part in the international community.

The Arab people have resisted all successive waves of invasion and occupations, and every challenge designed to perpetuate their state of division, exploitation and under-development. The independence of any of the Arab lands has been won, not by the struggle waged by the Arab masses in that land alone, but also by the united struggle of the Arab people in all the lands of the great Arab fatherland.

Since the beginning of this century, columns of martyrs have succeeded each other in the various regions of the Arab fatherland on the road of sacrifice and immolation. They have watered the tree of freedom, fed the torches which light the path of the Arab masses, and become the true symbol of the unity of those masses' destiny and aims. Since the middle of this century the struggle of the Arab peoples in their various lands to throw off the chains of direct colonialism has become wider and fiercer.

The Arab masses have never accepted the idea of independence as a goal the achievement of which would mean the end of their sacrifices. Rather they have considered it as a means of reinforcing their struggle and as an important milestone in their never-ending fight against the forces of colonialism, sionism and exploitation under a progressive and revolutionary leadership, to achieve the Arab nation's aims: unity, freedom and socialism.

In the Syrian Arab Land the masses of our people continued their struggle after independence under the leadership of the Arab Socialist Baath Party. Borne along by the tide of their rising fortunes, they won their great victory by starting the Revolution of 8 March 1963, seizing power and using it as an instrument to consolidate their struggle and continue their march towards the Arab nation's noble aims.

The Arab Socialist Baath is the Party of the proletarian Arab masses. It represents their will and their aspiration to carve out a future freed from the various forms of domination and exploitation, linking the Arab nation with its glorious past and enabling it to play its role of helping the cause of freedom of all the fighting peoples to triumph, and of helping mankind to advance.

The Arab Socialist Baath believed that the Arab nation can pass over from its present condition to the future to which it aspires only through a radical and general revolution of all aspects of Arab society, befitting the message which the Arab nation bears.

The Arab Socialist Baath has established the theoretical foundations of this Revolution, which was inspired by the masses' deep self-awareness, the past, present and future facts of the Arab nation, the heritage of the human spirit, the militant experience of other peoples, and all the circumstances of the contemporary world.

The Arab Socialist Baath Party was the first movement in the Arab fatherland to give Arab unity its healthy revolutionary content and to link the national with the socialist struggle. Accordingly, in the eyes of the party the Arab nationalist movement has been the cause of the Arab proletarian masses, whose path towards unity has at the same time been their path towards socialism and total liberation.

This provisional constitution, drawn up by the leadership of the party and the revolution and based on the will of the Arab people, represents a sincere attempt to guide the struggle of our Arab masses in this land and to organize and mobilize

[1] Text communicated by the Government of the Syrian Arab Republic.

their energies in the common battle of the Arab nation.

In drafting this provisional Constitution the Party leadership based itself on assimilation of all the circumstances in the past stage and on a deep understanding of the nature of the considerable tasks which the revolution will have to face in the next stage.

The provisional constitution of 1964 was suspended in accordance with decision No. 1 of 23 February 1966 of the Regional Provisional Headquarters of the Arab Socialist Baath Party because of its uselessness and its inability to assimilate the tasks of the period of revolutionary change through which the land is passing. Towards the end of the period following the suspension of the 1964 constitution, Decision No. 2 of 25 February 1966 of the regional party headquarters, establishing the powers and the relations between the various government institutions, was put into effect.

Throughout this period the leadership of the party and the revolution made considerable efforts and took important steps to organize the masses and transform society, in compliance with party congress resolutions, with a view to fulfilling the objective conditions in which the building of the institutions of the people's democracy could be completed and an adequate constitutional formula reached which would accord with the circumstances of socialist change and at the same time provide a framework to protect the course of the Revolution and strengthen its progress towards the future.

The party leadership took all the steps essential to ensure that the masses should play a bigger role and exercise their responsibilities in guiding Government affairs and in planning the course of the Revolution.

Next came the decision of the fourth Extraordinary Regional Congress of the Arab Socialist Baath Party, meeting towards the end of March 1969. This established a nationally-elected People's Assembly, to play a legislative part and draft a permanent constitution. The Congress also emphasized the need to draft a provisional constitution to define the framework of the next stage and regulate the relations between the various State authorities.

In compliance with this decision the regional headquarters of the Arab Socialist Baath Party drafted that provisional constitution, which is based on the following fundamental principles:

(1) The general Arab revolution is a present-day necessity and must continue in order to achieve the aims of the Arab nation: unity, freedom and socialism. The revolution in the Syrian Arab land forms part of the general Arab revolution. The various aspects of its policy are derived from the general strategy of the Arab revolution.

Within the context of these national and clearly-defined goals the revolution in the Syrian Arab Land defines its fundamental tasks and their stages, and outlines its positions, plans and programmes of action in every sphere. Its efforts are focused at this stage on the achievement of the goal which is fundamental and vital for the Arab people: liberation from the yoke of colonialist and Zionist occupation.

(2) The achievements, however great, of any Arab land pursuing the path of liberation and progress will remain subject to deviation and regression. They can only take on their true dimensions within the context of the unified State for which the Arab masses are fighting.

The policy of withdrawal and isolation in regional bodies is alien to the objectives of the Arab revolution and disregards the sacrifices of the Arab people. Indeed, the artificial regional bodies in the Arab fatherland are destined to disappear by merging in the unified State. For the Arab people, Arab unity is not only a national solution but also ultimately an economic and social solution and the defeat of under-development, because it constitutes the inevitable basis for the creation of a socialist society capable of meeting the challenges of the present-day world and the dangers of neo-colonialism.

(3) Progress towards building the socialist system, although it is a need arising from the requirements of Arab society, is also a fundamental need for mobilizing the energies of the Arab proletarian masses who constitute the overwhelming majority of the Arab people in their fight against zionism and colonialism, and for bringing about a general radical change in the Arab situation so as to create a unified Arab socialist society in which class distinctions and all forms of exploitation of man by man will disappear.

(4) Freedom is the goal both of the community and of the individual. It is not an abstract concept but a practical exercise connected with social and economic emancipation. Its achievement will require departure from the traditional parliamentary process which our people have already tried and known—that is, from the methods by which the will of the majority is distorted for the benefit of certain limited classes of people.

However, to supersede the parliamentary system does not imply the adoption of a dictatorial, individualistic, bureaucratic or military type of government, but rather of a wider and deeper democracy: the people's democracy whose aims and institutions this Constitution is designed to classify and establish as an ideal solution guaranteeing to the masses the exercise of their rights and the fulfilment of their obligations for achieving the aims of the Revolution, and also as the proper setting for promoting a permanent government, renewing the impetus of the Revolution, consolidating the gains of the masses and providing an atmosphere suitable to the development of the masses' movement and their deeper involvement in awareness and organization.

(5) The Arab revolutionary movement is a fundamental part of the world liberation movement. Our people, who are struggling for their total emancipation, stand with all their resources on the side of the fighting peoples in the various parts of the world, on the side of the forces of freedom and progress in the common struggle against the various forms of colonialism and against all forms of exploitation, discrimination and *apartheid*.

This constitution, which will form the guide for the masses of our people in the next stage and for their revolutionary authority in the Syrian Arab Land is by the very nature of things a provisional constitution which will be improved during its application. Its various aspects will inevitably be illuminated and deepened as the Revolution progresses. Thus it will be possible to fill any gaps in the permanent Constitution to be drafted later by the People's Assembly.

In the light of these principles, the masses of our people in the Syrian Arab Land, under the leadership of their Party the Arab Socialist Baath, will continue their fight for freedom and construction in accordance with the guidelines of this Constitution, which establishes their objectives, consolidates their positions and urges them towards the future to which they aspire.

PART I

PRINCIPLES OF THE STATE SYSTEM AND OF SOCIETY

1. POLITICAL PRINCIPLES

Article 1. (1) The Syrian Arab Land is a sovereign socialist people's democratic State and forms part of the Arab fatherland.

(2) The people of the Syrian Arab Land form part of the Arab nation.

Article 2. (1) The form of government is republican.

(2) The people are sovereign and shall exercise power in accordance with this Constitution.

Article 3. Legislation shall be based mainly on Islamic jurisprudence.

Article 4. The official language shall be Arabic.

...

Article 7. The Arab Socialist Baath Party is the leading Party of the community and the State.

Article 8. People's organizations and co-operative associations shall be institutions comprising the active forces of the people for securing the interests of their members and participating in the development of the community.

Article 9. The People's Assemblies shall be democratically-elected institutions through which the citizens shall exercise their political rights.

Aritcle 10. The armed forces and other defence organizations shall be responsible for the security of the territory of the fatherland and for safeguarding the objectives of the Unionist and Socialist Revolution.

Article 11. All government authorities shall be at the service of the people for the achievement of their objectives, the raising of the living level; the free development of the life of the citizens and of popular organizations and institutions, and the defence of the fundamental rights guaranteed by this Constitution.

2. ECONOMIC PRINCIPLES

Article 12. (1) The State economy shall be a planned socialist economy from which all forms of exploitation shall be eliminated.

(2) The State economy shall work to secure economic interdependence in the Arab fatherland.

Article 13. Property shall take the following forms:

(1) The property of the people shall comprise all property and wealth belonging to the community, such as national wealth, State infrastructures and nationalized institutions. The State shall exploit and manage these for the benefit of all the people.

(2) Collective property such as common possessions of people's and professional organizations, productive units, co-operative associations and other social institutions.

(3) Individual property belonging to individuals: The law shall establish the upper limit of individual property and its social function, which may not conflict with the interests of the community.

This property may not be expropriated except in the public interest against fair compensation in accordance with law.

Article 14. The right of inheritance is guaranteed in accordance with law.

Article 15. The exploitation and use of private economic institutions shall conform to social needs, serve to increase the prosperity of the people, and be in keeping with the requirements of the community.

Article 16. Public funds are the property of the people. The citizens are bound to protect them.

3. PRINCIPLES OF EDUCATION AND CULTURE

Article 17. The aim of the educational and cultural system is to create a national socialist Arab generation endowed with a scientific outlook, linked to its history, proud of its heritage, imbued with a fighting spirit, and determined to achieve the objectives of its nation: unity, freedom and socialism; and to serve and advance humanity.

Article 18. The educational system shall guarantee the steady progress of the people and be in harmony with the permanent evolution of its social and economic needs.

Article 19. (1) The State shall encourage a national socialist culture aimed at fulfilling the ideals of the Arab nation and the causes of humanity. The State shall regard this culture as the foundation for the building of the community.

(2) The State shall encourage the arts and the leanings and technical aptitudes of all its citizens.

(3) The State shall encourage physical education and regard it as one of the elements contributing to the training of a generation sound in body, mind and character.

Article 20. (1) The sciences, research and all scientific achievements shall be regarded as fundamental to the progress of the Arab socialist society. The State shall be obliged to give them general support.

(2) The State shall protect the rights of authors and inventors, who shall serve the interests of society.

PART II

RIGHTS AND DUTIES OF CITIZENS, PEOPLE'S ORGANIZATIONS AND CO-OPERATIVE SOCIETIES

1. RIGHTS AND DUTIES OF CITIZENS

Article 21. Syrian Arab nationality and its conditions shall be determined by a law guaranteeing special facilities to Syrian Arab emigrants and their children and to the nationals of other lands of the Arab fatherland.

Article 22. Citizens shall exercise their rights and enjoy their freedoms in conformity with law.

Article 23. (1) Citizens shall have equal rights and duties before the law.

(2) The State shall guarantee the principle of equality of opportunity for its citizens.

Article 24. The State shall give women every opportunity to play an active part in public life and shall strive for the removal of all obstacles to women's development in order to enable them to contribute to the building of the Arab socialist community.

Article 25. The State shall guarantee the personal freedom of citizens and safeguard their dignity and security.

Article 26. (1) Every person shall be innocent until convicted by an irrevocable judicial verdict.

(2) No one may be accused or arrested except in accordance with law.

(3) The right to legal defence shall be guaranteed by law.

Article 27. No one may be charged or punished except in virtue of a provision of law.

Article 28. Homes shall be inviolable and may not be entered or searched except in the cases specified by law.

Article 29. The confidential quality of postal correspondence and telephone communication shall be guaranteed in accordance with the provisions of law.

Article 30. (1) No citizen may be banished from the national territory.

(2) Every citizen may move freely in the national territory except where he is prohibited from doing so by a judicial sentence or the operation of a law relating to public health or security.

Article 31. (1) Freedom of belief shall be guaranteed and the State shall respect all religions.

(2) The State shall guarantee the free exercise of all religious practices, provided that they do not infringe public order.

Article 32. Every citizen may contribute to the political, economic, social and cultural life of the people in accordance with law.

Article 33. (1) Every citizen shall have the right and the duty to work; the State shall provide all its citizens with work.

(2) Every citizen shall be entitled to a remuneration, guaranteed by the State, in accordance with the quality and output of his work.

(3) The State shall fix working hours, guarantee the social security of workers, and safeguard their right to rest and holidays and their various allowances and bonuses.

Article 34. Every citizen shall be entitled to education, which shall be compulsory at the primary level and free at all levels.

Article 35. Every citizen may express his opinions freely and publicly and contribute, within the limits of the law, to supervision and criticism.

Article 36. (1) Every citizen shall be bound to fulfil his sacred duty to defend the fatherland, its constitution and its unionist and socialist system.

(2) Military service shall be compulsory and shall be governed by law.

Article 37. The payment of public taxes and charges shall be a duty, governed by law.

Article 38. Provisions of law shall not be applicable until they enter into force and may not have any retroactive effect; in non-criminal cases this rule may be set aside.

Article 39. (1) The family is the fundamental unit of society; it is protected by the State.

(2) The State shall protect and encourage marriage, remove all material and social obstacles to it, and protect motherhood and childhood.

Article 40. (1) The State shall protect its citizens and the members of their families in cases of emergency, sickness, incapacity and old age; and shall also protect orphans.

(2) The State shall protect the health of the citizen and provide him with every means of treatment and cure.

Article 41. Political refugees shall not be extradited on account of their principles or their defence of freedom.

2. RIGHTS AND DUTIES OF POLITICAL ORGANIZATIONS AND CO-OPERATIVE SOCIETIES

Article 42. The people's sectors shall be entitled to form trade-union or social or professional organizations, or service or producer co-operative societies.

Article 43. The independence of these organizations shall be guaranteed by laws which shall define their scope and relations and the limits of their activities.

Article 44. Through their organs and their representatives in the various sectors, and in the other committees and councils specified by law, these organizations shall contribute effectively towards—

(1) The building of the Arab socialist community and the protection of its régime;

(2) The planning and guidance of the socialist economy;

(3) Improvement of working conditions, accident prevention, health, culture and all aspects of the life of members of these organizations;

(4) The achievement of scientific and technological progress and the development of means of production;

(5) The exercise of a popular control over the machinery of government.

PART III

STRUCTURE AND SYSTEM OF THE STATE ADMINISTRATION

THE INSTITUTIONS OF STATE AUTHORITY

Article 45. The institutions of State authority shall comprise:

(1) The People's Assembly at the national level;

(2) The Head of State and the Council of Ministers;

(3) The local people's committees;

(4) The judiciary and the Office of the Public Prosecutor.

1. THE PEOPLE'S ASSEMBLY

Article 46. The National People's Assembly shall be the highest institution of State authority.

Article 47. The People's Assembly shall be elected for four years from the date of publication of the decree containing the final results of the elections. The form of the Assembly, the number of its members and the method of their election shall be established by law.

...

Chapter 4

Article 69. The magistrates shall be independent and subject only to law.

Article 70. Sentences shall be published in the name of the Arab people in Syria.

...

PART IV

TRANSITIONAL AND FINAL PROVISIONS

Article 75. The preamble of this Constitution shall be deemed to form an integral part thereof.

Article 76. The said Constitution may be amended by a decision of the People's Assembly adopted by a majority of two-thirds of the votes.

...

THAILAND

NOTE [1]

I. LEGISLATION

1. Engineering Profession Act (No. 2), B.E. 2512 (1969)

This Act amends the Engineering Profession Act, B.E. 2505 (1962) by fixing the Board of Control of the Engineering Profession with powers and duties relating to the appraisal of qualifications in the engineering profession, the examining of knowledge in cases of promoting engineers from one category to another, and the checking of the qualifications of licensees in the various categories in order to maintain the level and standard of the engineering profession and to prevent persons of inferior knowledge or evaders from practising this controlled profession for purposes of seeking any benefit, remuneration or reward.

2. Prevention of Communist Activities Act (No. 2), B.E. 2512 (1969)

This Act repeals the Custody of Persons Accused of Violating the Law on the Prevention of Communist Activities Acts, B.E. 2505 (1962), (No. 2), B.E. 2506 (1963), and (No. 3), B.E. 2511 (1968), and the Announcement of the Revolutionary Party (No. 12), Amendment Act, B.E. 2506 (1963), and amends the Prevention of Communist Activities Act, B.E. 2495 (1952) by replacing section 9 of the said Act as follows:

"Section 9. Whoever gives support to an organization, or to a member of an organization, which is communistic, by any such means as follows:

"(1) Providing lodging, a dwelling or meeting place;

"(2) Inducing another person to become a member or partisan;

"(3) Inducing another person to lose faith in religion, to do any act damaging the custom of the Thai people, or to believe in a doctrine, the principle or practice of which is to make another person lose faith in religion or custom of the Thai people;

"(4) Giving financial support, food, weapon, tool or instrument, or any other assistance such as disclosing an official secret, or delivering a document relating to a policy, working plan or information which ought not to be disclosed;

"Shall be punished with a term of imprisonment of five to ten years."

The following provisions are inserted in the Prevention of Communist Activities Act, B.E. 2495 (1952):

"Section 12. No person shall train or instruct any person in or propagate the Communist doctrine or any doctrine or principle of practice which will lead another person to or convince him in the Communist doctrine, regardless of whether it be done orally, through writing or printing.

"The provision of paragraph one shall not apply to the officials or instructors of a ministry, sub-ministry or department whose duty it is to give instruction, to defend the country or to suppress communist activities; or to the officials of another ministry, sub-ministry or department who perform their duties in accordance with the regulations of the ministry, sub-ministry or department to which they belong, or are entrusted, as requested by the former ministry, sub-ministry or department, provided that the performance of these duties shall not be in such a way as to induce any person to appreciate or believe in Communist doctrine.

"Whoever violates this section shall be punished with a term of imprisonment not exceeding two years.

"Section 13. When the Minister is of opinion that it is of advantage for the prevention of communist activities, he has the power to give notification in the *Government Gazette*, specifying any foreign territory where the taking of residence or the operation of any activity whether temporary or not by a Thai national is forbidden.

"Where the notification is given by the Minister under paragraph one, no Thai national shall reside or operate any activity whether temporarily or not in such forbidden territory, unless written permission has been obtained from the Minister.

"A Thai national violating paragraph two shall be punished with a term of imprisonment not exceeding two years.

"Section 14. When it appears to the Minister that there exist communist activities or any assembly or preparation for such activities in any area, the Minister, with the approval of the Council of Ministers, has the power to give notification in the *Government Gazette* specifying such an area as being a communist-infested area.

[1] Note furnished by the Government of Thailand.

"The notification specifying any area as being a communist-infested area under paragraph one shall be enforceable for a duration determined necessary by the Minister, but not exceeding one year from the day of notification. Such duration may, from time to time as is necessary, be extended for a period not exceeding one year at a time. The Minister may, at any time when he is of opinion that it is no longer necessary, give notification in the *Government Gazette* revoking the said notification.

"Section 15. Upon the notification specifying any area as being communist-infested under section 14, the Minister, with the approval of the Council of Ministers, shall appoint a Director for the Prevention of Communist Activities having the powers and duties to direct the prevention and suppression of communist activities in the area specified under section 14. For this purpose, the Director for the Prevention of Communist Activities shall be a senior administrative or senior police official under the Criminal Procedure Code and shall have the following powers and duties:

"(1) To do any act under section 17;

"(2) To order the surrender by the persons of any or all kinds of weapon prescribed by the Director for the Prevention of Communist Activities;

"(3) To forbid the persons to take out of their homes any or all kinds of weapon prescribed by the Director for the Prevention of Communist Activities;

"(4) To impose a curfew during a prescribed duration;

"(5) To require the persons to report to an official.

"The powers under (3) and (4) shall be exercised in accordance with the manner prescribed in the ministerial regulation.

"Whoever violates or fails to comply with the notification or order of the Director for the Prevention of Communist Activities under this section or the ministerial regulation issued under this section shall be punished with a term of imprisonment not exceeding two years or a fine not exceeding ten thousand baht, or both.

"Section 16. In the case where more than one area have been specified by the Minister as being communist-infested and a Director for the Prevention of Communist Activities has been appointed for each of such areas, the Minister, with the approval of the Council of Ministers, shall have the power to appoint a General Director for the Prevention of Communist Activities having the duties to supervise and control in order to coordinate and facilitate the operations for the prevention and suppression of communist activities in the communist-infested areas. The General Director for the Prevention of Communist Activities shall also have such powers and duties as those of a Director for the Prevention of Communist Activities in each area.

"Section 17. The Minister has the power to give notification in the *Government Gazette* specifying the whole or any part of a communist-infested area to be an area where the entry or residence of persons is forbidden.

"Where a notification of the Minister is given under paragraph one:

"(1) No person shall enter such area unless written permission has been obtained from the Director for the Prevention of Communist Activities;

"(2) Persons already residing in such an area on the day of notification under paragraph one shall move out of the area within the period prescribed by the Director for the Prevention of Communist Activities, unless written permission to reside therein has been obtained from the Director for the Prevention of Communist Activities.

"At any time where appropriate, the Director for the Prevention of Communist Activities may revoke the permission to enter or reside in the area where the entry or residence of persons is forbidden.

"The issue or the revocation of permission to enter or reside in the area where entry or residence is forbidden, and the notification ordering persons residing therein to move out under this section shall be made in accordance with the manner and form prescribed in the ministerial regulation.

"The Minister shall make provision as to the dwelling place and compensation for persons having to move out under paragraph one, as the Minister may think fit.

"Whoever without written permission from the Director for the Prevention of Communist Activities, enters the area where entry is forbidden under paragraph one in violation of (1), or whoever already residing in such an area, on the day of notification of the Minister specifying the area where residence is forbidden, does not move out within the period prescribed by the Director for the Prevention of Communist Activities in noncompliance with (2), shall be punished with a term of imprisonment not exceeding two years or a fine not exceeding ten thousand baht, or both.

"Section 18. The inquiry official shall, in all cases involving the charge of committing an offence under this Act, whether coupled with any charge of committing another offence or not, have the power to keep the alleged offender in custody for the purpose of conducting the inquiry for a period not exceeding thirty days from the day the alleged offender arrives at the office of the administrative or police official. Where it is necessary to keep and alleged offender in custody for longer than the said duration, the inquiry official may, with the approval of the Director-General of the Police Department, keep the alleged offender in custody for another period not exceeding sixty days. If the offence has been committed in an area specified by the Minister as being communist-infested, the period of sixty days shall be extended to one hundred and eighty days.

"If it is necessary to keep an arrested person in custody for longer than the duration prescribed in the preceding paragraph in order to complete the inquiry, the alleged offender shall be handed to the Court. The public prosecutor or the inquiry official shall apply by motion to the Court for a warrant to detain such alleged offender. The Court has the power to remand the alleged offender in

custody for not exceeding ninety days each time, but not exceeding three times.

"Section 19. The provision of section 18 shall apply *mutatis mutandis* to cases where a military commander keeps an alleged offender in custody for an offence under this Act; the military commander shall be deemed to be an inquiry official and the military officer of the rank of the commander of a division or its equivalent in the military region where the alleged offender is kept in custody shall be deemed to be the Director-General of the Police Department. Where there is no military officer of the rank of the commander of a division or its equivalent in such military region, the highest military commander in such region shall be deemed to be the Director-General of the Police Department.

"Section 20. Within an area specified by the Minister as communist-infested, the Director for the Prevention of Communist Activities, the police official of the rank of sub-lieutenant upward, or the administrative official of the position of third-grade *palat amphoe* upward shall have the power to search or arrest any person reasonably suspected of having committed an offence under this Act without a warrant of search or of arrest, at any time or place.

"Section 21. The administrative or police official, the senior administrative or police official under the Criminal Procedure Code, who has been officially instructed to suppress communist activities, shall have his territorial jurisdiction throughout the Kingdom in his capacity of being an administrative or police official, a senior administrative or police official, as the case may be.

"Subject to section 15 and section 16, a person officially instructed to suppress communist activities shall be an administrative or police official under the Criminal Procedure Code and shall have his territorial jurisdiction throughout the Kingdom.

"Section 22. In case the death of a person reasonably suspected to have committed an offence under this Act occurs within an area specified by the Minister as being communist-infested, and is caused by the act of an official claiming to be carrying out his duty, or occurs while the person is in custody of an official claiming to be carrying out his duty, the inquiry official of the locality where the body is, and an officer of the Ministry of Public Health attached to the locality, a physician of the *tambon*, the public health officer of the province, or the physician attached to a health centre or to a hospital, or a military physician carrying out his duty in that locality, shall hold an inquest as soon as possible, and a note shall be made stating all particulars thereof.

"It shall be the duty of the inquiry official to notify the persons whose duty it is to conduct the inquest.

"After such an inquest has been held, the inquiry official shall submit the file of the inquest to the provincial governor. If death is caused by the act of an official claiming to be carrying out his duty, or if the person dies while in the custody of an official claiming to be carrying out his duty, the provincial governor shall submit the file of the inquest to the Director-General of the Public Prosecution Department, or the person acting on his behalf, who alone shall have the power to issue a prosecution or a non-prosecution order.

"In case the alleged offender is subject to the jurisdiction of the Military Court, the power to issue a prosecution or a non-prosecution order under paragraph three shall be vested in the Judge Advocate-General.

"This Act also provides that the inquiry official or the military commander who keeps in custody a person accused of committing an offence under the Prevention of Communist Activities Act, B.E. 2495 on the day of its enforcement, is to have the power to keep such a person in custody for another period not exceeding one hundred and eighty days. If a court proceeding is not taken after the expiration of the said period, such person is to be released."

3. Mahidol University Act, B.E. 2512 (1969)

The reason for the enforcement of this Act is to re-organize the University of Medical Sciences and to make provisions for its expansion into a complete university. Since the law on the University of Medical Sciences does not so provide, this Act therefore repeals the various Medical Sciences University Acts, establishes a new university called "Mahidol University" and transfers all the administration, property, liability, officials, etc. of the Medical Sciences University to this new University. Under this Act, the University is to be under the supervisory control of the University Council (section 15), which is composed of the Prime Minister as its Chairman, the Secretary-General of the National Education Council, Rector, Deputy-Rector, Deans, Directors of Institutes, Directors of Schools in the University, if any, and not less than four but not more than nine persons (appointed by Royal Command as its members) (section 13). The functions of the University Council are as follows:

(1) To set down rules and regulations of the university;

(2) To determine the curriculum for submission to and approval by the National Education Council;

(3) To find methods for the promotion of education and research in the University;

(4) To confer a degree, higher certificate, diploma and certificate;

(5) To propose the establishment, merger and dissolution of a faculty, graduate school, institute, school and department of studies;

(6) To consider the acceptance of a graduate school, college or higher educational institute as an affiliated institution of the University;

(7) To consider the appointment and removal of the rector, deputy-rector, dean, deputy-dean, director of the institute, director of the school, head of the department of studies, professor, deputy-professor and assistant-professor;

(8) To control the finance and property of the University, and

(9) To appoint the University Promotion Committee and to fix the duties thereof (section 15).

4. UNIVERSITY OF CHIANG MAI ACT, B.E. 2512 (1969)

This Act repeals the University of Chiang Mai Act, B.E. 2507 (1964), and re-establishes the University of Chiang Mai for which, for the purpose of re-organization and in order to extend the scope of education of the University, it provides the more appropriate provisions identical to those in the Mahidol University Act, B.E. 2512 (1969) (see *ante*).

5. NATIONAL EDUCATION COUNCIL ACT, B.E. 2512 (1969)

This Act repeals and replaces the National Education Council Act, B.E. 2502 (1959), in order to re-organize the National Education Council and to increase the efficiency of its office. Under this Act the National Education Council is composed of the Prime Minister as its chairman, the Deputy Prime Minister as its deputy chairman, the rectors (or other persons holding a similar position called by any other name) of the universities or educational institutes of the State, the Under-Secretary of State for Education, the Director-General of the Teacher Training Department, the Director-General of the Educational Techniques Department, the Director-General of the Secondary Education Department, the Director-General of the Elementary and Adult Education Department, the Director-General of the Vocational Education Department, the Director-General of the Local Administration Department, the Secretary-General of the National Economic Development Council, the Director of the Budget Bureau, and other persons appointed by the Council of Ministers, that is, to the total number not exceeding seventy, as its members; the Secretary-General of the National Education Council as its member and Secretary, and the ministers in charge of every ministry as its advisers (section 4). The National Education Council has the duties of considering the recommendation, advice or opinion of the Office of the National Education Council, or of performing any other act prescribed by law as its duty, and of submitting its opinion to the Council of Ministers or Prime Minister on the activity relating to education as may be asked by the Council of Ministers or Prime Minister to consider; and in performing its duties, the National Education Council may authorize the Executive Board to act on its behalf (section 9).

The Office of the National Education Council, with the Secretary-General of the National Education Council as its head (section 13), has the following duties:

(1) To study and to examine the educational situation, in order to formulate a national education plan and a national education development plan in accordance with the development of the country;

(2) To consider and co-ordinate the educational projects and working plans on every level of the ministry, sub-ministry, department, provincial administrative authority and municipality in accordance with the national education development plan as laid down;

(3) To follow up the execution of the educational projects and working plans, to collect educational reports and to examine the annual reports under the educational projects of the ministry, sub-ministry, department, provincial administrative authority and municipality in order to give advice on the improvement of the operation relating to education;

(4) To consider and to make recommendation relating to the annual educational budgets of the ministry, sub-ministry, department, provincial administrative authority and municipality, in conjunction with the Office of the National Economic Development Council;

(5) To do necessary work in conjunction with the ministry, sub-ministry, department, provincial administrative authority and municipality, in the consideration of finding funds for educational projects as well as in requesting aids and in raising of financial loans or other properties for employment under the educational development projects;

(6) To make and to promote educational research on every level in order to propose solutions for educational problems and to propose methods for educational advancement;

(7) To consider and propose the improvement of educational curriculum on the level lower than that of higher education, in order to attain the standard of and in accordance with the national education development plan;

(8) To consider the grant of approval of the curriculum of a university or institute of higher learning owned by the State as well as by an individual;

(9) To consider the proposal of the establishment, merger, improvement and dissolution of a university or institute of higher learning owned by the State;

(10) To consider the approval of the establishment, merger and dissolution of a faculty, department of studies or working division called by any other name in a university or institute of higher learning;

(11) To perform the duties relating to the working of the Civil Service Commission in a university;

(12) To perform the duties relating to the working of the Private College Board under the law on private college;

(13) To act as a co-ordination centre rendering services relating to education to other working units;

(14) To do other acts prescribed by law as being its duties (section 10).

The Executive Board of the National Education Council is composed of the Secretary-General of the National Education Council, the Secretary-General of the National Economic Development Council and eight other members appointed by the Council of Ministers, and has the duties as prescribed in this Act or other laws, and as entrusted by the National Education Council (section 14).

6. PRIVATE COLLEGE ACT, B.E. 2512 (1969)

The reason for the enforcement of this Act is to encourage private persons to establish higher

educational establishments in order to provide higher education within the scope of the law, and to enhance the efficiency of the education provided by such higher educational establishments so that it will accord with the National Education Plan.

A private college may be established where a licence is issued by the Minister of Education with the approval of the Private College Board (section 6), which is composed of two representatives from the Ministry of Education, two representative from the Office of the National Education Council and not more than three qualified persons appointed by the Council of Ministers (section 9). A private college established under this Act is a juristic person (section 14). It has the power to confer a certificate in the branch of studies taught therein upon the student who has completed the course. It may also confer a diploma, higher certificate or degree in the branch of studies taught therein where a certificate recognizing the standard of education has been obtained from the Office of the National Education Council with the approval of the Executive Board of the National Education Council (section 16). A private college is to be under the supervisory control of its Executive Board, whose functions include:

(1) The setting down of regulations relating to the administration of the private college;

(2) The allocation of funds and the setting down of regulations on the payment out of such funds;

(3) The consideration on the improvement of the curriculum of the course and of the educational equipments;

(4) The consideration on the establishment, merger and dissolution of a faculty or department of studies;

(5) The appointment and removal of the Director and an instructor;

(6) The reporting on the result of the instruction given in accordance with the curriculum of the private college to the Office of the National Education Council;

(7) The finding of methods for the promotion of education, research and training in the private college;

(8) The approving of the conferment of a certificate, diploma, higher certificate or degree;

(9) The approving of the annual balance sheet and of the change of balance of various funds;

(10) The conduct of other business which the private college ought to carry out (section 27).

The Executive Board of a private college is to be composed of not less than four but not more than eight persons appointed by the licensee with the approval of the Minister of Education, and a representative from the Ministry of Education. The Director of such a private college is to be Secretary of the said Board (section 25).

The members of the Private College Executive Board appointed by the licensee must not be persons of bad conduct or lacking in good morals; not less than half the total number of members must be of Thai nationality. A licensee, who is a natural person having the qualifications and not having the disabilities as above mentioned, may be appointed a member of the said Board (section 26).

The Office of the National Education Council, with the approval of the Executive Board of the National Education Council, may revoke the certificate recognizing the standard of education of a private college where it is of the opinion that the education in such a private college has fallen below the standard so recognized (section 60). The Minister of Education may, with the approval of the Private College Board, order a private college to come under the control of the Ministry of Education; he will then appoint a Private College Control Board of five members to function in place of the executive board of the private college (section 66).

7. Factory Act, B.E. 2512 (1969)

The purpose of this Act is to revise the law on factories. It repeals the two earlier Factory Acts, and makes provisions more appropriate for the greatly changed situation at present in order to accord with the present national industrial development. The Minister of Industry may, by means of notification in the *Government Gazette,* exempt:

(1) Any factory, the object of which is for industrial development;

(2) Any factory of an educational institution established for the purpose of training students;

(3) Any factory which operates only as a component necessary for some other purpose which is not a factory operation;

(4) Any factory which operates in the form of home industry and does not cause any danger or annoyance to anybody;

from complying partially or totally with the provisions of this Act (section 6).

A factory may be established only where a licence to establish the factory has been obtained from the Under-Secretary of State for Industry or the person entrusted by him to issue the licence (section 8). When the establishment of a factory is completed, the licensee to establish the factory is to apply to the Under-Secretary of State for Industry or the person entrusted by him to issue the licence, for a licence to operate the factory. If the factory and the machinery are found to be correctly in accordance with the licensed plans and specifications, a licence to operate the factory will be granted (section 12).

Where an industrial zone has been declared under the law on town planning, the Minister of Industry has the power to notify in the *Government Gazette* prescribing the area within such industrial zone where the establishment of certain categories or kinds of factories may or may not be permitted (section 34). The Under-Secretary of State for Industry or the person entrusted by him to issue the licence is to order any factory which causes grave danger to the public to discontinue its operation temporarily, either totally or partially, and to complete the modification of the factory within a prescribed period of time (section 35).

A licensee to operate a factory has the following duties:

(1) To keep the factory structurally secure and always in safe condition, as well as to look after and maintain the condition of the machinery so that it is suitably secure and safe for use;

(2) To provide the factory with sufficient emergency exits, in proportion to the number of workers;

(3) To provide a danger alarm;

(4) To provide sufficient fire-fighting equipments or other equipments for extinguishing fire in proportion to the condition, size and nature of the operation of the factory, as well as to arrange for other means of fire-prevention;

(5) To arrange the factory in accordance with hygiene and sanitation;

(6) To arrange for refuse disposal, drainage and ventilation;

(7) To provide sufficient working lights;

(8) To provide adequate and suitable working space, in proportion to the number of workers, machinery, raw materials and manufactured objects;

(9) To provide first-aid kit;

(10) To provide hygienic lavatories and urinals as well as wash-places;

(11) To provide clean drinking-water;

(12) To take precautions against accidents or danger which may derive from the machinery, equipment, instrument for moving, transferring, picking, lifting or conveying materials, electric wire, steam-pipe or energy conductor within the factory, by providing fences, barriers or other protections to ensure safety;

(13) To provide safe storage and employment of poisonous materials, chemicals, inflammable materials, explosives or other materials which may be dangerous or may cause dust, heat, light or sound which is dangerous for the performance of the work employing such materials, that is, under the laws thereon, as well as to provide preventive measures and protection against danger to the workers performing such duties;

(14) To operate the factory in such a way as not to cause nuisance under the law on public health;

(15) To make reports on the volume of production and of sale of the factory;

(16) To do other acts prescribed by the Minister (section 39).

Where a licensee to operate a factory is found to contravene or not to comply with the provisions of this Act or a Ministerial Regulation, notification or condition issued or prescribed under this Act, or not to comply with the order of the official issued under this Act, the Under-Secretary of State for Industry or the person entrusted by him to issue the licence has the power to suspend the licence to operate a factory for a period of time he deems appropriate. In case of grave contravention or non-compliance with the said provisions, ministerial regulation, notification or condition, the licence to operate a factory may be revoked (section 40).

8. Organization of the Courts of Justice Amendment Act (No. 5), B.E. 2512 (1969)

This Act establishes two or more, as the Minister of Justice may deem appropriate, of each of the positions of the Vice-President of the Supreme Court, Deputy-Chief Justice of the Appeal Court, Deputy-Chief Justice of the Civil Court and Deputy-Chief Justice of the Criminal Court, who are to assist the President of the Supreme Court, the Chief Justice of the Appeal Court, the Chief Justice of the Civil Court, and the Chief Justice of the Criminal Court, as the case may be, in the performance of his duties, in order to speed up the hearing and adjudication of cases, and the administrative works, of the said Courts, which have gradually and greatly been increasing in volume.

9. Judicial Service Act (No. 7), B.E. 2512 (1969)

This Act prescribes the rates of salaries of the Vice-Presidents of the Supreme Court, the Deputy-Chief Justices of the Appeal Court, the Civil Court and the Criminal Court, and those of the Chief Justices of the Appeal Court, the Civil Court and the Criminal Court. It also re-organizes the Judicial Service Commission which is now composed of the President of the Supreme Court as its Chairman, the Under-Secretary of State for Justice, the Chief Justice of the Appeal Court, the most senior Vice-President of the Supreme Court as its members *ex officio*, and eight other qualified members: four elected from among the senior justices of the Supreme Court, the Deputy-Chief Justice of the Appeal Court, the Chief Justices of the Civil Court and the Criminal Court, and the less senior Vice-Presidents of the Supreme Court; and the other four elected from the list of retired justices.

10. Royal Decree on the taking of population and dwelling census, B.E. 2512 (1969)

This Royal Decree was issued under section 15 of the Statistics Act, B.E. 2508 (1965) to authorize the National Statistics Office to take a census in respect of the number of population and dwellings, personal and social characteristics, and the economy of the people, throughout the country, in order to facilitate the economic and social development planning of the State and of private persons.

11. Notification of the Government of 30 May B.E. 2512 (1969) enforcement of the Charter of the Southeast Asian Ministers of Education Organization [2]

This notification announces the coming into force as from 6 March B.E. 2512 (1969) of the Charter of the Southeast Asian Ministers of Education Organization upon its acceptance by five of the original Member States, that is, the Republic of Indonesia, the Republic of Singapore, the Federation of Malaysia, the Kingdom of Laos and the Kingdom of Thailand.

[2] For extracts from the Charter, see *Yearbook on Human Rights for 1968*, pp. 468-469.

12. ROYAL PROCLAMATION ON THE NATIONAL EDUCATION PLAN (NO. 2), OF 20 JANUARY B.E. 2512 (1969)

Article 23 of the Royal Proclamation on the National Education Plan of 20 October B.E. 2503 (1960) is repealed and replaced, in order to allow groups of persons or private persons to participate in the higher education of youth, by the following provision of this Royal Proclamation of 20 January B.E. 2512 (1960):

"As to the provision of educational establishments, the State employs the principle of division of labour, namely, the State provides some and encourages groups of persons or private persons to provide others."

II. JUDICIAL DECISIONS

1. JUDGEMENT OF THE SUPREME (DIKA) COURT No. 1/2512

The accused was the new owner of a house which had originally been rented to the plaintiff. The dispute arose between the accused and the plaintiff as to whether or not the plaintiff has the right to stay in possession of the house under the original lease which the plaintiff had entered into with the original owner of the house, who later transferred the ownership of the said house to the accused. The accused, having served the notice to vacate the said house on the plaintiff, then proceeded to erect a barricade preventing the plaintiff from entering the said house to enjoy the possession thereof. The plaintiff therefore instituted a criminal proceeding against the accused for an offence under the Penal Code. The Court of First Instance decided in favour of the accused and dismissed the charge. The plaintiff appealed to the Appeal Court which reversed the decision of the Court of First Instance holding that the accused was guilty under section 362 of the Penal Code which provides:

"Whoever enters into any immovable property belonging to any other person in order to take possession of such property in whole or in part, or enters upon such property to do anything whatever to disturb the peaceful possession of such other person, shall be punished with a term of imprisonment not exceeding one year or fine not exceeding two thousand baht, or both."

The accused then appealed to the Supreme (Dika) Court. The Supreme Court upheld the decision of the Appeal Court and dismissed the appeal of the accused holding that whether the right of possession of the plaintiff existed or not was a civil dispute, and that the accused, although the owner of the said house, had no right to take the law into his own hands in so disturbing the peaceful possession thereof of the plaintiff. In so doing, the accused was guilty of the offence under section 362 of the Penal Code.

2. JUDGEMENT OF THE SUPREME (DIKA) COURT No. 99/2512

The Court of First Instance found the accused, a police sergeant and a police constable, guilty of murdering an alleged offender, who was not the head of his household, within the house he resided, while trying to arrest him under a warrant of arrest, but without a warrant of search. The Appeal Court reversed the decision of the Court of First Instance holding that the accused were not guilty, on account of self-defence and that they entered the house of the deceased under the instruction of their superior, a police sub-lieutenant who accompanied them to the house of the deceased with the warrant of arrest. The Supreme Court reversed the decision of the Appeal Court holding that the police sub-lieutenant was not a senior police officer having the power to issue a warrant of search, or to search without a warrant of search under the Criminal Procedure Code.

The accused, although possessing the warrant of arrest, were not acting lawfully under sections 81 and 92 of the Criminal Procedure Code, which provide thus:

"Section 81. An arrest, with or without a warrant, may not be made:

"(1) In a private place, except when it is made in accordance with the provisions of this Code governing search in a private place;

"..."

"Section 92. No search may be made in a private place without a warrant of search, unless it is made by an administrative or police official and in the following cases:

"(1) Where there is a cry for help emanating from the private place;

"(2) Where a flagrant offence is evidently being committed in the private place;

"(3) Where a person having committed a flagrant offence has, whilst being pursued, taken refuge; or there are serious grounds for suspecting that such person is hiding in the private place;

"(4) Where there are reasonable grounds for suspecting that an article obtained through an offence is concealed or to be found inside, and there are reasonable grounds to believe that by reason of the delay in obtaining a warrant of search the article is likely to be removed;

"(5) Where the person to be arrested is the head of the household of such private place and there is a warrant for his arrest, or the arrest is to be made under section 78.

"When the search is made by a senior administrative or police official acting in person, no warrant of search is necessary but it must be a case where a warrant of search may be issued or where a search may otherwise be made under this Code."

Therefore, the accused had acted beyond their power and were guilty of murder.

3. JUDGEMENT OF THE SUPREME (DIKA) COURT No. 423/2512

The complainant had been detained for the offence of hooliganism under the Announcement of the Revolutionary Party No. 21 for a period of 30 days, and was then further detained for the offence of hooliganism under the Announcement of the Revolutionary Party No. 43 for a period of more than three months. The Supreme Court

upheld the decision of the Court of Appeal and ruled in favour of the complainant that the detention of the complainant beyond the limit of three months was illegal, for article 2 of the Announcement of the Revolutionary Party No. 43, in prescribing that the committee for the handling of the detention, rehabilitation, vocational training and release of the detainees was to consider and issue an order every three months which persons were to be further detained and which were to be released etc., indicated the undesirability of detaining such persons for an indefinite period, and in this case the said committee had not considered or ordered if the complainant was to be further detained or released at the expiration of the three months.

TOGO

DECREE NO. 69-53 OF 10 MARCH 1969 ON THE ESTABLISHMENT, ORGANIZATION AND OPERATION OF SOCIAL CENTRES[1]

Article 1. Public institutions, to be called "social centres", shall be set up in Togo. These centres, placed under the supervision of the Minister for Social Affairs, shall be the responsibility of the Director of Social Affairs.

Article 2. Each social centre shall be the operational base for multi-purpose social work intended for the benefit of the population of a specific geographical area. The centres shall aim, through community action, to raise the standard of living and to increase the well-being of individuals, families and the community, without discrimination of any kind.

Article 3. The social centres shall have a self-management system and shall require the active participation of those who use them.

The management bodies and their functions shall be laid down by the Director of Social Affairs in a set of regulations to be issued in the form of an order of the supervising Minister.

The activities of each social centre shall be defined in the regulations, which shall take into account the specific purposes of each one, having regard to the needs of the population and the area concerned.

...

[1] *Journal officiel de la République togolaise*, No. 412, of 16 April 1969.

TRINIDAD AND TOBAGO

NOTE [1]

1. Legislation

(*a*) The Aliens (Landholding) Ordinance, ch. 21 No. 3 was amended by the Aliens (Landholding) (Amendment) Act, No. 11 of 1969.

The effect of this amendment is *inter alia* to change the definition of "alien" to include any person who is not a citizen of Trinidad and Tobago.

(*b*) The Immigration Act No. 41 of 1969—An Act respecting the admission of persons into Trinidad and Tobago.

This Act (which has not yet been proclaimed) makes provision (among other things) for:—

(i) The classification of certain persons as residents;

(ii) Permitted classes of entrants;

(iii) Loss of resident status in certain well-defined cases;

(iv) Prohibited classes of entrants.

2. Commission of Enquiry

(*a*) A one-man Commission of Enquiry (comprising Mr. Justice Clement Phillips, Acting Chief Justice of Trinidad and Tobago) was appointed to investigate allegations of discriminatory practices by the management of the Trinidad Country Club, a proprietary club.

After careful consideration of all the material facts, the Commission arrived at the inescapable conclusion that there was no evidence of any discriminatory practice by the management of the club.

[1] Note furnished by the Government of Trinidad and Tobago.

TUNISIA

NOTE [1]

The Government of the Republic of Tunisia has indicated that it would like the following acts to be published in the *Yearbook on Human Rights for 1969*:

Act of 9 May 1969 authorizing the accession of Tunisia to the Convention on the Status of Stateless Persons.

Act of 9 May 1969 ratifying International Labour Conventions Nos. 8, 22, 23, 55, 58, 73 and 91 relating to labour at sea.

Act of 12 June 1969 regulating the import, trade, possession and carrying of arms.

Act of 26 July 1969 ratifying International Labour Conventions Nos. 59, 77, 117, 119, 120 and 127.

Act of 26 July 1969 ratifying the Convention against Discrimination in Education.

[1] Note furnished by the Government of Tunisia.

DECREE NO. 69-10 OF 8 JANUARY 1969 CONCERNING THE STATUS OF ESSENTIAL SUPPORT OF ONE'S FAMILY WITH REGARD TO MILITARY SERVICE [2]

Article 1. Whether a person has the status of essential support of his family within the meaning of article 26 of Act No. 67-19 of 31 May 1967 shall be determined by taking into account his family situation and the available resources of the family.

Article 2. The status of essential support of one's family may be granted, subject to the family's resources, to a citizen who has genuinely dependent upon him one or more of the following persons:

(1) One or more legitimate children;

(2) A spouse who has one or more children or whose marriage was consummated over two years before his age group was called up;

(3) Parents over the age of seventy or more than 70 per cent incapacitated;

(4) Young brothers or sisters (under the age of ten).

Article 3. In assessing the available resources of the family, all means of subsistence in cash or in kind which would be available to the persons genuinely dependent on the person concerned if he were called up for military service, including his personal resources, shall be taken into account.

The status of essential support of one's family shall not be granted if the Central Commission for exemptions, deferments and classification has information establishing that the means of support of the dependants of the person concerned will continue to be adequate, despite his being in the armed forces.

Article 4. A citizen who for any reason was not called up with his age group shall not be entitled to apply for exemption from military service on the grounds of being the essential support of his family unless he was entitled to that status when his age group was called up or if his situation involves serious social difficulties.

The Secretary of State for National Defence shall decide in the case of each such person whether his situation involves serious social difficulties and shall, if necessary, grant him exemption.

Article 5. The Central Commission for exemptions, deferments and classification shall consider the applications and classify them into different categories according to the number of dependants and the family's resources, established in the manner described in articles 2 and 3 of this Decree.

Article 6. The Secretary of State for National Defence shall select, from among the young men having the status of essential support of their families, those who shall be exempted from military service, taking into account the categories in which they have been classified by the Commission for exemptions, deferments and classification.

Article 7. Young men who are exempted under the provisions of article 6 may waive their exemption. They shall then be conscripted with the next class segment to be called up after the date of their waiver.

Article 8. Certain Citizens may be deemed to be the temporary support of their families and may claim deferment on that ground.

[2] *Journal officiel de la République tunisienne*, No. 2, of 14 January 1969.

Article 9. The status of temporary support of one's family may be granted, subject to the condition concerning resources mentioned in article 3 of this Decree, for such time as one or more of the following persons are genuinely dependent on such citizens:

(*a*) One or several brothers or sisters aged ten years or over:

In this case the deferment shall be valid until one of the brothers or sisters of the person concerned can meet the needs of the family in his stead;

(*b*) A widowed or divorced mother:

In this case the deferment shall be valid until the mother's remarriage.

Article 10. The deferment of military service granted to one who is the temporary support of his family shall be extended until he attains the age of thirty if the prerequisites for recognition of his status as support of his family are fulfilled continuously until that time.

Article 11. If, however, a citizen who has been granted exemption from or deferment of military service as being the temporary support of his family should for any reason lose that status, he shall be conscripted with the next class segment called up after the change of his family situation.

...

DECREE NO. 69-11 OF 8 JANUARY 1969, CONCERNING THE SITUATION OF YOUNG PERSONS RESIDENT ABROAD WITH REGARD TO MILITARY SERVICE [3]

Article 1. Tunisians who are permanently resident abroad when the class or class segment to which they belong is called up shall be exempted from active military service.

Article 2. Exemption from military service on the ground of residence abroad may not be claimed by Tunisian citizens who have been declared fit for service and have left Tunisia after the closure of the review board dealing with the class to which they belong without having obtained the consent of the Secretary of State for National Defence to their taking up residence abroad.

Article 3. In order to prove that he is genuinely resident abroad, the applicant shall submit:

(1) A contract of employment in the prescribed form of a recognized professional card;

(2) In the case of wage-earners, a pay-slip dated not more than three months before the date of application;

(3) A certificate of registration at a consulate.

Article 4. Young persons to whom article 1 applies may spend three months each year in Tunisia without forfeiting their exemption. Permission to stay for longer periods may be granted to the persons concerned by a decision of the Secretary of State for National Defence.

Article 5. Young persons under the age of thirty who cease to reside permanently abroad shall be called upon to fulfil their military obligations in accordance with the law.

Article 6. Young persons to whom the exemption provided for in article 1 applies may waive their exemption. In that event, they shall be included in the next class segment to be called up after the date of their waiver.

[3] *Ibid.*

DECREE OF THE SECRETARY OF STATE FOR NATIONAL DEFENCE OF 8 JANUARY 1969, LAYING DOWN CONDITIONS FOR GRANTING DEFERMENT OF MILITARY SERVICE [4]

Article 1. Deferment of military service may be granted to students, pupils and apprentices duly enrolled at public institutions of higher, secondary, intermediate or vocational education.

Enrolment at private educational establishments shall not be taken into consideration unless such establishments are approved by the Secretary of State for national education.

Article 2. Deferment of military service on account of study or apprenticeship shall be granted, and may be renewed, for a period of one year. It may be renewed, on application, throughout the period of study or apprenticeship up to the maximum age of twenty-nine. The application for renewal will not be considered unless it is accompanied by a certificate of regular attendance for the current school or university year.

Provisional deferments may be withdrawn in the event of proven irregular attendance.

Article 3. A deferment of military service for one year only may be granted to a citizen who has a brother who was conscripted and is serving in the armed forces. In such cases, a document certifying that the brother in the armed forces is in fact serving in his unit shall be submitted to the Commission by the applicant.

...

[4] *Ibid.*

ACT NO. 69-3 OF JANUARY 1969, CONCERNING THE ORGANIZATION OF HIGHER EDUCATION [5]

TITLE I

THE UNIVERSITY

Article 1. The University shall include all higher education and scientific research institutions under the authority of the Secretary of State for National Education. It shall participate in the preparation and co-ordination of curricula and of teaching and research methods for all levels of education within the framework of the State's general education policy and under the authority of the Secretary of State for National Education.

Article 2. The University shall carry out its responsibilities through a University Council.

TITLE II

HIGHER EDUCATION

Chapter I. General organization and purposes

Article 3. Higher education shall be provided in faculties, institutes and schools, each of which may establish teaching or scientific research sections or centres, subject to the approval of the Secretary of State for National Education. The organization and content of the instruction and the examination of students shall be governed by specific regulations.

Article 4. The faculties, institutes and schools of higher education shall:

(*a*) Organize and provide a type of higher education which is in keeping with the current state of knowledge and national conditions and which meets the country's needs;

(*b*) Organize, promote and co-ordinate scientific research;

(*c*) Protect and promote the nation's culture, particularly by fostering the nation-wide teaching of Arabic, and the advancement of science, technology, the fine arts and literature;

(*d*) Establish and organize inter-university and cultural relations with other countries in matters of education and research, by such means as visits by foreign teachers and preparing students for foreign diplomas, and, in general, organize cultural relations and the exchange of information on scientific research with foreign, national or international university, scientific and cultural institutions.

. . .

Chapter III. Curricula, methods and examinations in higher education

Article 14. All candidates for higher education shall take entry tests for the purpose of assessing their aptitude for courses in a given discipline.

The form of and arrangements for entry tests shall be laid down in an order of the Secretary of State for National Education.

. . .

Article 17. The Arabic language, Moslem civilization and the history of Islamic thought in Tunisia shall be taught at all levels in all higher education institutions.

Chapter IV. Discipline in higher education institutions

Article 18. The Rector shall be responsible for good order and discipline in his institution. He may take any measures necessary to ensure the proper conduct of the instruction process.

Chapter V. Free higher education

Article 23. Higher education shall be free. Students may, however, be required to pay insurance or reinsurance, library and laboratory fees.

The amount of such fees shall be laid down in an order of the Secretary of State for National Education on the basis of proposals of the Councils of the various higher education institutions.

. . .

[5] *Journal officiel de la République tunisienne*, No. 4, of 31 January 1969.

ACT NO. 69-4 OF 24 JANUARY 1969 REGULATING PUBLIC MEETINGS, PROCESSIONS, PARADES, DEMONSTRATIONS AND ASSEMBLIES [6]

Article 1. Public meetings shall be free. They may be held without prior permission subject to the conditions laid down in this Act.

Article 2. Advance notice shall be given of all public meetings, with a statement of the date and time at which they are to be held. However, election meetings shall be governed by special election regulations.

Article 3. The notice shall indicate the purpose of and reason for the meeting.

Article 4. Meetings shall not be allowed to continue after midnight. However, in districts in which public premises close at a later hour, they may continue until that hour.

[6] *Ibid.*

Article 6. The Security authorities shall assign an official to attend the public meeting. He shall be authorized to declare the meeting dissolved:

(1) If asked to do so by the committee responsible for the meeting;

(2) If fighting or acts of violence occur.

The persons assembled shall be required to disperse when first ordered to do so.

Article 7. The responsible authorities may prohibit by decree any meeting likely to disturb public safety or law and order. Security officials shall notify the organizers of the meeting of the decree.

In such cases the organizers may appeal to the Secretary of State for the Interior, whose decision shall be final.

Article 8. Meetings shall not be held on public thoroughfares.

Chapter II. Processions, parades and demonstrations on public thoroughfares

Article 9. Preliminary notice shall be given of any procession, parade and, in general, any demonstration of any kind on public thoroughfares.

Article 10. Notice shall be given in the manner laid down in article 2 of this Act and shall state the assembly points and the route, and the banners or flags which are to be carried.

Article 11. Armed processions, parades and demonstrations shall be prohibited and shall be deemed to be assemblies on public thoroughfares. The participants shall be treated in accordance with the provisions of those articles of this Act which deal with participants in assemblies.

Article 12. The responsible authorities may prohibit by decree any demonstration which is likely to disturb public safety or law and order.

Security officials shall notify the organizers of the demonstration of the prohibition.

Chapter III. Assemblies on public thoroughfares

Article 13. The following shall be prohibited on public thoroughfares and squares:

(1) All armed assemblies;

(2) All unarmed assemblies likely to disturb the peace.

...

Chapter IV. Use of weapons

Article 20. With the exception of the cases of self-defence security officials may resort to the use of weapons provided for in articles 39, 40 and 42 of the Criminal Code, only in the following exceptional circumstances:

(1) When they cannot otherwise defend places they are occupying, buildings they are protecting, or posts or persons they have been instructed to guard, or if resistance cannot be overcome by any means other than use of weapons;

(2) When they vainly order a suspect to stop by repeatedly shouting the order "Stop! Police", and he does not obey and attempts to escape, and when there is no means other than the use of weapons to compel him to stop;

(3) When they make a signal ordering a vehicle, boat or any other means of transport to stop and the driver does not comply, and when there is no means other than the use of arms to compel him to stop.

...

ACT NO. 69-19 OF 27 MARCH 1969, CONCERNING THE PROFESSION OF PUBLIC LETTER-WRITER [7]

Article 1. A person shall be deemed to be a public letter-writer if he habitually and for remuneration offers his writing skills and linguistic knowledge to third parties with a view to expressing their thoughts in writing.

Article 2. No one shall exercise the profession of public letter-writer unless he is of Tunisian nationality and is in possession of a permit issued by the Governor within whose jurisdiction the place where he exercises his profession is.

The said permit shall be valid only in the commune or district *(délégation)* mentioned therein.

Article 3. The permit shall be issued only after enquiries have been made and the linguistic knowledge of the applicant tested, if necessary, by examination. The procedures for such examinations shall be laid down in an order of the Secretary of State for the Interior.

Article 4. All applications for the permit referred to in article 2 above shall be hand-written and be accompanied by an extract from the court record of the applicant and a certificate stating the level of education attained, which shall in no case be lower than the second year of secondary education.

Article 5. All letters, petitions, statements, complaints and other documents prepared by a public letter-writer shall indicate clearly his name and address and the date of his permit.

Article 6. Every public letter-writer shall keep a record book, to be numbered and initialled by the competent authority, in which he shall record:

(*a*) The identity of the petitioner, his district *(gouvernorat)* of origin and his current place of residence;

(*b*) The date and purpose of the petition;

(*c*) The addressee.

When complete, these record books shall be sent to the office of the Governor of the district in which

[7] *Journal officiel de la République tunisienne*, No. 12, of 28 March 1969.

the letter-writer exercises his profession or, in Tunis, to the Department of National Security.

Article 7. The persons referred to in article 1 shall comply with the provisions of this Act within three months from the date of its publication in the *Journal officiel de la République tunisienne.*

Article 8. The penalties for violations of the provisions of this Act shall be those laid down in article 315 of the Criminal Code. The permit may also be withdrawn by the issuing authority.

...

ACT NO. 69-21 OF 27 MARCH 1969, AMENDING ARTICLE 227 *bis* OF THE CRIMINAL CODE [8]

Sole article

Article 227 bis of the Criminal Code is revoked and replaced by the following provisions:

Article 227 bis (new). Any person who, without using violence, compels a female minor under the age of fifteen years to submit to sexual intercourse shall be sentenced to five years' hard labour.

If the victim is over the age of fifteen years and under the age of twenty years, the penalty shall be five years' imprisonment.

Attempts to commit these acts shall also be punishable.

The marriage of the guilty person to the victim in either of the two cases provided for in this article shall cause the prosecution to be discontinued or the execution of the sentence to be stayed.

If, however, within two years from the date of the consummation of the marriage, the marriage is ended by a divorce granted on the application of the husband in accordance with Art. 30 (3) of the Personal Status Code,[9] the prosecution or the execution of the sentence shall be resumed.

[8] *Ibid.*

[9] For extracts from the Personal Status Code, see *Yearbook on Human Rights for 1956*, pp. 219-220.

ELECTORAL CODE

Promulgated by Act No. 69-25 of 8 April 1969 [10]

TITLE I

GENERAL PROVISIONS

Chapter I

THE ELECTORATE

Article 1. Suffrage shall be universal, free, direct and secret.

Article 2. All Tunisian men and women who have attained the age of twenty, have been Tunisian nationals for at least five years, are in possession of their civil and political rights and are not under any legal disability, shall be entitled to vote.

Article 3. No person may be registered on the electoral roll if:

1. He has been convicted of a crime;

2. He has been convicted of an offence and sentenced to an unsuspended term of imprisonment exceeding three months or to a suspended term exceeding six months;

3. He has been declared bankrupt and has not been discharged;

4. He is of unsound mind and has been committed to an institution;

5. He has been placed under legal guardianship.

Article 4. Conviction for negligence, except where accompanied by the offence of leaving the scene, shall not preclude enrolment on the register of electors.

Article 5. Members of the armed forces and the National Guard shall not exercise the franchise during the period of their service or their duties.

Chapter II

ELECTORAL ROLLS

Section I. Establishment of electoral rolls

Article 6. An electoral roll shall be established in each commune and sector.

Article 7. The electoral roll shall include:

1. All voters who are actually domiciled in the commune or sector;

[10] *Journal officiel de la République tunisienne*, No. 14 of 15 April 1969.

2. All voters who, for two years prior to the year of registration, have paid a duty or tax on property located in the territory of the commune or sector or on a profession or occupation practised there and who, if they do not reside in the commune or sector, have stated their desire to exercise their franchise there.

Citizens who have not complied with the conditions required by law at the time the electoral rolls are drawn up but who will comply with them before the roolls are closed shall also be registered.

. . .

Article 10. No person may be registered on more than one electoral roll.

Any voter who is registered on more than one electoral roll shall indicate, within the period established in article 9 of this Act, the roll on which he wishes to be registered. If he fails to do so, his name shall remain on the roll for the electoral district in which he was last registered and removed from all other rolls.

. . .

Section II. Disputes concerning registration on the electoral rolls

Article 13. Any dispute concerning the electoral rolls established by the administrative authorities shall be submitted to a Review Board for its decision.

. . .

Article 19. Decisions of the Review Board may be appealed to the court of first instance having jurisdiction in the District where the Review Board which is being challenged holds its meetings.

Decisions of this court shall be final and may not be appealed.

The right of appeal shall be open to the parties concerned as well as to the administrative authorities.

. . .

Chapter III

PROPAGANDA

Article 26. Public electoral campaign meetings shall be free. Notice thereof must be given to the Governor or the *délégué* at least twenty-four hours in advance.

Article 27. Every meeting shall have a committee [bureau] consisting of not less than three persons. The bureau shall be responsible for maintaining order, preventing any violation of the law, preserving the character of the meeting as specified in the notice and prohibiting any speech that is contrary to public policy [*ordre public et bonnes mœurs*] or that contains an incitement to action which is a statutory crime or offence.

Article 28. A person representing the authorities may be present at the meeting. He may dissolve the meeting at the request of the bureau or if any acts of violence occur.

Article 29. Propaganda shall be subject to the provisions of the decree of 9 February 1956 relating to printing, the sale of books and the press.

Article 30. The legal formality of registering printed matter shall be dispensed with in respect of ballot papers.

Article 31. No ballot papers, handbills or other printed propaganda shall be distributed on the day of the election.

Article 32. No public official may distribute ballot papers, policy statements or candidates' handbills.

Article 33. During the period of the electoral campaign, special places shall be set aside by the administration for the display of election posters. At each of these places, an equal amount of space shall be given to each candidate or to each list of candidates.

Notices relating to the election may not be posted at any other place or in the space assigned to other candidates.

. . .

Article 36. Election posters shall be printed on paper of the same colour as the ballots.

They shall be exempt from the stamp tax.

Article 37. Candidates shall be permitted to use Radiodiffusion Télévision Tunisienne for electoral campaign purposes.

The number, date and hours of broadcasts to be assigned to them shall be drawn by lot by the Secretary of State for Cultural Affairs and Information after the representatives of the candidates or lists of candidates have been duly summoned to appear.

Applications for broadcast time must be received in the Office of the Secretary of State for Cultural Affairs and Information not later than thirty days before the day of the election of the President of the republic and ten days before the day of other elections.

Chapter IV

VOTING

Section I. Boards of Elections

. . .

Article 41. The Chairman of the Board of Elections shall be responsible for maintaining order in the polling station. No armed guards may be stationed in the polling station without his permission.

The Chairman shall be authorized to have anyone who interferes with the voting removed from the room.

Voters shall concern themselves only with the voting to which they have been summoned. They shall not engage in any arguments or discussions.

The Chairman may, if necessary, suspend the voting operations to restore order.

No voter may enter a polling station carrying a weapon.

. . .

TITLE II

SPECIAL PROVISIONS FOR THE ELECTION OF THE PRESIDENT OF THE REPUBLIC

Chapter I

ELIGIBILITY

Article 63. Any Moslem male citizen who is a qualified voter may be elected President of the

Republic subject to the conditions and reservations hereinafter specified.

Article 64. No person may be elected President of the Republic unless:

1. His father and grandfather were Tunisian nationals without interruption;
2. He has been a Tunisian national since birth;
3. He has attained the age of forty.

Article 65. No person shall be re-elected President of the Republic more than three times in succession.

TITLE III

SPECIAL PROVISIONS FOR THE ELECTION OF DEPUTIES

Chapter I

COMPOSITION OF THE NATIONAL ASSEMBLY AND TERM OF OFFICE OF ITS MEMBERS

...

Chapter II

ELIGIBILITY AND INELIGIBILITY

Article 76. Any male citizen who is a qualified voter may be elected to the National Assembly subject to the conditions and reservations hereinafter specified.

Article 77. No person may be elected to the National Assembly who is not of a Tunisian father or has not attained the age of thirty.

Article 78. Persons who have lawfully been deprived of their rights of citizenship by a court decision may not be elected.

Article 79. The following persons may not be elected:

1. Governors;
2. Judges;
3. Members of the diplomatic corps;
4. *Premiers délégués*, *délégués* and sector heads;
5. Law enforcement officers.

Chapter III

INCOMPATIBILITY OF OFFICE

Article 80. The holding of a non-elective public office remunerated out of funds of the State, of public institutions or of public agencies shall be incompatible with the function of deputy.

Consequently, any person to whom the foregoing paragraph applies who is elected to the National Assembly shall be replaced in his post and placed in suspension within one month of the review of his credentials.

Any deputy appointed or promoted to a public office remunerated out of funds of the State, of public institutions or of public agencies shall cease to be a member of the National Assembly by virtue of the fact that he accepts such office.

The foregoing provisions shall not apply to members of the Council of the Republic.

Article 81. The holding of an office conferred by a foreign State or by an international organization and remunerated out of the funds of that State or organization shall also be incompatible with the function of deputy.

Article 82. The position of chairman or administrative head of a national enterprise or public institution shall be incompatible with the function of deputy.

Article 83. The position of head of an enterprise, chairman of a board of directors, managing director, administrative head or manager shall be incompatible with the function of deputy if held in:

1. Public or national enterprises, companies or institutions which enjoy benefits granted by the State or by a public agency in the form of subsidies, participation or the equivalent, unless such benefits are derived from the automatic application of a general law or regulation;
2. Companies concerned exclusively with finance and publicly engaged in promoting savings and loan operations.

Article 84. It shall be unlawful for any deputy while in office to accept a permanent position in any of the public or national enterprises, companies or institutions specified in the preceding article.

Article 85. The provisions of articles 83 and 84 of this Act notwithstanding, a deputy may be appointed to represent the State, the region or the commune in companies or public or national enterprises in which the State, region or commune has invested capital.

Article 86. It shall be unlawful for any deputy to use his name followed by his title or allow it to be used in an advertisement relating to financial, industrial or commercial enterprise.

Article 87. A deputy who at the time of election finds that he holds one of the incompatible offices referred to in this chapter shall, within one month of the review of his credentials, furnish evidence that he has resigned from the office which is incompatible with his functions or, if he holds a government post, that he has applied to be placed in suspension. If he fails to do so, he shall automatically be declared divested of his duties.

If a deputy, while in office, accepts a position incompatible with his office or one of the functions specified in article 84 of this Act or disregards the provisions of article 86 of this Act, he shall also be automatically divested of his duties unless he resigns from office of his own accord.

The order of divestiture shall in all cases be issued by the National Assembly on the application of the Bureau of the Assembly or of the President of the Republic.

Chapter IV

BALLOTING

Article 88. Deputies shall be elected on the first ballot from a list, with a single list of candidates of various parties if they obtain an absolute majority, in accordance with the provisions of this chapter.

Voters may cross out names of candidates and write in those of candidates on other lists.

...

Chapter V

DECLARATIONS OF CANDIDATURE

...

Article 94. No candidate's name may be included on more than one list in the same electoral district.

No person may be a candidate in more than one electoral district.

...

Chapter VI

PROPAGANDA

Article 99. Electoral campaigns shall begin two weeks before the day of the election.

The provisions of article 33 shall become applicable as from that day.

...

TITLE IV

SPECIAL PROVISIONS FOR THE ELECTION OF MEMBERS OF THE MUNICIPAL COUNCIL

Chapter I

COMPOSITION OF THE MUNICIPAL COUNCIL AND TERM OF OFFICE OF COUNCILLORS

...

Article 111. Municipal councillors shall be elected for a term of three years and shall be eligible for re-election.

Chapter II

ELIGIBILITY AND INELIGIBILITY

Article 112. Any voter of the commune, man or woman, who has attained the age of twenty-five may stand for election to its municipal council, subject to the restrictions specified below:

Article 113. The following persons may not be elected to municipal councils: (1) governors; (2) judges; (3) *premiers délégués*, *délégués* and sector heads; (4) law enforcement officers.

Article 114. The following persons may not be elected in the judicial area in which they exercise their functions: (1) accountants responsible for communal funds; (2) engineers and public works officials of the municipal highways department; (3) salaried officials of the commune, with the exception of persons remunerated by the commune only for services rendered in their capacity as public officials or independent office holders; (4) employees and officials in the office of the Governor or the *délégué*.

...

Chapter III

INCOMPATIBILITY OF OFFICE

Article 116. No person may be a member of more than one municipal council.

Article 117. Ascendants and descendants, brothers and sisters of the same parents, and spouses may not be members of the same municipal council at the same time. The office shall fall to the eldest.

...

Chapter V

PROPAGANDA

Article 125. The electoral campaign shall begin two weeks before the day of the election.

The provisions of article 33 of this Act shall become applicable as from that day.

...

ACT NO. 69-32 OF 9 MAY 1969, INSTITUTING A PERFORMER'S CARD [11]

Article 1. With a view to organizing and improving the profession of performing artist an employment card to be known as a "performer's card" is hereby instituted.

Article 2. No one shall exercise the profession of singer, musician or dancer without having first obtained a performer's card.

Article 3. The performer's card shall be issued by the Secretary of State for Cultural Affairs and Information on the advice of a professional commission to be known as "the Performing Artists' Commission", the membership and rules of operation of which shall be laid down by decree.

Article 4. Performer's cards shall be issued to applicants who have been successful in an examination, the conditions of which shall be laid down in an order of the Secretary of State for Cultural Affairs and Information.

Article 5. A performing artist who fails to fulfil his professional duties or commits an act prejudicial to the good name of his profession shall be liable to the following penalties: reprimand; warning; temporary withdrawal of the performer's card; permanent withdrawal of the performer's card.

The penalty shall be imposed by the Secretary of State for Cultural Affairs and Information after consultation with the Performing Artists' Commission referred to in article 3. It shall not be imposed unless the person concerned has first been invited to appear before the Commission or to be represented by a lawyer of his choice.

Article 6. Persons whose profession is that of agent or impresario for public entertainment performances shall be approved by the Secretary of State for Cultural Affairs and Information.

[11] *Journal officiel de la République tunisienne*, No. 19, of 13 May 1969.

Article 7. Violations of the provisions of this Act shall be punished by fines of from 10 to 100 dinars.

In the case of a repeated offence the person concerned may be sentenced either to a fine of from 20 to 200 dinars with imprisonment for from sixteen days to three months, or to only one of these penalties.

Article 8. Any person who forges a performer's card or uses a forged card shall be subject to the penalty laid down in article 193 of the Criminal Code.

Article 9. Performers who were carrying on their profession before 1 January 1968 are exempt from the examination requirement referred to in article 4.

ACT NO. 69-35 DATED 26 JUNE 1969 INSTITUTING THE INVESTMENT CODE [12]

Preliminary provisions

Article 1. The purpose of this Act, entitled the Investment Code, is to create favourable conditions for investments within Tunisia and to lay down measures for encouraging, guaranteeing and protecting them.

Investments made before the entry into force of this Code may, on application, qualify for the benefits of its provisions.

Article 2. The guarantees and advantages provided for in this Code shall be applicable to investments made in Tunisia by physical persons or bodies corporate of any nationality which have been approved in accordance with article 7 below.

The said guarantees and advantages may, subject to the procedure laid down in article 5, be extended to commercial investments.

Article 3. No subsequent amendments to this Code shall have the effect of imposing less favourable conditions on approved investments.

Article 4. The application of this Code shall not prevent investors from being granted more favourable treatment under existing or future legislation.

Article 5. Guarantees and advantages not provided for in this Code may be granted under agreement concluded between the State and the investor after consultation with the Investment Commission referred to in article 9.

Article 6. Foreign investors shall be accorded equal treatment under this Act, including its fiscal and social provisions.

TITLE I

Approval and categories of investments

Article 7. Any physical person or body corporate wishing to invest, or to expand, transform or relocate his industrial enterprise in Tunisia shall request the approval of the Secretary of State for the Plan and the National Economy.

Article 8. Each investment approved by the Secretary of State for the Plan and the National Economy on the advice of the Commission referred to in article 9 shall be classified in one of the following categories:

Category A. This category shall include all capital investments of a value of 50,000 dinars or less.

Category B. This category shall include all ca pita investments which create a minimum of ten permanent jobs and are of a value of between 50,000 and 250,000 dinars.

Category C. This category shall include all capital investments which create more than fifty permanent jobs and are of a value exceeding 250,000 dinars.

...

Article 9. The organization and mode of operation of the Investments Commission shall be laid down by decree.

...

TITLE III

CONTRACTUAL ADVANTAGES

Article 15. The Tunisian Government may, on the advice of the Commission grant special advantages to individual investors, including:

(1) Reduction of the amount of production tax actually charged on purchases and imports of industrial capital goods used in the production process;

(2) Adoption of more favourable depreciation arrangements for plant and equipment;

(3) Temporary exemption from customs duties;

(4) Special long-term tax arrangements ensuring a fixed level of tax for a period not exceeding twenty years;

(5) Transfer of possession, free of charge or for a consideration, of the land needed to establish the enterprise;

(6) Assumption by the State of responsibility for the infrastructure work;

(7) Grant of exclusive operating and marketing rights for a given period;

(8) Total or partial prohibition on the import of competing products;

(9) Interest rebates on loans contracted by the enterprise.

TITLE IV

TRANSFER GUARANTEE

Article 16. Approval under article 7 of this Act gives non-resident investors the guaranteed right to transfer invested capital or the income thereon in foreign currency.

[12] *Ibid.*, No. 24, of 27 June 1969.

If the investment is made in kind, the guaranteed right to transfer capital and income shall be granted either in the manner specified in the decision to approve the investment or in accordance with the provisions of the agreement concluded with the Government.

Article 17. The transfer in foreign currency of the income from capital invested shall take place immediately after the amounts to be transferred have been accounted for to the Central Bank of Tunisia.

Article 18. The guaranteed right to transfer invested capital shall apply to the real net proceeds of the transfer or liquidation of the business, even if such amount is greater than the capital originally invested in foreign currency.

...

ACT NO. 69-56 OF 22 SEPTEMBER 1969 RELATING TO THE REFORM OF AGRARIAN STRUCTURES [13]

Chapter I

GENERAL PROVISIONS

Article 1. The right to own agricultural land shall belong only to individuals possessing Tunisian nationality, to co-operatives or to public, State or quasi-State corporations.

However, individuals possessing a foreign nationality may be authorized by decree to acquire one or more specified parcels for the purpose of constructing a residence.

Article 2. The exploitation of agricultural land may be carried on: (1) by the State or by a public or quasi-public body; (2) by agricultural co-operatives; (3) by individuals.

Article 3. The collective exploitation of agricultural land may be carried on primarily in large-scale holdings by legally organized agricultural production co-operative units under a planting programme approved in advance by decree and in accordance with the basic objectives of the national development plans.

The direct exploitation of family parcels the yield from which is intended primarily for family consumption and the area of which must not exceed two hectares adjacent to the dwelling may be authorized within the boundaries of the agricultural production co-operative unit, provided that such exploitation does not impede the functioning of the unit.

Agricultural production co-operative units may, within the framework of their farming programme and of their operational budget, arrange for the exploitation by one or more of their members of parcels corresponding to or exceeding the size if their contributions, in accordance with procedures to be laid down by decree.

Article 4. The exploitation of agricultural land by individuals must be carried on in accordance with the basic objectives of the national development plans.

Such exploitation shall be carried on primarily on fruit-growing and market-gardening holdings. The terms and conditions to which the persons carrying on such exploitation are subject shall be laid down by decree.

Article 5. Stock-raising, bee-keeping, poultry-farming, the production in quantity of selected seeds, nursery-gardening and flower-growing may be carried on in any legal form.

Article 6. Agricultural exploitation by the State shall be carried on through national offices, service offices and public or quasi-public establishments for research, instruction, extension work, experimentation, development and promotion of production in accordance with the national development plans.

...

[13] *Ibid.*, No. 37, of 23 September 1969.

TURKEY

ACT AMENDING ARTICLE 68 AND REPEALING TRANSITIONAL ARTICLE 11 OF THE CONSTITUTION OF THE REPUBLIC OF TURKEY

Act No. 1188, entered into force on 6 November 1969 [1]

Article 1. Article 68 of the Constitution of the Republic of Turkey, Act No. 334 of 9 July 1961, is hereby amended as follows:

(b) *Qualifications for election to the National Assembly*

Article 68. Any Turk who has completed his thirtieth year shall be eligible for election to the office of deputy.

The following persons shall not be eligible for election to the office of deputy: persons who cannot read and write Turkish; persons who are under a disability; persons who, being liable for active military service and not having been exempted therefrom, have not performed or are deemed not to have performed such service; persons barred from the civil service; persons who have been convicted of an offence punishable by severe imprisonment and whose sentences have become final; persons who, have been sentenced to imprisonment for more than five years, with the exception of persons guilty of negligence; persons who have been convicted of such shameful offences as embezzlement, misappropriation, corruption, bribery, theft, fraud, forgery, abuse of confidence or fraudulent bankruptcy and whose sentences have become final.

Standing for election shall not be conditional upon resignation from the civil service. The question of which civil servants may stand for election, and in what conditions, shall be regulated by law, having regard to the maintenance of safety during elections.

Judges, army officers, employees of the armed services and non-commissioned officers may not stand for election or be elected unless they resign their posts.

Article 2. Transitional article 11 of the Constitution of the Republic of Turkey, Act No. 334 of 9 July 1961, is hereby repealed.

Article 3. This Act shall enter into force on the date of its promulgation.

[1] Text furnished by the Government of Turkey.

UGANDA

NOTE [1]

In December 1969, the Annual Delegates' Conference of the Uganda Peoples' Congress (the Uganda Peoples' Congress has been the ruling party since Uganda's Independence) unanimously endorsed "The Common Man's Charter" and this document was enthusiastically welcomed by the people of Uganda as a whole and is being implemented by the Uganda Government. The Charter contains the philosophy and goals of the ruling party. The following is an extract from the Charter, relating to human rights:

THE COMMON MAN'S CHARTER

1. We the members of ...

...

6. Recognising that the roots of the Uganda People's Congress have always been in the people right from its formation, and realising that the Party has always commanded us that whatever is done in Uganda must be done for the benefit of all, we hereby re-affirm our acceptance of the aims and objectives of the U.P.C., which we set out below in full:

...

(iv) To fight relentlessly against poverty, ignorance, disease, colonialism, neo-colonialism, imperialism, and *apartheid*;

...

(vi) To protect without discrimination based on race, colour, sect, or religion every person lawfully living in Uganda and enable him to enjoy the fundamental rights and freedoms of the individual, that is to say:

(*a*) Life, liberty, security of the person and protection of the law;

(*b*) Freedom of conscience, of expression and association;

(*c*) Protection of privacy of his home, property, and from deprivation of property without compensation.

(vii) To ensure that no citizen of Uganda will enjoy any special privileges, status or title by virtue of birth, descent or heredity;

(viii) To ensure that in the enjoyment of the rights and freedoms no person shall be allowed to prejudice the right and freedoms of others and the interests of the State;

...

[1] Note furnished by the Government of Uganda.

THE IMMIGRATION ACT, 1969

Assented to on 28 March 1969 [2]

Immigration Control

1. (1) There shall be a board, to be known as the Immigration Control Board, consisting of a chairman and not less than six nor more than eight other members, all of whom shall be appointed by the Minister.

...

2. (1) It shall be the duty of the Board,

(*a*) To determine whether or not an entry permit shall be granted to any person under this Act;

(*b*) To determine any question under this Act or any regulation made pursuant thereto, which may be referred to it by the Minister;

(*c*) To perform such other functions as may be imposed upon it by or under this Act.

(2) A person aggrieved by the decision of the Board made under this section may, within one month of the date he is notified of the decision, appeal to the Minister and the decision of the Minister thereon shall be final and shall not be questioned in any court.

...

4. There shall be a Principal Immigration Officer, a Deputy Principal Immigration Officer, such Senior Immigration Officers and other immigration officers as may be considered necessary for the proper carrying out of the provisions of this Act.

5. (1) For the purpose of exercising his functions under this Act, an immigration officer may,

(*a*) Without a search warrant, enter upon and search any ship, aircraft, train or vehicle in Uganda;

(*b*) Interrogate any person whom he reasonably believes,

[2] Printed and published by the Government Printer, Entebbe, Uganda.

(i) is about to enter or leave Uganda;

(ii) is a prohibited immigrant; or

(iii) is able to give any information regarding any infringement or suspected infringement of this Act or any regulations made thereunder;

(*c*) Require any person who desires to enter Uganda,

(i) to make and sign a declaration in such form as may be prescribed by regulations made under this Act;

(ii) to submit himself to a medical examination by a medical practitioner appointed by the Minister responsible for health;

(*d*) Require the person in charge of a ship, aircraft, train or vehicle arriving from or leaving for any place outside Uganda to furnish a list in duplicate, signed by himself, of the names of all persons in his ship, aircraft, train or vehicle;

(*e*) If there is reasonable cause to suspect that any person has contravened any of the provisions of this Act or that his presence in Uganda is unlawful, and, if in order to prevent the purposes of this Act from being defeated it is necessary to arrest such person immediately, arrest any such person without a warrant, and the provisions of section 30 of the Criminal Procedure Code shall apply to such arrest;

(*f*) Enter upon any premises during reasonable hours and investigate any matter relating to immigration.

(2) An immigration officer may require any person,

(*a*) To declare whether or not he is carrying or conveying any documents;

(*b*) To produce to the officer any documents which he is carrying or conveying,

and may search any such person and any baggage belonging to him or under his control, in order to ascertain whether that person is carrying or conveying any documents and may examine and detain for such time as he thinks proper for the purpose of examination, any documents produced to him or found on such search.

(3) An immigration officer may in writing require any person to attend at his office and to furnish to that officer such information, documents and other particulars as are necessary for the purposes of determining whether that person should be permitted to remain in Uganda.

(4) The powers conferred upon an immigration officer by subsection (2) of this section may be exercised by a police officer.

6. No matter or thing done by any immigration officer shall, if it is done *bona fide* for the purposes of executing any provisions of this Act or any regulation made thereunder, subject such immigration officer or any person acting by his directions to any civil liability.

7. The Minister may, subject to the provisions of this Act, give directions of a general or specific nature to the Board or any immigration officer, and the Board or immigration officer shall comply with any such direction.

Immigrants

8. (1) The following persons are prohibited immigrants and their entry into or presence within Uganda shall be unlawful except in accordance with the provisions of this Act, that is to say,

(*a*) A destitute person;

(*b*) A person suffering from mental disorder or a mental defective;

(*c*) Any person who,

(i) refuses to submit to a medical examination after having been required so to do under the provisions of section 5 of this Act;

(ii) is certified, by a medical practitioner appointed for the purpose by the Minister, to be suffering from a contagious or infectious disease which makes his presence in Uganda dangerous to the community;

(*d*) Any prostitute or any person who is living, or who, prior to entering Uganda, was living on the earnings of prostitution;

(*e*) Any person against whom there is in force an order of deportation from Uganda made under the provisions of this Act or any other law;

(*f*) Any person whose presence in or entry into Uganda is, or at the time of his entry was, unlawful under this Act or any other law for the time being in force;

(*g*) Any person who has not in his possession a valid passport issued to him by or on behalf of the government of the State of which he is a subject or citizen or a valid passport or document of identity issued to him by an authority recognized by the Government, such document being complete and having endorsed thereon all particulars, endorsements and visas required from time to time by the government or authority issuing such document and by the Government;

(*h*) A person who in consequence of information received from the government of any State, or any other source deemed reliable by the Minister or the Principal Immigration Officer is declared by the Minister or the Principal Immigration Officer to be an undesirable immigrant; but every declaration of the Principal Immigration Officer under this paragraph shall be subject to confirmation or otherwise by the Minister, whose decision shall be final;

(*i*) Any person who, not having received a free pardon, has been convicted in any country of murder, or any offence for which a sentence of imprisonment has been passed for any term, and who by reason of the circumstances connected therewith is declared by the Minister to be an undesirable immigrant; except that the provisions of this paragraph shall not apply to offences of a political character not involving moral turpitude;

(*j*) Any person who is a subject or citizen of any country with which Uganda is at war; and

(*k*) The children, if under eighteen years of age, and dependants of a prohibited immigrant.

(2) The burden of proof that any person is not a prohibited immigrant shall lie upon that person.

9. (1) Subject to the provisions of subsection (2) of this section and section 20 of this Act, no person shall enter or remain in Uganda unless he is in possession of a valid entry permit, certificate of residence or pass issued to him under or by virtue of the provisions of this Act.

(2) This section shall not apply to such persons or class of persons as the Minister may, by statutory order, declare.

...

Deportation

14. (1) The Minister may in writing under his hand order any prohibited immigrant, or any person whose presence within Uganda is, under the provisions of this Act, unlawful, to be deported from and remain out of Uganda, either indefinitely or for such period of time as may be specified in the order.

...

20. (1) The Immigration (Control) Act is hereby repealed.

(2) The transitional and saving provisions contained in Schedule 2 to this Act shall have effect notwithstanding any other provisions of this Act.

...

THE CRIMINAL PROCEDURE CODE (AMENDMENT) ACT, 1969

Assented to on 25 April 1969 [3]

1. The Criminal Procedure Code Act is hereby amended,

(*a*) In section 2, by deleting the definitions of "proclaimed person" and "proclaimed offender" occurring therein;

(*b*) By substituting for section 8 thereof, the following,

"8. (1) Where any sentence to which this section applies is imposed by a magistrate's court, such sentence shall be subject to confirmation by the High Court.

"(2) This section applies to,

"(*a*) A sentence of imprisonment for a period of two years or over; or

"(*b*) Preventive detention under the provisions of the Habitual Criminals (Preventive Detention) Act.;"

...

(*f*) In section 122,

(i) by substituting the words "an offence punishable by death" for the expression "murder, treason or rape, or a person convicted under the provisions of section 216A of this Code," occurring in subsection (1) thereof; and

(ii) by substituting for subsection (2) thereof, the following,

"(2) Notwithstanding anything contained in subsection (1) of this section,

"(*a*) a Chief Magistrate may, in any case triable by a magistrate's court, direct that any person to whom bail has been refused by a court presided over by any magistrate (other than a Chief Magistrate) within the area of his jurisdiction, be released on bail, or that the amount required for any bail bond be reduced; and

"(*b*) the High Court may in any case direct that any person be released on bail or that the amount required for any bail bond be reduced."; and

"(iii) by adding the following new subsection thereto,

"(3) Notwithstanding anything contained in subsection (1) or subsection (2) of this section, in any case where a person has been released on bail, the High Court may, if it is of the opinion that for any reason the amount of the bail should be increased,

"(*a*) issue a warrant for the arrest of the person released on bail directing that he should be brought before it to execute a new bond for an increased amount; and

"(*b*) commit such person to prison if he fails to execute a new bond for an increased amount.";

(*g*) By adding after section 122 thereof, the following new section,

"123. (1) Where any person appears before a magistrate's court charged with an offence for which bail may be granted the court shall inform him of his right to apply for bail.

"(2) When an application for bail is made, the court (in deciding if it is probable that the applicant will appear at his trial) shall have regard to the following matters,

"(*a*) the nature of the accusation;

"(*b*) the gravity of the offence charged and the severity of the punishment which conviction might entail;

"(*c*) the antecedents of the applicant so far as they are known;

"(*d*) whether the applicant has a fixed abode within the area of the court's jurisdiction; and

"(*e*) whether the applicant is likely to interfere with any of the witnesses for the prosecution or any of the evidence to be tendered in support of the charge.

"(3) Where bail is not granted under the provisions of section 122 of this Code the, court shall.

"(*a*) record the reasons why bail was not granted; and

"(*b*) inform the applicant of his right to apply for bail to the High Court or to a Chief Magistrate as the circumstances may require.";

(*h*) By substituting for section 125 thereof, the following,

[3] Printed and published by the Government Printer, Entebbe, Uganda.

"125. When any person is required by any court or officer to execute a bond, with or without sureties, such court officer may (except in the case of a bond for good behaviour) permit that person,

"(*a*) to deposit any specific article or property; or

"(*b*) to deposit a sum of money to such amount as the court or officer may fix,

in lieu of executing such a bond.";

(*i*) By inserting in section 149 thereof, the following new subsection,

"(3) Where in any proceedings the court is of the opinion that a child of tender years called as a witness does not understand the nature of the oath, the court may receive the evidence of the child without an oath being administered if the court is of the opinion that the child is possessed of sufficient intelligence and understands its duty to speak the truth so as to justify the reception of the evidence:

"Provided that no person shall be convicted on such evidence tendered on behalf of the prosecution unless the evidence is corroborated by some other material evidence in support thereof implicating him.";

...

(*l*) In section 179, by adding the following new subsection thereto,

"(6) In this section 'property' includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person but also any property into which or for which the same may have been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.";

(*m*) In section 199,

(i) By substituting for subsection (1) thereof, the following,

"(1) Notwithstanding anything contained in this Code, a magistrate to whom this section applies may, with the consent of the person conducting the prosecution, try an offence in the manner provided by this section."; and

(ii) By deleting subsection (5) thereof and adding after subsection (4), the following new subsections,

"(5) Any fit person may be appointed to be a magistrate (hereinafter referred to as a 'petty sessional magistrate') for the purposes of this section, and any person so appointed shall have such jurisdiction only as is necessary to hear and determine cases in the magisterial area to which he has been appointed, in the manner provided in this section.

...

"(7) No appeal shall lie against any finding, sentence or other order in a case tried under the provisions of this section.

...

(*q*) By substituting for section 205 thereof, the following,

"205. (1) Before or during the hearing of any case, it shall be lawful for the court to adjourn the hearing if sufficient cause is shown, on due application made in open court for such adjournment:

"Provided that when the hearing of evidence has first begun the trial shall be continued from day to day until the trial is concluded, unless the court find the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

"(2) Where a hearing is adjourned under the provisions of this section, the court shall appoint a time and place for the resumption of the proceedings and in the meantime the court may suffer the accused person to go at large or may, by warrant, remand him in some prison, remand home or other suitable place, or may release him upon entering into a recognisance with or without sureties, at the discretion of the court, conditioned for his appearance at the time and place to which such hearing or further hearing shall be adjourned:

"Provided that no such adjournment shall be for more than thirty clear days, or if the accused person has been committed to prison or other place of security, for more than fifteen clear days, the day following that on which the adjournment is made being counted as the first day.";

(*r*) By adding after section 298 thereof, the following new section,

"298A. (1) Notwithstanding the provisions of section 298 of this Code, where any offender has been sentenced by a court to which this section applies, to imprisonment for a period not exceeding three years, the court may, after taking into consideration the nature of the offence, the age and character of the offender and any other mitigating circumstances, order that the sentence be suspended.

"(2) An order suspending a sentence under the provisions of this section is hereinafter referred to as a 'suspension order' and the period during which any such sentence is suspended as the 'suspension period'.

"(3) Where a suspension order is made under the provisions of this section, the court shall record the fact and the sentence to which such order relates shall not be carried into effect unless the offender commits another offence punishable by a substantive sentence of imprisonment without the alternative of a fine within the period of two years next following the date upon which such sentence would have expired, calculated without remission.

"(4) Before making a suspension order under the provisions of this section the court shall explain to the offender that if he commits another offence punishable by a substantive sentence of imprisonment without the alternative of a fine during the suspension period, he will be liable to serve the sentence to which the order relates.

"(5) If it appears to a Chief Magistrate exercising jurisdiction over the area wherein an offender in respect of whom a suspension order has been made happens to be, that he has been convicted of any offence punishable by a substantive sentence of imprisonment without the alternative of a fine committed during the suspension period, the Chief Magistrate may, in his discretion,

"(*a*) issue a summons requiring the offender to appear at the time and place specified therein; or

"(*b*) issue a warrant for his arrest; or

"(*c*) if he is in custody, issue a warrant requiring his production before the court,

as the circumstances shall require.

"(6) Where any person appears before a Chief Magistrate in obedience to a summons or warrant issued under the provisions of subsection (5) of this section, and it is proved to his satisfaction that such person,

"(*a*) is an offender in respect of whom a suspension order has been made; and

"(*b*) has been convicted of another offence punishable by a substantive sentence of imprisonment without the alternative of a fine committed during the suspension period,

the Chief Magistrate shall, subject to the provisions of subsection (7) of this section, by warrant under his hand, order that the offender be committed to prison to serve the sentence to which the suspension order relates and any such sentence shall be deemed to commence from the date on which the commitment warrant of the Chief Magistrate was issued:

"Provided that if the offender is already serving a sentence of imprisonment, the warrant of the Chief Magistrate shall direct that the sentence be executed after the expiration of the sentence being served.

"(7) Notwithstanding the provisions of subsection (6) of this section, if the Chief Magistrate before whom an offender appears in pursuance of a summons or warrant issued under the provisions of subsection (5) of this section, is of the opinion having regard to all the circumstances (including the character, age and antecedents of the offender or to the trivial nature of the offence committed during the suspension period) that it is inexpedient to make an order committing the offender to prison, he may direct that the offender be discharged and, if the suspension period has not expired, the suspension order shall continue to have effect for the remainder of such period.

"(8) (*a*) No appeal shall lie against an order made by a Chief Magistrate committing an offender to prison in accordance with the provisions of subsection (6) of this section.

"(*b*) For the removal of doubts, nothing in this section shall be read as limiting the powers of the High Court to vary any order made under the provisions of this section in the exercise of the jurisdiction conferred by the provisions of section 341 of this Code.

"(9) Save where the context otherwise requires, this section shall apply to,

"(*a*) the High Court;

"(*b*) a court presided over by a Chief Magistrate or a Magistrate Grade I; and

"(*c*) such other courts as may be specified by the Minister by statutory instrument.";

(*s*) By adding, after section 299, the following new section,

"299A. (1) A magistrate's court shall not pass a sentence of imprisonment on any person who is proved to the satisfaction of the court to be a first offender and who is over the apparent age of eighteen years, unless the court is of the opinion that having regard to all the circumstances (including the character of the offender and the gravity of the offence), no other method of dealing with him is appropriate.

"(2) For the purposes of determining whether any other method of dealing with any such person is appropriate the court shall, whenever possible, obtain, consider and take into account any information that is available which the court considers relevant.

"(3) In every case where the court passes a sentence of imprisonment on a person to whom the provisions of this section apply, the court shall record its reasons for doing so.";

(*t*) In section 300A, by substituting for subsection (1) thereof, the following,

"(1) A court shall not pass a sentence of imprisonment on any person who is, in the opinion of the court, under the apparent age of eighteen years (in this section referred to as a 'young offender') but the court shall, if it is of the opinion that having regard to all the circumstances (including the character of the offender and the gravity of the offence) no other method of dealing with him is appropriate, order him to be detained in safe custody, pending an order by the Minister under the provisions of subsection (2) of this section, in such place and manner as it thinks fit and shall transmit the court record, or a certified copy thereof, to the Minister.

"(1A) For the purposes of determining whether any other method of dealing with any such person is appropriate the court shall, whenever possible, obtain, consider and take into account any information that is available which the court considers relevant.

"(1B) In every case where the court orders a person to be detained in safe custody under the provisions of this section, the court shall record its reasons for doing so.";

...

(*x*) By substituting for sections 326, 327 and 328 thereof, the following,

"326. (1) Every appeal shall be commenced by a notice in writing which shall be signed by the appellant or an advocate on his behalf, and shall be lodged with the registrar within fourteen days of the date of judgment or order from which such appeal is preferred.

"(2) Every notice of appeal shall state shortly the effect of the judgment or order appealed against and shall,

"(*a*) contain a full and sufficient address at which any notices or documents connected with the appeal may be served on the appellant or his advocate; and

"...

"327. Save in so far as any such fee is waived or reduced, the fee prescribed for filing the notice of appeal shall be paid at the time of lodging such notice and if such fee, if any, is not paid the notice shall not be received.

"328. If the appellant is in prison he may present any document relating to his appeal to the officer in charge of the prison who shall then forward such document to the registrar and for the purpose of section 326 of this Code on the date of such presentation, any such document shall be deemed to have been lodged with the registrar.";

...

(*z*) By substituting for section 329 thereof, the following,

"329. (1) On receiving a notice or grounds of appeal under section 326 of this Code, the appellate court, or a judge thereof, shall peruse the same and after perusing the record of the trial court,

"(*a*) in the case of an appeal against sentence only, where it considers that the sentence is not excessive; or

"(*b*) in any other case, where it considers that no question of law is raised proper for consideration by it, or that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or led the court to consider that the sentence ought to be reduced,

"it may dismiss the appeal summarily without hearing the appellant:

"Provided that,

" (i) nothing in this section shall be read as preventing the appellate court, or a judge thereof, from dismissing an appeal summarily where paragraph (*b*) of this subsection applies with regard to conviction, and directing that it be heard as regards sentence only; and

"(ii) no appeal shall be summarily dismissed where the notice or grounds of appeal has been signed by an advocate, unless such advocate has had an opportunity of being heard in support of the same.

". . ."

(*aa*) In section 331, by adding after subsection (2), the following new subsections,

"(3) An appellate court may, on any appeal, if it considers that any sentence of imprisonment ought to have been suspended in accordance with the provisions of section 298A of this Code, order that such sentence be suspended and the provisions of that section shall apply *mutatis mutandis* as if such order had been made at the time such sentence was imposed.

"(4) An appellate court may, on any appeal, if it considers a suspension order ought not to have been made under the provisions of section 298A of this Code, direct that the sentence to which such order relates be carried into effect and any such sentence shall be deemed to commence from the date upon which the appellant was received into prison pursuant to the direction of the appellate court.";

(*bb*) By substituting for section 335 thereof, the following,

"335. (1) Appeals from magistrates' courts shall be heard by not less than two judges as the Chief Justice shall direct.

"(2) If on the hearing of an appeal the court is equally divided in opinion, the appeal shall be dismissed.";

(*c*) By substituting for section 336 thereof, the following,

". . ."

"336A. (1) The appellate court may dismiss an appeal for want of prosecution,

"(*a*) if the appellant, at any time before the appeal is determined, escapes from custody or fails to appear after he has been released on bail; or

"(*b*) if the appellant fails to take any necessary step in prosecuting his appeal within the time allowed and has not made an application for extension of time.

"(2) Notwithstanding the provisions of subsection (1) of this section the appellate court may consider and determine an appeal in the absence of the appellant and may make such other order as it thinks fit.

"(3) Where on the dismissal of an appeal under the provisions of section 335 or this section any sentence of imprisonment or of a fine remains to be served or paid, the appellate court may issue a warrant of arrest or make such other order as it deems necessary to enforce the execution of the sentence.";

(*dd*) In section 341,

(i) By substituting for subsection (5) thereof, the following,

"(5) Any person aggrieved by any finding, sentence or order made or imposed by a magistrate's court may petition the High Court to exercise its powers of revision under the provision of this section:

"Provided that no such petition shall be entertained where the petitioner could have appealed against any such finding, sentence or order and has not appealed"; and

(ii) By adding after subsection (7), the following new subsection,

"(8) Where an application is made by the Director of Public Prosecutions under the provisions of subsection (1) of this section to make an order to the prejudice of an accused person, such application shall be lodged with the registrar within thirty days of the imposition of such sentence unless, for good cause shown, the High Court extends the time."

". . ."

THE IMMIGRATION REGULATIONS, 1969

Statutory Instrument No. 165 of 1969 [4]

Pass

1. (1) There shall be the following classes of pass, that is to say,

(*a*) Dependant's Pass;
(*b*) Pupil's Pass;
(*c*) Visitor's Pass;
(*d*) In Transit Pass;
(*e*) Inter-State Pass;
(*f*) Prohibited Immigrant's Pass;

[4] Printed and published by the Government Printer, Entebbe, Uganda.

(*g*) Special Pass; and

(*h*) Re-entry Pass.

(2) A pass specified in this regulation may be issued by such person or authority as may be specified in these Regulations in relation thereto.

2. (1) Any person who is lawfully residing in Uganda or who intends to enter Uganda by virtue of any entry permit, certificate of residence or pass issued to him under the provisions of the Act or these Regulations may apply to the Board for a Dependant's Pass in respect of any of his dependants.

. . .

3. (1) A Pupil's Pass may be issued by the Principal Immigration Officer to any person who satisfies him that he has been accepted as a pupil by any training establishment in Uganda approved by the Minister responsible for education.

(2) A Pupil's Pass shall entitle the holder thereof to enter Uganda within the period stated in such pass and remain therein for such period as shall be stated in such pass.

(3) The Principal Immigration Officer may cancel a Pupil's Pass if the person to whom such pass was issued fails to enter and undergo training in the training establishment for which he has been accepted, or having entered such training establishment fails to remain or to be retained as a pupil therein.

4. (1) A Visitor's Pass may on application be issued by the Board to any prospective visitor, other than a prohibited immigrant, who wishes to enter Uganda for the purpose of,

(*a*) spending a holiday;

(*b*) travelling;

(*c*) temporarily carrying on any business, trade or profession; or

(*d*) investigating the possibilities of settlement in Uganda.

. . .

5. (1) An In Transit Pass may on application be issued by an immigration officer to any person, other than a prohibited immigrant, who satisfies him that he desires to enter Uganda for the purpose of passing through Uganda to a destination outside Uganda and that he is in possession of such valid documents as will permit him to enter the country of his destination and is otherwise qualified under the law in force in that country to enter the same.

. . .

6. (1) The Principal Immigration Officer may at his discretion issue to any person who satisfies him that he is lawfully present in Uganda an Inter-State Pass which shall entitle the holder thereof to leave Uganda for the purpose of entering any of the other East African countries and to re-enter Uganda from any of such countries at any time during the period of validity of such pass.

. . .

7. (1) The Principal Immigration Officer may grant a Prohibited Immigrant's Pass to a prohibited immigrant authorising him to enter and remain in Uganda subject to such conditions as to duration and place of residence, occupation, security or any other matter or thing whatsoever as the Principal Immigration Officer may deem expedient; but no such pass may authorise a prohibited immigrant to remain in Uganda for a period of more than one month, except with the prior approval of the Board.

. . .

8. (1) A Special Pass may be issued by the Board to any person living in or arriving in Uganda if the Board considers the issue of such a pass desirable,

(*a*) in order to afford itself an opportunity of making an inquiry for the purpose of determining whether such person is entitled to an entry permit or is otherwise entitled to remain in or enter Uganda under the Act or these Regulations, or whether such person is a prohibited immigrant; or

(*b*) in order to enable such person to enter Uganda temporarily for the purpose of obtaining medical treatment; or

(*c*) in order to afford such person a reasonable opportunity of applying for and obtaining an entry permit or pass other than a Special Pass or of completing any immigration formality.

. . .

9. (1) On application made to him in that behalf, the Principal Immigration Officer,

(*a*) shall issue a Re-entry Pass to any person lawfully residing in Uganda, not being a person to whom paragraph (*b*) of this sub-regulation applies, who wishes to leave Uganda temporarily;

(*b*) may, at his discretion and subject to such conditions as he may impose, issue a Re-entry Pass to any person lawfully present in Uganda by virtue of a valid pass issued under these Regulations who desires to leave Uganda temporarily.

. . .

10. An Entry Permit shall cease to be valid if the holder thereof, being out of Uganda at the date of issue, has not entered Uganda within one year after such date; but the Board may in its absolute discretion extend the said time limit of one year for such period not exceeding two years as it may consider expedient.

11. Every holder of a pass, other than a Pupil's Pass, shall,

(*a*) if required by an immigration officer so to do, report to an immigration officer immediately prior to leaving Uganda;

(*b*) comply with any instructions given to him by an immigration officer regarding the making of reports as to himself and his whereabouts during his stay in Uganda.

. . .

THE CRIMINAL PROCEDURE CODE (AMENDMENT) (NO. 2) ACT, 1969

Act No. 35 of 1969, assented to on 16 October 1969
and entered into force on 17 October 1969 [5]

1. The Criminal Procedure Code is hereby amended,

...

(*c*) By substituting for subsections (3) and (4) of section 331 thereof, the following subsections,

"(3) Where the appellate court maintains or imposes a sentence of imprisonment not exceeding three years in the exercise of its powers under the provisions of subsection (1) or (2) of this section, if the appellant satisfies the court that there are special reasons, having regard to the nature of the offence for which he was convicted, his age or antecedents that the sentence should be suspended, the court may order that it be suspended and shall record its reasons for making such order.

"(4) An order suspending a sentence under the provisions of subsection (3) of this section is hereinafter referred to as a 'suspension order' and the period during which any such sentence remains suspended as the 'suspension period'.

"(5) Where a suspension order is made the sentence to which such order relates shall not continue to have effect unless the appellant commits another offence punishable by a substantive sentence or imprisonment without the alternative of a fine within the period of two years next following the date upon which such sentence would have expired, calculated without remission.

"(6) Before making a suspension order the appellate court shall explain to the appellant in ordinary language his liability under the provisions of subsection (5) of this section.

"(7) If it appears to a court that a person in respect of whom a suspension order has been made has been convicted of an offence punishable by a substantive sentence of imprisonment without the alternative of a fine, committed during the suspension period, the court shall,

"(*a*) issue a summons requiring him to appear at the time and place specified therein; or

"(*b*) issue a warrant for his arrest; or

"(*c*) if he is in custody, issue a warrant requiring his production before the court,

as the circumstances shall require.

"(8) Where a person appears before the court in obedience to a summons or warrant issued under the provisions of subsection (7) of this section, and it is proved to the satisfaction of the court that such person,

"(*a*) is an offender in respect of whom a suspension order was made; and

"(*b*) has been convicted on an offence punishable by a substantive sentence of imprisonment without the alternative of a fine, committed during the suspension period,

the court shall, subject to the provisions of subsection (9) of this section, by warrant under its hand, order that the offender be committed to prison to serve the sentence to which the suspension order relates and any such sentence shall be deemed to commence from the date on which the commitment warrant was issued:

"Provided that,

"(*a*) if the offender is already serving a sentence of imprisonment, the warrant of commitment shall direct that the sentence shall be executed after the expiration of the total period of imprisonment to which the offender is already subject; and

"(*b*) if the offender had served any period of a sentence before the suspension order was made, in addition to any remission to which he is entitled under the provisions of the Prisons Act, he shall be granted remission equivalent to any such period.

"(9) Notwithstanding the provisions of subsection (8) of this section, if the court before which an offender appears under the provisions of subsection (8) of this section is of the opinion having regard to all the circumstances (including the trivial nature of the offence committed during the suspension period) that it would be inexpedient to make an order committing the offender to prison, it may direct that the offender be discharged and if the suspension period has not expired the suspension order shall continue to have effect for the remainder of such period.

"(10) Jurisdiction under the provisions of subsections (7), (8) and (9) of this section shall be exercised,

"(*a*) in the case of a suspension order made on an appeal to the High Court, by a judge thereof;

"(*b*) in the case of a suspension order made on an appeal to a court presided over by a chief magistrate, by the chief magistrate having jurisdiction over the area within which the offender happens to be."

...

[5] Printed and published by the Government Printer, Entebbe, Uganda.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

NOTE [1]

As a result of the further development of all branches of the national economy, considerable progress was made in 1969 in raising the people's level of living. The data quoted below from the report of the Central Statistical Board of the Council of Ministers of the Ukrainian SSR show that the vital economic, social and cultural rights of the broad masses of the population of the Ukraine are being safeguarded.

During the year, the national income rose by 6.5 per cent. In the course of the first four years of the Five-Year Plan, the national income increased by 31 per cent, which is in accordance with the rates envisaged in the directives for the Five-Year Plan.

The average annual number of manual and non-manual workers in the national economy was 15.7 million, an increase of 550,000, or 3.6 per cent, over 1968.

In 1969, as in previous years, there was no unemployment in the Ukraine. In certain sectors of the economy and districts of the Republic there was a shortage of manpower.

The past year saw a rise in the wages of middle-income categories of workers in construction, building repair work and enterprises producing construction materials.

The average monthly cash wage for manual and non-manual workers was 110.3 roubles in 1969, an increase of 3.3 per cent over 1968. With the addition of payments and benefits from social consumption funds, the average monthly wage was 150.9 roubles, as against 145 roubles in 1968.

The wages of collective farm workers rose by 3.4 per cent.

Payments and benefits received by the population from social consumption funds totalled 10,900 million roubles, an increase of 7.6 per cent over 1968.

These funds provided free education and medical care; pension allowances and other types of social welfare and social insurance; passes to sanatoria and rest homes; paid vacations; upkeep of kindergartens and crèches.

Almost 400,000 new, well-equipped apartments and individual dwellings with a total useful floor space of 19.5 million square metres—1 million square metres more than in 1968—financed by the State, collective farms and the population were brought into occupancy in towns and rural settlements of the Republic.

During the past year, 1.8 million persons moved into new houses or improved their living conditions in existing dwellings. New general education schools with space for more than 235,000 students, children's pre-school establishments with space for 77,000 and a large number of hospitals, polyclinics and other cultural and social facilities were built with finances provided by the State and by collective farms. At the same time, plans for the construction of dwellings and social and cultural facilities by a number of ministries and departments and in the Republic as a whole were underfulfilled.

Public education, science and culture continued to progress.

Over 14 million people were receiving education in one form or another, 8.5 million of them in general education schools, 804,000 in higher educational establishments and 790,000 in technical schools and other specialized secondary educational establishments.

Some 819,000 persons graduated from eight-year schools and 541,000 graduated from secondary general education schools. Of these totals, 57,000 an 172,000 respectively received their eight-year and secondary education in schools for working and rural youth.

Enrolment in extended-day schools and groups was 1.2 million, or 16 per cent more than in the previous school year.

Attendance at full-time children's pre-school educational establishments totalled approximately 1.5 million, or 50,000 more than in the previous year. In addition, over 1 million children attended seasonal children's pre-school establishments.

Approximately 3.8 million children and adolescents spent the summer at pioneer and school camps, children's sanatoria and holiday and tourist centres.

A total of 307,000 young specialists graduating from higher and secondary specialized educational establishments were absorbed into the national economy, including 105,000 with higher education and 202,000 with secondary specialized education. In comparison with the previous year, the number of specialists graduating from higher and secondary specialized educational establishments increased by 35,000, or 13 per cent.

Enrolment at higher and secondary specialized educational establishments totalled 394,000, including 154,000 at the former and 240,000 at the latter.

Large numbers of manual and non-manual workers and collective farm workers received train-

[1] Note furnished by the Government of the Ukrainian Soviet Socialist Republic.

ing and obtained higher qualifications. During the year, 234,000 young skilled workers were trained at vocational technical schools. Approximately 3.8 million people trained for new occupations or obtained higher qualifications directly at enterprises, at institutions and organizations and at collective farms by receiving individual or group instruction or taking courses.

Scientific workers numbered more than 121,000 at the end of the year; of these, almost 33,000 held the degree of Doctor of Science or that of Candidate of Science.

At the end of the year there were approximately 29,000 cinema installations in the Republic. Cinema attendance for the year exceeded 900 million.

Medical services to the population continued to improve.

During the year the number of doctors in all specialities rose by 3,000, and the number of hospital beds by more than 14,000. The number of beds in sanatoria, rest homes and convalescent homes also increased.

The most important of the few legislative acts adopted in 1969 in the field of human rights is the Code on Marriage and the Family of the Ukrainian Soviet Socialist Republic, which entered into force on 1 January 1970.

This quite extensive legislative act is divided into six sections and consists of 201 articles.

Section I of the Code affirms the fundamental principles and purposes of the legislation on marriage and the family and clearly defines the sphere of relationships governed by the Code. In accordance with article 2, this includes the procedure and conditions for contracting marriage; personal and property relations arising in the family between spouses, between parents and children and between other members of the family; relations arising in connexion with adoption, guardianship and curatorship, and foster parenthood; the procedure and conditions for dissolving a marriage; and civil registration procedures.

Section II of the Code contains provisions governing questions relating to marriage. The Code stipulates that only marriages which are contracted in State civil registry offices shall be recognized.

A comparison with the legislation previously in force shows that in this section a number of new provisions have been introduced and several changes have been made: the registration of the marriage in ceremonial fashion (article 12) one month from the date on which the application is filed (article 14), the raising of the minimum age for marriage in the case of women from sixteen to seventeen years (article 16) and the possibility of combining the surnames of those contracting marriage (article 19). In addition to the judicial procedure for dissolving marriage, the Code provides for the possibility of dissolving it in civil registry offices with the mutual consent of spouses having no minor children (article 41), in the case of persons recognized in the manner prescribed by law as missing, persons incapacitated as a result of mental illness or mental deficiency, and persons who have been sentenced for the commission of a crime to deprivation of liberty for a period of not less than three years (article 42). New also is the provision prohibiting a husband from instituting divorce proceedings without the consent of his wife during her pregnancy or within a year from the birth of a child (article 38).

Section III of the Code is devoted to relations between the members of the family, primarily between parents and children. Fundamentally new are the provisions in this section determining the procedure for establishing the filiation of a child whose parents are not married to each other (articles 53, 55, 56 and 57). Article 53 of the Code provides for the possibility of establishing the filiation of a child whose parents are not married to each other by means of a joint declaration by the parents. In the absence of such a declaration, paternal filiation may be established judicially. In the latter case, the court takes account of whether the child's mother and the respondent cohabited and maintained a joint household prior to the child's birth or have been jointly bringing up or supporting the child, or of any reliable evidence of acknowledgement of paternity by the respondent.

The other provisions of this section of the Code do not contain fundamental changes as compared with the legislation previously in force, but a number of provisions have been made broader and more specific so as to increase the responsibility of parents for the support and rearing of their children.

The provisions governing adoption (articles 101-127) are based on the principle that the status of the adopted child in no way differs from that of the adoptive parent's own children. Under article 112 of the Code, secrecy of adoption is safeguarded by the law.

Section IV of the Code deals with the regulation of guardianship and curatorship, and section V—a new section—lays down rules governing the procedure for registering births, deaths, marriages, divorces and adoptions, registering the establishment of paternity, and registering changes of given names, patronymics and surnames (articles 158-193).

Section VI, the final section of the Code (Articles 194-201), governs the application of the legislation of the Ukrainian Soviet Socialist Republic concerning the family and marriage to aliens and stateless persons and the application in Ukrainian territory of the laws on the family and marriage of foreign States and the relevant international treaties and agreements.

Some of the other enactments relating to the safeguarding and defence of human rights are the following:

The Council of Ministers of the Ukrainian Soviet Socialist Republic adopted decision No. 108 of 6 February 1969, entitled "Increasing the participation of women in skilled agricultural work" (*Collected Decisions of the Ukrainian SSR*, 1969, No. 4, item 45). This decision outlines measures for increasing the participation of women in skilled work as tractor drivers, mechanization specialists on live-stock farms, drivers of automobiles and trucks with a load capacity of up to 2.5 tons, electricians, repair workers, construction workers and workers in other specialities in which the use of female labour in agriculture is permitted. It also outlines measures designed to increase significantly the enrolment of women in rural vocational-technical schools and their branches for training in the above-mentioned occupations and specialities.

Persons graduating from three-year rural vocational-technical schools are issued a certificate showing that they have mastered a trade and received a secondary education and enabling them to enter higher educational establishments.

Women tractor drivers working in agricultural production are given additional leave.

On 8 October 1969 the Central Committee of the Communist Party of the Ukraine and the Council of Ministers of the Ukrainian Soviet Socialist Republic adopted decision No. 573, entitled "The Organization of Preparatory Sections in Higher Educational Establishments" (Collected Decisions of the Ukrainian SSR, 1969, No. 10, item 123). This decision is aimed at raising the level of the general education of working and rural youth and creating for it the necessary conditions for admission to higher educational establishments.

The preparatory sections admit persons completing secondary education who are among the front-rank manual workers, collective farm workers and demobilized members of the armed forces. Young manual workers and collective farm workers entering the preparatory sections are required to have spent not less than one year doing practical work.

Persons who have completed the course offered by the preparatory sections and have successfully passed their final examinations may enrol for the first-year course at higher educational establishments without taking the entrance examinations.

Students at the preparatory sections who have enrolled for full-time study receive a student's grant.

UNION OF SOVIET SOCIALIST REPUBLICS

SOME LEGISLATIVE INSTRUMENTS ADOPTED IN THE SOVIET UNION IN 1969 ON HUMAN RIGHTS QUESTIONS [1]

In 1969 important legislative instruments in the field of human rights were adopted by the Supreme Soviet of the USSR.

On 19 December 1969, at the seventh session of the Seventh Supreme Soviet of the Union of Soviet Socialist Republics, the fundamental principles of the health legislation of the USSR and of the Union Republics were approved. This legislative instrument regulates a wide range of social relations in the sphere of protection of the health of the population, and its objectives are the safeguarding of people's health, provision of the people with therapeutic and prophylactic care, with treatment at sanatoria and health resorts and with therapeutic and prosthetic services, the organization of leisure, tourism and physical culture, and the protection of the mother and her child.

Some articles and extracts from articles of the "Fundamental principles of the health legislation of the USSR and of the Union Republics" are given below.

"*Article 3.* Health protection of the population—an obligation of all State agencies and public organizations

"The protection of the health of the population shall be an obligation of all State agencies, undertakings, institutions and organizations..."

"*Article 4.* Provision of medical care to citizens

"Citizens of the USSR shall be entitled to free, professional medical care, provided by State health institutions and accessible to all."

"*Article 5.* Principles of the organization of public health in the USSR

"The protection of the health of the population of the USSR shall be ensured by a system of socio-economic and public health measures and shall be achieved by:

"(1) Carrying out extensive health-improvement and prophylactic measures, particular attention being paid to the health of the younger generation;

"(2) The creation of the appropriate sanitary and hygienic conditions in industry and everyday life, and the elimination of causes of industrial accidents and occupational diseases and of other factors having an adverse effect on health;

"(3) Carrying out measures designed to improve environmental hygiene and to ensure the sanitary protection of bodies of water, the soil, and the atmosphere;

"(4) The planned development of a network of health institutions and medical industry undertakings;

"(5) Satisfying the needs of the population for all forms of medical care, free of charge; improving the quality and standards of medical care; a gradual extension of the system of referral to preventive, case-detection, treatment and follow-up centres; and the development of specialized medical services;

"(6) The free supply of therapeutic and diagnostic products within the framework of in-patient care, with a gradual extension of the free supply of therapeutic products (or their supply on favourable terms) in other forms of medical care;

"(7) An extension of the network of sanatoria, prophylactoria, rest homes, boarding-houses, tourist establishments and other institutions for the treatment of workers and for their recreation;

"(8) The physical and hygienic training of citizens, and the development of physical culture and sport on a mass scale;

"(9) The development of science, the planned conduct of scientific research, and the training of scientific personnel and highly qualified specialists in the health field;

"(10) The utilization of the achievements of science, technology and medical practice in the activities of health institutions, and the provision of the latter with the latest equipment;

"(11) The formulation of scientific and hygienic principles for the nutrition of the population;

"(12) The broad participation of public organizations and of teams of workers in the health protection of the population."

"*Article 10.* Development of a network of health institutions, children's establishments and sports facilities

"The network of health institutions must be developed and their location must be determined on a basis of the established standards of medical care of the population, account being taken of the economic, geographical and other characteristics of the different regions of the country.

"In the planning and building of population centres, housing estates, undertakings and other construction schemes, provision must be made for the construction of the necessary health institutions, children's pre-school and extra-scholastic establish-

[1] Texts furnished by the Government of the Union of Soviet Socialist Republics.

ments, schools, and buildings and facilities for sports activities."

"*Article 12.* Practice of medical and pharmaceutical activities

"Medical and pharmaceutical activities shall be open to persons who have received special training and the corresponding qualification at the appropriate higher and special intermediate educational establishments of the USSR.

"Aliens and stateless persons permanently domiciled in the USSR who have received special training and the corresponding qualification at the appropriate higher and intermediate special educational establishments of the USSR may engage in medical and pharmaceutical activities in the territory of the USSR in accordance with their specialty and qualification.

"Persons who have received medical or pharmaceutical training and the corresponding qualification at the appropriate educational establishments of foreign states shall be allowed to practise medical or pharmaceutical activities in the USSR in accordance with the procedures laid down by the legislation of the USSR.

"The practice of medical and pharmaceutical activities by persons not duly authorized to engage therein shall be prohibited.

"The liability incurred by the illegal practice of medicine shall be laid down by the legislation of the Union Republics."

"*Article 16.* Obligation to preserve professional secrecy

"Physicians and other medical workers shall not be entitled to divulge any information concerning the disease or the intimate and family aspects of the life of a patient which comes to their knowledge as a consequence of their performing their professional duties.

"The directors of health institutions shall be required to communicate information concerning citizens' diseases to the health agencies when this is required in the interests of safeguarding the health of the population, and to investigatory and judicial bodies, at their request."

"*Article 29.* Compulsory medical examinations

"In order to protect the health of the population and to prevent communicable and occupational diseases, pre-employment and periodic medical examinations shall be compulsory for workers employed in food industry, public catering and trading undertakings, water supply installations, therapeutic and prophylactic establishments, children's establishments, livestock farms, and certain other undertakings, institutions and organizations, also in undertakings, institutions and organizations in which working conditions are unhealthy..."

"*Article 30.* Prevention and elimination of communicable diseases

"... Patients suffering from communicable diseases who constitute a danger to their associates shall be subject to compulsory hospitalization, and contacts shall be placed in quarantine.

"Persons who are carriers of communicable diseases shall be subject to appropriate health measures. Should such persons be a possible source of the propagation of communicable diseases owing to the nature of the processes in which they are employed or to the work in which they are engaged, they shall be temporarily assigned to other work or, if such transfer is impossible, temporarily suspended from work and paid a social insurance allowance in accordance with the legislation of the USSR."

"*Article 32.* Provision of therapeutic and prophylactic care to citizens

"Citizens of the USSR shall be provided with specialized medical care in policlinics, hospitals, centres for prevention, case-detection, treatment and follow-up, and other therapeutic and prophylactic establishments, also with emergency and domiciliary medical care.

"Medical care for disabled veterans of the Great Patriotic War shall likewise be provided in special therapeutic and prophylactic establishments; in the case of out-patient care, such persons shall enjoy special privileges, laid down by the legislation of the USSR.

"During a period of illness involving a temporary work disability, citizens shall be excused from work and paid a social insurance allowance in accordance with established procedures.

"... Aliens and stateless persons permanently domiciled in the USSR shall be entitled to medical care on an equal footing with citizens of the USSR..."

"*Article 33.* Arrangements for providing citizens with therapeutic and prophylactic care

"Therapeutic and prophylactic care shall be made available to citizens by the health institutions serving their place of residence or their place of work.

"Persons who have been injured in an accident or who, on account of a sudden illness, are in need of urgent medical assistance, shall be given immediate care by the nearest therapeutic and prophylactic establishment, irrespective of the authority to which the latter is subordinate..."

"*Article 35.* Procedures governing surgical intervention and the use of complex diagnostic methods

"Surgical operations shall be carried out and complex methods of diagnosis employed subject to the patient's consent or, if the patient is under sixteen years of age or is mentally ill, to the consent of the patient's parents or guardians.

"Emergency surgical operations shall be carried out and complex methods of diagnosis employed without the consent of the patients or of their parents or guardians only in exceptional cases where a delay in establishing a diagnosis or in the performance of the operation would endanger the life of the patient and it appears impossible to obtain those persons' consent."

"*Article 36.* Special prophylactic and therapeutic measures

"In order to protect the health of the population, the health agencies shall be required to take special measures for the prevention and treatment of diseases which constitute a danger to the patient's associates (i.e. tuberculosis, mental diseases, venereal diseases, leprosy, chronic alcoholism, and drug dependence), also of the quarantinable diseases.

"Tuberculosis patients shall be provided with the appropriate medicaments free of charge; their treatment in sanatoria and prophylactoria shall likewise be free of charge ..."

"*Article 38.* Encouragement of motherhood. Guarantees for the health protection of the mother and her child

". . . The protection of maternal and child health shall be ensured by the organization of an extensive network of women's consultation centres, maternity homes, sanatoria and rest homes for expectant mothers and mothers with children, crèches, kindergartens and other children's establishments; by the provision of maternity leave with payment of a social insurance allowance; by allowing nursing mothers time off during work to enable them to nurse their children; by the payment, in accordance with established procedures, of a grant on the occasion of the birth of a child and of allowances to compensate for absences from work while a sick child is cared for; by prohibiting the employment of women in arduous occupations or occupations dangerous to health, and by transferring pregnant women to easier work without any reduction in their average wage or salary; by the improvement, from the hygienic and other standpoints, of working and living conditions; by State and public assistance to the family; and by other measures as laid down by the legislation of the USSR and of the Union Republics.

"In the interests of protecting the health of the woman, she shall have the right to decide herself, whether or not to accept motherhood."

"*Article 39.* Provision of medical care for expectant mothers and the newborn

"Health institutions shall provide every woman with professional medical surveillance during pregnancy, in-patient medical care during confinement, and therapeutic and prophylactic care, for both herself and the infant, after delivery."

"*Article 40.* Provision of medical care for children and adolescents

"Medical care for children and adolescents shall be provided by therapeutic and prophylactic establishments and by establishments for convalescence, rehabilitation and rest: i.e. policlinics, centres for prevention, case-detection, treatment and follow-up, hospitals, sanatoria and other health institutions. Accommodation in children's sanatoria shall be free of charge.

"Children and adolescents shall be subject to the surveillance provided by centres for prevention, case-detection, treatment and follow-up."

"*Article 42.* State assistance to citizens in the care of their children. Benefits granted to mothers when their children are ill

"The basic cost of keeping children in crèches, kindergartens and other children's establishments shall be met out of the State budget, also from the resources of undertakings, institutions, organizations, collective farms, trade unions and other public organizations.

"Children with developmental defects of a physical or mental nature shall be accommodated, at State expense, in infants' homes, children's homes and other specialized children's establishments.

"If it is impossible to admit a sick child to hospital or if there are no indications for in-patient care, the mother or another member of the family looking after the child may be released from work and paid a social insurance allowance in accordance with established procedures.

"Mothers of hospitalized infants below the age of one year, also mothers of older children who are seriously ill and in the opinion of the physician require maternal care, shall be given an opportunity to stay with their child at the therapeutic establishment and shall be entitled to payment of a social insurance allowance in accordance with established procedures."

A number of other instruments relating to human rights were approved by joint decisions of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR.

Thus, on 28 November 1969, the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR approved the Model Collective Farm Regulations, adopted by the Third All-Union Congress of Collective Farmers.

Excerpts from these regulations are given below.

"The collective farm system is an integral part of Soviet socialist society; it is the way laid down by V. I. Lenin, the way that has stood the test of history and corresponds with the peculiarities and interests of the peasantry, for the gradual transition of the peasantry to communism.

"Public ownership of the means of production, the advantages of large-scale collective farming and the day-to-day concern and help of the Party and the State, have made it possible to achieve vast social and economic transformations in the countryside. Thanks to the selfless work of the collective farmers and to the efforts of the working class and of the whole Soviet people, the collective farms have been turned into large-scale mechanized agricultural undertakings, their collective wealth has been immeasurably increased, the standard of living of the collective farmers has been raised, and the differences between town and country have been gradually surmounted.

"The collective farm, as a collective form of socialist economic activity, fully complies with the objectives of further development of the forces of production in the countryside, ensures that production is directed by the collective-farm masses themselves on a basis of collective farm democracy, and makes it possible to combine correctly the personal interests of the collective farmers with the collective interest of the community at large. The collective farm is a school of communism for the peasantry.

"Under the direction of the Communist Party the collective farmers are, in close and indissoluble union with the working class, actively participating in the construction of communism in our country."

"I. AIMS AND TASKS

"2. The basic tasks of the collective farm are:

". . . to satisfy more fully the growing material and cultural needs of the collective farmers, to improve their everyday living conditions and gradually to transform the hamlets and villages into well-organized settlements."

"II. MEMBERSHIP IN THE COLLECTIVE FARM, AND RIGHTS AND OBLIGATIONS OF COLLECTIVE-FARM MEMBERS

"3. Citizens who have reached sixteen years of age and have expressed a desire to participate with their labour in the common husbandry of a collective farm may be members of the farm.

"Admission to membership in a collective farm shall be effected by the general meeting of the collective farmers, on the recommendation of the collective-farm management, in the presence of the person making the application.

"An application for membership in a collective farm shall be considered by the collective-farm management within one month."

"4. A collective-farm member shall be entitled:

"To be given work in the common husbandry of the collective farm with guaranteed payment in accordance with the amount and the quality of the labour he contributes;

"To participate in the management of the affairs of the collective farm, to elect and be elected to its management bodies; and to submit proposals for improving the collective farm's activities and for eliminating defects in the work of the management and officials;

"To receive assistance from the collective farm in increasing his professional skill and acquiring a speciality;

"To enjoy the use of a personal plot of land for subsidiary husbandry and for the construction of a dwelling and farm buildings, also the use of the collective farm grazing land and commonly owned working livestock and transport for his personal needs in accordance with the procedures established in the collective farm;

"To social security, the provision of social amenities and the assistance of the collective farm in building and repairing his dwelling and in securing fuel."

"6. Membership in a collective farm shall be retained by persons temporarily absent from the farm in the event of:

"Performance of urgent active military service;

"Election to an office in Soviet, public or co-operative organizations;

"Attendance at a training course entailing discontinuance of work;

"Assignment to work in inter-collective-farm organizations, and

"Departure to work in industry or in other branches of the national economy for a period fixed by the collective-farm management.

"Membership in a collective farm shall also be retained by collective farmers who have ceased work on account of old age or disability, if they continue to live on the collective farm's land."

"7. An application by a collective farmer to withdraw from the collective farm shall be considered by the management and the general meeting of the collective-farm members within three months of presentation of the application."

"V. PRODUCTIVE AND FINANCIAL ACTIVITIES OF THE COLLECTIVE FARM

"23.... The members of a collective farm shall not be answerable with their own property for the farm's liabilities and debts."

"VI. ORGANIZATION OF LABOUR, REMUNERATION AND LABOUR DISCIPLINE

"25 The length of the working day and the daily work schedule on a collective farm, the arrangements for the granting or days off and paid annual leave and the minimum amount of labour to be performed in the common husbandry by able-bodied collective farmers, shall be determined by the collective farm's Rules."

"27. The basic source of the incomes of collective farmers shall be the common husbandry of the collective farm. Remuneration for labour on the collective farm shall be made in accordance with the amount and the quality of the labour contributed to the common husbandry by each collective farmer on the principle of higher pay for good work and better results."

"28. The collective farm shall establish guaranteed payment for the labour of members of the collective farm in respect of work in the common husbandry.

"In order to increase collective farmers' material incentive to step up the production, improve the quality and reduce the cost of agricultural output, in addition to the basic remuneration for labour supplementary payment and other forms of material incentive shall be applied."

"29. To satisfy the collective farmers' requirements of agricultural products a stock of natural produce shall be established in the collective farm to which a certain proportion of the gross crop of grain and other products, also of fodder, shall be allocated. The products and fodder shall be issued as payment for labour or sold to collective farmers, in quantities and in accordance with procedures determined by the general meeting of the collective-farm members."

"30. The collective-farm management shall ensure the punctual payment of pay due to collective farmers, payments in cash being made not less frequently than once a month and natural produce being issued as it becomes available.

"Final settlement with the collective farmers shall be made not later than one month after approval of the collective farm's annual report."

"32. All work on a collective farm shall be performed with due regard to the established safety regulations and the requirements of industrial hygiene.

"The collective farm shall allocate the requisite resources for implementing safety measures and measures of industrial hygiene, and for the purchase of special clothing, special footwear and protective equipment for issue or sale to the collective farmers in accordance with established norms."

"33. Women members of a collective farm shall be entitled to maternity leave; expectant mothers shall be given lighter work; the necessary arrangements shall be made for nursing mothers to feed their children at the proper time, and they may be granted additional leave.

"The collective farm shall arrange a short workday for adolescents and allow them other privileges."

"34. For outstanding production results, making and applying rationalization proposals, saving public resources, long years of unexceptionable work in collective-farm production, and other services rendered to the collective farm, the general meeting of the collective-farm members or the management shall take the following steps with a view to encouraging collective farmers: express appreciation; award prizes or make a costly gift; award a diploma of honour; put names up on the board of honour or inscribe them in the book of honour; confer the titles 'Honoured Collective Farmer' and 'Distinguished Collective Farmer'.

"Other measures of encouragement may also be established at the discretion of the collective farmers' general meeting.

"The titles 'Honoured Collective Farmer' and 'Distinguished Collective Farmer' shall be conferred by a decision of the general meeting of the collective-farm members in accordance with the regulations approved by the farm."

"VII. DISTRIBUTION OF THE GROSS OUTPUT AND RECEIPTS OF THE COLLECTIVE FARM

"36. In the distribution of receipts it must be ensured that there is a correct combination of accumulation and consumption, and a steady growth of common productive capital, reserve stocks and social amenities, and that collective farmers' standard of living improves."

"37. The collective farm shall set aside, out of the natural products of plant cultivation and livestock keeping:

"Fodder . . . for issue or sale to the collective farmers;

"Products for public catering and for the maintenance of children's establishments and orphans, also a proportion of products and fodder for the relief of pensioners, disabled persons and members of the collective farm who are in need."

"38. The funds obtained from the sale of products and other sources shall be employed by the collective farm primarily for paying the collective farmers for their labour. . ."

"VIII. SOCIAL SECURITY OF THE COLLECTIVE FARMERS

"39. Members of the collective farm shall, in accordance with the legislation in force, receive from the resources of the Collective Farmers' Centralized Union Social Security Fund old age pensions, disability pensions and pensions for loss of the bread-winner, and women shall receive, in addition, maternity allowances.

"40. Collective farm members shall, in accordance with the established procedures, be provided out of the resources of the Collective Farmers' Centralized Social Insurance Fund with allowances for temporary disablement and with passes for sanatoria and rest homes, and they shall also be allowed other forms of social insurance.

"The collective farm may, by decision of its general meeting, make additional payments in respect of all types of pensions established for collective farmers, and established personal pensions for veterans of collective-farm construction and for persons who have rendered special services to development of the common husbandry of the collective farm.

"Disabled collective farmers who receive no pension or allowance shall be given assistance by the collective farm out of its resources. By decision of the collective farmers' general meeting, the collective farm may allocate funds for the construction farm and inter-collective-farm sanatoria, rest homes, Pioneer camps, and homes for old people and disabled persons.

"The collective farm shall, in accordance with the established procedure, make contributions to the Collective Farmers' Centralized Union Social Security Fund and to the Collective Farmers' Centralized Union Social Insurance Fund."

"IX. CULTURE, WELFARE, AND PUBLIC SERVICES AND AMENITIES

"The collective farm shall take measures to improve the conditions of collective farmers in regard to social amenities and shall display a day-to-day concern for strengthening the health and improving the physical fitness of collective-farm members and their families.

"To these ends the collective farm shall:

"Construct and equip collective-farm clubs, libraries and other cultural and educational establishments, and sports facilities, promote the development of physical culture and sports, and set up kindergartens and crèches;

"Assist parents and schools in the proper upbringing of children, maintain close liaison with schools, render assistance to the education authorities in teaching children the elements of production, provide schools with plots of land, equipment, seeds, fertilizers and transport facilities, and ensure the placement of school-leavers in employment on the collective farm;

"Organize, where necessary, public catering facilities for collective farmers;

"Assist the health authorities in carrying out therapeutic and prophylactic measures on the collective farm, and provide collective farm members with transport facilities, free of charge and without delay, for the conveyance of sick persons to medical establishments.

"Organize public services and amenities and lay on electricity, and install radio in populated parts of the collective farm and the homes of collective farmers, and promote arrangements to provide collective-farm members with everyday services; provide collective farmers, in accordance with the procedure established in the collective farm, with assistance in the construction and repair of dwellings, and furnish specialists working on the collective farm with the living space they require.

"The collective farm shall concern itself with raising the occupational skill and the cultural and professional standard of collective-farm members; send collective farmers, in accordance with the established procedures, for training at higher and secondary specialist education institutions and at technical colleges and schools and on further training courses; and grant collective farmers who are

satisfactorily receiving tuition from correspondence-course and evening general-education and specialist education institutions, and are working conscientiously on the collective farm, the privileges laid down by the legislation in force."

"X. SUBSIDIARY HUSBANDRY OF THE COLLECTIVE FARMER'S FAMILY (COLLECTIVE-FARM HOUSEHOLD)

"42. The collective farmer's family (collective-farm household) may own a dwelling, farm buildings, commercial livestock, poultry, bees and minor implements for work on a private plot.

"The collective farmer's family (collective-farm household) shall be allowed the use of a private plot, for growing vegetables and fruit and other needs, not more than half a hectare in area including the land occupied by buildings, and in irrigated areas not more than one fifth of a hectare in area.

". . . The use of private plots within the limits laid down by the collective farm shall be retained by collective farmers' families (collective-farm households) where all the members of the family (collective-farm household) are incapable of work on account of old age or disability, where the only member of the family (collective-farm household) capable of work has been called up for urgent active military service or has been elected to an office or is taking a training course or has temporarily undertaken other work with the consent of the collective farm, or where the remaining members of the family (collective-farm household) consist only of minors. In all other cases the question of retention of the private plot shall be decided by the general meeting of the collective-farm members.

". . . The collective-farm management shall, in accordance with the procedure established by the collective farm, give collective farmers assistance in cultivating private plots; such assistance shall be rendered in the first place to families none of whose members is able to work."

"43. . . . The collective farm management shall give collective farmers assistance over acquiring livestock and obtaining veterinary services, and over the provision of livestock with fodder and pasturage."

"44. The collective farm shall, by decision of the general meeting of the collective farmers, grant private plots of land to teachers, physicians and other specialists working in rural areas and resident on the collective farm's land. Workers, employees, pensioners and disabled persons resident on the collective farm's land may, if there is land for such plots unoccupied, be granted private plots by decision of the general meeting of the collective farmers.

"The aforementioned persons may also be permitted to use pastureland for their livestock in accordance with the established procedure."

"XI. MANAGEMENT BODIES AND INSPECTION COMMITTEE OF THE COLLECTIVE FARM

"45. The management of collective farm's affairs shall be carried out upon a basis of broad democracy and active participation by the collective farmers in settlement of all matters to do with the life of the collective farm.

"The affairs of the collective farm shall be managed by the general meeting of members of the collective farm, and in the interval between meetings by the collective-farm management."

"54. An Inspection Committee shall be elected, for a period of three years, to supervise the economic and financial activities of the collective farm's management and officials. The Inspection Committee shall elect a chairman from among its members.

"The Inspection Committee shall be guided by the collective farm regulations and the legislation in force; it shall be accountable to the general meeting of members of the collective farm, and shall exercise control over observance of the collective farm regulations, the safe-keeping of collective-farm property, the legality of contracts and of economic operations involving expenditure of financial resources and of stocks of materials and capital equipment, and the accuracy of records, accounts and settlements with the collective farmers, also over the prompt consideration by the collective-farm management and officials of complaints and applications made by collective farmers."

"56. Election for the management, the chairmanship of the collective farm and the Inspection Committee shall be carried out by open or secret ballot at the discretion of the general meeting of collective farmers.

". . . The chairman of the collective farm, the members of the management, and the chairman and members of the Inspection Committee may be recalled before the appointed time, by decision of the general meeting of the collective farm members, where they have lost the confidence of the collective farmers."

In a resolution of the Central Committee of the Communist Party of the Soviet Union and of the Council of Ministers of the USSR," On the organization of preparatory departments in higher educational institutions", of 20 August 1969, with a view to raising the standard of the general education schooling of workers and rural youth and to creating the requisite conditions for them to enter higher educational institutions, the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR recognized the desirability of setting up preparatory departments in higher educational institutions (paragraph 1).

"3. Admission to preparatory departments is open to leading workers, collective farmers and servicemen demobilized from the Armed Forces of the USSR who have completed their secondary education. Young workers and collective farmers admitted to preparatory departments must have done not less than one year of practical work.

"Persons who have completed their studies in preparatory departments and have passed the final examinations shall be admitted to the first course at higher educational institutions without sitting entrance examinations."

Important instruments for extending and guaranteeing the right to education in the USSR were approved in 1969 by the Council of Ministers of the USSR.

Thus, on 22 January 1969, the Council of Ministers approved regulations concerning the Higher Educational Institutions of the USSR.

"1. Higher education in the USSR shall be provided free of charge, on the principle of the equal right of all citizens of the USSR to education, regardless of race, nationality, sex, property and social status, or religion, on a basis of broad development, national in form and socialist in content, of the culture of the peoples of the USSR."

". . .

"8. Citizens of the USSR who have completed their secondary education shall be entitled to admission to higher educational institutions. Persons shall be accepted for full-time education up to thirty-five years of age and for part-time education without any age limit. . ."

"9. Students at higher educational institutions shall be entitled:

"To the use, free of charge, of the laboratories, offices, auditoria, reading rooms, libraries and computer installations, also of the sports facilities, buildings and equipment and other facilities, of the higher educational institutions;

"To participate in research work arranged by the higher educational institution and by the students' scientific society;

"To participate, through public organizations, in discussion on questions concerning improvement of the educational process and ideological-educational work, also on questions concerning students' progress and their labour and educational discipline, the assignment of grants, the allocation of places in hostels, and other matters to do with students' education and welfare.

"After graduating from a higher educational institution students shall be given work according to their speciality."

". . ."

"11. Full-time students at higher educational institutions shall be provided with grants in accordance with the legislation in force.

"Hostels shall be provided for necessitous non-local students."

"12. Full-time students at higher educational institutions shall enjoy the privileges established for them."

". . ."

"15. A student who has complied with all the requirements of the plan of studies and the courses shall be permitted to defend his graduation project (paper) or to sit for the State examinations.

"A student who has defended his graduation project (paper) or taken the State examinations shall, by decision of the State Examination Board, be given a qualification in accordance with the speciality studied and shall be awarded a diploma and a badge of the prescribed pattern to be worn on the breast."

"16. . . . A student who has obtained an honours diploma shall be given preference in the matter of assignment to work or admission to a post-graduate course."

"17. Students who have graduated at a higher educational institution shall be given work in the speciality studied at the educational institution in accordance with the Regulations concerning the Individual Assignment of Young Specialists."

"18. Citizens of foreign countries resident in the territory of the USSR shall be admitted to higher educational institutions in the normal way.

"Citizens of foreign countries admitted to the higher educational institutions of the USSR shall have the rights and duties of students laid down in the present Regulations.

"In cases in which it is provided otherwise by an international agreement concluded by the USSR with the foreign State concerned, the provisions of the international agreement shall apply."

". . ."

"20. The filling of vacant posts among the professors, teachers and scientific staff at higher educational institutions shall be by competition in accordance with established procedures; re-election of the aforesaid staff for a further period shall be a matter for the council of the higher educational institution (of the faculty) to decide.

"Dismissal of professors and teachers on the permanent staff on account of a reduction in the volume of work may not take place except at the end of the academic year."

"21. The professors, teachers and scientific staff of a higher educational institution shall be entitled:

"To use the laboratories, offices, auditoria, reading rooms, libraries and other educational facilities and auxiliary educational facilities, also the scientific facilities, of the higher educational institution;

"To participate in discussion on questions concerning higher educational institutions' activities at meetings of higher educational institutions' councils (of the councils of a higher educational institution's branches, faculties and scientific bodies);

"To draw up and submit proposals for improving the teaching, teaching research and educational work at the higher educational institution;

"To participate in the work of science-methodology councils and commissions;

"To participate in international and national conferences, congresses and meetings in accordance with the established procedures."

". . ."

"24. . . . The rights and duties of auxiliary educational staff and of administrative and general staff shall be determined by the internal rules and official instructions."

". . ."

"29. For students receiving day or evening forms of education two vacations a year shall be established having a total duration of 7 to 10 weeks, and for correspondence-course students one annual vacation of from 8 to 10 weeks. . ."

On 22 January 1969 the Council of Ministers of the USSR also approved Regulations concerning the Secondary Specialist Education Institutions of the USSR, the first item of which reads as follows:

"Secondary specialist education in the USSR shall be provided free of charge, on the principle of the equal right of all citizens of the USSR to education, regardless of race, nationality, sex, property and social status, or religion, on a basis of broad development, national in form and socialist in content, of the culture of the peoples of the USSR."

In 1969 new marriage and family codes were adopted in all the Union Republics (with the

exception of Georgian SSR). The codes reaffirmed the basic principles of our legislation, which safeguard human rights in all possible ways. They are based on the complete equality of men and women, and on the equality of rights of all citizens, irrespective of nationality, race or attitude towards religion. They guarantee the freedom to enter into marriage. A number of provisions seek to ensure that every child has an opportunity to obtain the requisite education. Particular attention is paid to protection of the rights of children. At the same time the codes safeguard sufficiently thoroughly one of the most important personal human rights, namely parental rights: the right to bring up one's own children.

On 11 July 1969, the sixth session of the Seventh Supreme Soviet of the USSR adopted the Act approving the Principles of the Corrective Labour Legislation of the Union of Soviet Socialist Republics and of the Union Republics.

The Principles contain a number of provisions designed to safeguard human rights.

"*Article 1.* Aims of Soviet corrective labour legislation

"... The purpose of the infliction of punishment is not to cause physical suffering or to humiliate."

"*Article 4.* Ground for the serving of a sentence

"The sole ground for the serving of a criminal sentence and for the application of corrective measures to convicted persons shall be a court sentence which has entered into legal force."

"*Article 8.* Legal position of persons serving sentences of imprisonment, exile, banishment or corrective labour without imprisonment

"Persons serving sentences of imprisonment, exile, banishment or corrective labour without imprisonment shall have the duties and rights prescribed by law for citizens of the USSR as restricted by the legislation applying to convicted persons, also by the sentence of the court and by the regime established in the present Principles and in the corrective labour codes of the Union Republics for the serving of this type of sentence.

"The legal position of aliens and stateless persons serving a sentence of imprisonment, exile, banishment or corrective labour without imprisonment shall be determined by the legislation of the USSR establishing the rights and duties of such persons while they are in the territory of the USSR, as restricted by the legislation applying to convicted persons, also by the sentence of the court and by the regime established in the present Principles and in the corrective labour codes of the Union Republics for the serving of this type of sentence."

"*Article 15.* Prisons

"... Pregnant women and nursing mothers may not be kept under a strict regime."

"*Article 26.* Correspondence of persons sentenced to imprisonment

"... Convicted persons shall be entitled to address complaints, statements and letters to State bodies, public organizations and officials. Complaints, statements and letters of convicted persons shall be forwarded to the proper quarter and shall be permitted in accordance with the procedure prescribed by law.

"Complaints, statements and letters addressed to the procurator shall not be subject to inspection and shall be forwarded to the proper quarter within twenty-four hours."

"*Article 27.* Labour of imprisoned persons

"Every convicted person shall be obliged to work. The administration of corrective labour institutions shall be required to ensure that convicted persons are employed in socially useful labour, account being taken of their fitness for work and as far as possible of their trade or profession..."

"*Article 28.* Labour conditions of imprisoned persons

"For persons serving a sentence in corrective labour colonies or prisons, an eight-hour work-day shall be established; they shall be allowed one rest-day a week. In accordance with the procedure laid down by the labour laws, convicted persons shall be released from labour on public holidays.

"The length of the work-day of persons serving a sentence in corrective labour colony-settlements or in educative labour colonies, and the assignment to them of weekly rest-days, shall be established in the normal way in accordance with the labour laws.

"... The labour of convicted persons shall be organized in compliance with the labour protection and safety regulations established by the labour laws.

"Persons who have become unfit for work while serving a sentence shall, after their release, be entitled to a pension and to indemnification in the cases and according to the procedures provided for by the laws of the USSR."

"*Article 29.* Payment for the labour of imprisoned persons

"The labour of imprisoned persons shall be remunerated, taking into account its amount and quality, in accordance with the norms, and at the rates applying in the national economy. The reckoning of the earnings of convicted persons shall allow for a partial reimbursement of expenditure on the upkeep of the corrective labour institutions.

"... Under the system established by these Principles and by the corrective labour codes of the Union Republics, convcited persons may not be employed without payment except on work to provide services and amenities in places of imprisonment and in the surrounding area, or on work to improve the social amenities of convicted persons."

"*Article 30.* Political education work with imprisoned persons

"With imprisoned persons, political education work shall be carried out with a view to educating them in the spirit of an honest attitude to labour, scrupulous compliance with the law and respect for the rules of socialist society and careful regard for socialist property, and with a view to increasing their awareness and raising their cultural level, and to developing a useful initiative.

"The participation of convicted persons in political education measures shall be encouraged and shall be taken into account in determining the degree of their correction and re-education."

"*Article 31.* General-education instruction and occupational training of imprisoned persons

"Compulsory eight-year general-education instruction of convicted persons shall be carried out in corrective labour institutions.

"Compulsory occupational training shall be organized for convicted persons who have no trade or profession.

"Convicted persons of over forty years of age shall be given general-education instruction if they wish, and disabled persons of the first and second categories shall also be given vocational technical training if they wish."

"*Article 32.* Amateur groups in places of imprisonment

"With a view to developing habits of collectivism in convicted persons serving a sentence in places of imprisonment and encouraging useful initiative among them, also to utilizing the influence of the collective on the correction and re-education of convicted persons in corrective labour institutions, amateur groups of convicted persons working under the guidance of the administration of the institutions shall be set up..."

"*Article 36.* Material living conditions of imprisoned persons

"Persons serving a sentence in places of imprisonment shall be provided with the requisite dwelling conditions in conformity with the sanitation and hygiene regulations.

"Convicted persons shall be given an individual sleeping berth and bedding. They shall be provided with clothing, underwear and footwear according to the season and with due regard to climatic conditions.

"Convicted persons shall be given food ensuring the normal vital activity of the organism... For expectant and nursing mothers, for minors and also for sick persons, improved dwelling conditions shall be created and higher standards of nutrition shall be established.

"Female prisoners who are conscientious about work and comply with the requirements of the regime may be permitted by the administration of the corrective labour institution, with the consent of the Supervisory Commission, to live outside the colony while released from work on account of pregnancy and childbirth, also until the child reaches the age of two years...

"Convicted persons who have been released from work on account of sickness and expectant and nursing mothers shall be provided with food free of charge for the period of release from work. Minors, also disabled persons of the first and second categories, shall be provided with food and clothing free of charge. In the case of convicted persons who persistently avoid work, the cost of the food and clothing shall be recovered from the funds in their personal accounts.

"The standards of nutrition and of material living conditions for imprisoned persons shall be laid down by the Council of Ministers of the USSR."

"*Article 37.* Medical care of imprisoned persons

"The necessary therapeutic institutions shall be organized at places of imprisonment. Therapeutic and prophylactic work at places of imprisonment shall be arranged for and carried out in compliance with the public health laws...

"Infants' homes shall be organized in corrective labour colonies where necessary. Convicted persons may place their children of up to two years of age in such homes."

"*Article 39.* Security measures and grounds for the use of weapons

"Where imprisoned persons offer physical resistance to the personnel of corrective labour institutions, display turbulence or perpetrate other acts of violence, the use of handcuffs or a strait jacket shall be permitted to prevent them from harming others or themselves.

"Where an imprisoned person commits an assault or any other deliberate act directly endangering the life of the personnel of corrective labour institutions or the life of other persons, also in the case of escape from custody, the use of weapons shall be permitted, as an exceptional measure, if it is impossible to prevent the aforesaid acts by other means. The use of weapons shall not be permitted in the case of the escape of women and minors.

"The administration of the place of imprisonment shall inform the procurator immediately of every instance of the use of weapons."

"*Article 40.* Procedure and conditions for the serving of a sentence of exile

"... The correction and re-education of persons serving a sentence of exile shall be effected upon a basis of their being compulsorily employed in socially useful labour taking into account their ability to work, and of political education work being carried out with them...

"An exile shall choose his place of residence at his discretion within the administrative *raion* assigned for his residence...

"... The Executive Committees of the local Soviets of Working People's Deputies shall, not later than fifteen days after the arrival of exiles at the place of the serving of their sentence, provide them with work taking into account their ability to work and as far as possible their trade or profession, and shall provide them with living space and render them where necessary material assistance until they commence work.

"... The labour of persons serving a sentence of exile shall be regulated in the normal way by the labour laws."

"*Article 41.* Procedure and conditions for the serving of a sentence of banishment

"... Banished persons shall choose their place of work and their place of residence at their discretion, excepting areas they are forbidden to live in by the sentence of the court.

"... The Executive Committees of the local Soviets of Working People's Deputies shall assist banished persons over placement and the obtaining of living space.

"The labour of persons serving a sentence of banishment shall be regulated in the normal way by the labour laws."

"*Article 42.* Forms of corrective labour without imprisonment and procedure for the serving of sentences thereto

"Sentences of corrective labour without imprisonment shall be served in accordance with the sentence of the court at the place of work of the convicted

person or at other places determined by the authorities executing sentences of this kind but within the convicted person's *raion* of residence, account being taken of his ability to work and as far as possible of his trade or profession. In the case of a minor, account shall also be taken of the need to ensure the requisite supervision of his conduct and his acquisition of a professional skill. . ."

"*Article 43.* Execution of a sentence of corrective labour without imprisonment

"The correction and re-education of persons serving a sentence of corrective labour without imprisonment shall be effected upon a basis of their participation in socially useful labour. Control over the conduct of the convicted persons, and the carrying out of political education work with them, shall be effected by the collectives of undertakings, institutions and organizations at the place where the sentence is served.

". . . In the case of convicted persons recognized to be unfit for work after the pronouncement of sentence, the authorities executing sentences of this kind shall submit to the court an application for substitution of some other, lighter kind of sentence for corrective labour without imprisonment. . ."

"*Article 44.* Conditions for the serving of a sentence of corrective labour without imprisonment

"From the earnings of persons sentenced to corrective labour without imprisonment sums of a size fixed by the sentence of the court shall be deducted for payment into the State revenue during the period of the serving of the sentence.

". . . During the period of the serving of a sentence of corrective labour without imprisonment the release of convicted persons from work at their own desire without the permission of the authorities responsible for the execution of sentences of this kind shall be prohibited.

"The time spent serving a sentence of corrective labour without imprisonment shall not be included in the convicted person's general period of uninterrupted service, and an entry to that effect shall be made in his labour book.

"Provided there has been conscientious work and exemplary conduct during the period of the serving of a sentence of corrective labour without imprisonment such time may be included in the general period of service of the person serving the sentence upon the basis of a court decision to that effect.

"Persons sentenced to corrective labour without imprisonment shall not be given regular leave while they are serving the sentence. The time spent in serving the sentence shall not be included in the period conferring a right to leave and to receive privileges and wage increases.

"Persons serving a sentence of corrective labour without imprisonment shall have temporary disablement allowances and maternity allowances estimated from their earnings less the deductions fixed by the sentence of the court."

"*Article 46.* Grounds for release from serving a sentence

"Convicted persons shall be released on the expiry of their sentence or on other grounds prescribed by law. If a sentence of imprisonment ends on a rest-day or public holiday, they shall be released on the day before the rest-day or the public holiday.

"Convicted persons who have contracted a chronic mental or other serious illness preventing them from continuing to serve the sentence may be released by the court from serving the remainder of the sentence. . . ."

"*Article 47.* Material assistance to persons released from serving a sentence; their placement

"Persons released from places of imprisonment shall be provided with free passage to their place of residence or work, also with food or money for the journey in accordance with the established norms.

"Should they lack the right clothing and footwear for the time of year or means to purchase them, released persons shall be provided with clothing and footwear free of charge. They may be paid a lump sum out of a special fund.

". . . Persons released from serving a sentence must be provided with work, as far as possible taking their trade or profession into account, by the Executive Committees of the local Soviets of Working People's Deputies within five weeks of their applying for placement assistance. In necessary cases persons released from serving a sentence shall be assigned living space.

". . . Disabled persons and persons of advanced age shall, at their request, be accommodated in homes for the disabled or for old people. Minors without parents shall in necessary cases be sent by the Commissions for the Affairs of Minors to boarding schools or placed under guardians."

On 11 July 1969, the Supreme Soviet of the USSR adopted Regulations concerning Custody Pending Trial, the purpose of which is further to strengthen safeguards of the person against unlawful and unwarranted arrest.

The Regulations define the grounds and the procedure for making an arrest, the legal position of arrested persons and the regime for their detention in places of custody pending trial.

"*Article 1.* "Custody pending trial under the criminal procedure legislation of the USSR and of the Union Republics is a measure of preventive restriction of freedom in respect of an accused person, of an accused person committed for trial or of a suspected person, in connexion with the committing of a crime for which the law allows a penalty of imprisonment.

"The procedure for custody pending trial shall be determined by the present Regulations and by other legislation of the USSR, also by the legislation of the Union Republics.

"The procedure for custody pending trial shall also extend the keeping under arrest of convicted persons whose sentences have not entered into legal force."

"*Article 2.* Purposes of the Regulations concerning Custody Pending Trial

"The purpose of the Regulations concerning Custody Pending Trial is, in conformity with the Principles of Criminal Procedure of the USSR and of the Union Republics, articles 33 and 34, to establish rules for the detention in places of custody pending trial of persons in respect of whom custody

has been selected as a measure of preventive restriction to eliminate the possibility of their avoiding investigation and trial, preventing establishment of the truth in a criminal case or engaging in criminal activities, also to ensure execution of the sentence."

"*Article 3.* Grounds for custody pending trial

"The grounds for custody pending trial shall be an order of the official investigator or of a person prosecuting an inquiry authorized by the procurator, an order of the procurator or a judgement or decision of a court selecting custody pending trial as a measure of preventive restriction, issued in accordance with the penal and criminal-procedure legislation of the USSR and of the Union Republics."

"*Article 6.* Legal position of persons confined in places of custody pending trial

"Persons confined in places of custody pending trial shall have the duties and rights prescribed by law for citizens of the USSR, as restricted by the present Regulations and by the regime of detention in custody.

"The legal position of aliens and stateless persons confined in places of custody pending trial shall be determined by the legislation of the USSR establishing the rights and duties of such persons while they are in the territory of the USSR, as restricted by the present Regulations and by the regime of detention in custody."

"*Article 7.* Principal requirements of the regime in places of custody pending trial

"The principal requirements of the regime in places of custody pending trial shall be: isolation of the persons held in custody, constant surveillance over them, and their separate confinement as provided for in article 8 of the present Regulations.

"Persons held in custody as a measure of preventive restriction shall be searched, have their finger-prints taken and be photographed; articles found on them, also any parcels or packages received on their behalf, shall be subject to examination and their correspondence to censorship. They shall be forbidden to have in their possession money and articles of value, also objects not permitted to be kept in places of custody pending trial. Money taken from them while they are in places of custody pending trial shall be entered in their personal account, and articles of value and objects shall be stored; money and articles of value not acquired by way of earnings for labour or the source of acquisition of which has not been ascertained shall pass into the State revenue upon an order to that effect stating the reasons upon which it is based, authorized by the procurator, being made by the chief officer of the place of custody pending trial.

"Persons in custody may be put to labour only within the bounds of the place of custody pending trial with their consent and by permission of the person or body conducting the proceedings in regard to the case. The conditions for payment for their labour shall be determined in accordance with the procedure laid down by the Council of Ministers of the USSR."

"*Article 8.* Separate confinement in places of custody pending trial

"Persons in custody shall be confined in common cells. In exceptional cases, in pursuance of an order stating the reasons upon which it is based, authorized by the procurator, issued by the person or body conducting the proceedings in regard to the case or by the chief officer of the place of custody pending trial, they may be confined in solitary confinement cells.

"Persons in custody shall be put in cells which comply with the following isolation requirements:

"Isolation of men from women;

"Isolation of minors from adults: in exceptional cases adults may, with the procurator's authorization, be put in cells in which there are minors;

"Isolation of persons who have previously served a sentence in places of imprisonment from persons who have not been confined in places of imprisonment;

"Isolation of persons accused or suspected of having committed heinous crimes from other persons held in custody;

"Isolation of persons accused or suspected of having committed particularly dangerous crimes against the State, as a rule, from other persons held in custody;

"Isolation of particularly dangerous recidivists from other persons held in custody;

"Isolation of convicted persons from other persons held in custody, and according to the type of corrective-labour-colony regime decided upon by the sentence of the court;

"Isolation of aliens and stateless persons as a rule from other persons held in custody.

"Persons suspected or charged in respect of one and the same criminal case shall, on the instructions of the person or body conducting the proceedings in regard to that case, be confined separately from one another.

"The procedure for the accommodation of persons held in custody in the therapeutic institutions of the places of confinement shall be laid down by the Ministry of Internal Affairs of the USSR."

"*Article 9.* Rights of persons in custody

"Persons in custody shall have the right:

"To take one hour of exercise daily;

"To receive once a month a package or parcel weighing up to five kilograms; to receive remittances of money; to purchase, by written order, food and necessaries costing not more than ten roubles a month; to wear their own clothing and footwear;

"To have in their keeping documents and notes relating to the criminal case;

"To use the facilities for table games, and books from the library, of the place of custody pending trial;

"To address complaints and statements to State bodies, public organizations and officials, in accordance with the procedure laid down in article 13 of these Regulations.

"Women in custody shall be entitled to have with them children up to two years of age. For pregnant women and for women who have children with them, also for minors, the duration of the daily exercise shall be up to two hours.

"Persons serving a sentence in places of imprisonment shall, where custody is selected for them as a measure of preventive restriction in connexion with the proceedings in regard to another case, be confined

in accordance with the rules laid down by the present Regulations. The right to receive parcels and packages and to buy food and necessaries shall be established for these persons in accordance with the rules laid down by the legislation of the USSR and of the Union Republics for the type of corrective-labour-colony regime appointed for them by the sentence, decision or order of the court."

"*Article 10.* Duties of persons in custody

"Persons held in custody shall be required to observe the good order established in places of custody pending trial; to comply with the requirements of the administration; to take their turn, as appointed by the administration to do so, to be on duty in the cells; to treat with respect the furniture, equipment and other property of places of custody pending trial."

"*Article 11.* Material living conditions and medical care for persons in custody

"Persons in custody shall be provided with the requisite dwelling conditions in conformity with the sanitation and hygiene regulations.

"Persons in custody shall be provided free of charge, in accordance with the established norms, with food, an individual sleeping berth, bedding and other kinds of material living conditions. In necessary cases they shall be issued clothing and footwear of the prescribed design.

"Medical care, also therapeutic and prophylactic work and anti-epidemic work, in places of custody pending trial shall be organized and effected in conformity with the public health legislation.

"The arrangements for providing persons held in custody with medical care, and for use of the public health authorities' medical institutions and employment of their medical personnel's services for that purpose, shall be laid down by the Ministry of Internal Affairs of the USSR and the Ministry of Public Health of the USSR."

"*Article 12.* Arrangements for allowing persons in custody to receive visits

"Persons in custody may be allowed by the administration of the place of custody pending trial to receive visits from relatives or other persons only with the permission of the person or body conducting the proceedings in regard to the case. The length of a visit shall be one to two hours. The person or body conducting the proceedings in regard to the case may not give permission for a visit, as a rule, more frequently than once a month.

"From the time of the admission of the defence lawyer, confirmed in writing by the person or body conducting the proceedings in regard to the case, to participation in the case, persons in custody shall be entitled to receive visits from the defence lawyer in private without restriction as to the visits' number or duration."

"*Article 13.* Correspondence of persons in custody, and procedure for forwarding complaints, statements and letters

"Persons in custody may carry on a correspondence with their relatives and other citizens by permission of the person or body conducting the proceedings in regard to the case.

"Complaints, statements and letters of persons held in custody shall be perused by the administration of the place of custody pending trial. Complaints, statements and letters addressed to the procurator shall not be subject to perusal and shall be forwarded to the right address within twenty-four hours of their presentation.

"In conformity with the criminal procedure legislation of the USSR and of the Union Republics, complaints concerning actions of the person prosecuting the inquiry or of the official investigator shall be forwarded by the administration of the place of custody pending trial to the procurator; and complaints concerning actions and decisions of the procurator to the procurator at the level above him, not later than three days from the time of their presentation.

"Other complaints, statements and letters to do with the proceedings in a criminal case shall be forwarded by the administration of the place of custody pending trial to the person or body conducting the proceedings in regard to the case not later than three days from the time of their presentation. They shall be perused by that person or body and forwarded to the proper quarter not later than three days from the time of their reception. Complaints, statements and letters containing information communication of which might hinder the establishment of the truth in regard to a criminal case shall not be forwarded to the quarter indicated, and the person held in custody, also the procurator, shall be informed of the fact.

"Complaints, statements and letters on matters not to do with the proceedings in regard to a case shall be considered accordingly by the administration of the place of custody pending trial or forwarded to the proper quarter in accordance with the procedure laid down by law."

"*Article 17.* Security measures and grounds for the use of weapons

"Where persons in custody offer physical resistance to the personnel of places of custody pending trial, display turbulence or perpetrate other acts of violence, the use of handcuffs or a strait jacket shall be permitted to prevent them from harming others or themselves.

"Where a person held in custody commits an assault or any other deliberate act directly endangering the life of the personnel of places of custody pending trial or the life of other persons, also in the case of escape from custody, the use of weapons shall be permitted, as an exceptional measure, if it is impossible to prevent the aforesaid acts by other means. The use of weapons shall not be permitted in the case of the escape from custody of women and minors.

"The administration of places of custody pending trial shall inform the procurator immediately of every instance of the use of weapons.

"*Article 18.* Grounds for the release of persons held in custody as a measure of preventive restriction

"The grounds for the release of persons from custody shall be:

"(1) Revocation of the measure of preventive restriction;

"(2) Modification of the measure of preventive restriction;

"(3) Expiry of the period provided by law for the holding of persons in custody as a measure of

preventive restriction where that period has not been extended by the procedure prescribed by law. The chief officer of the place of custody pending trial shall be required, not later than seven days before the expiry of the period for the holding of a person in custody, to give written notice of the period's expiry to the person or body conducting the proceedings in regard to the case, also to the procurator supervising observance of the law in places of custody pending trial.

"The release of persons from custody shall be effected by the chief officer of the place of custody pending trial upon the basis of an order of the person prosecuting an inquiry, the official investigator or the procurator, or of the judgement or decision of a court. In the case provided for in paragraph (3) of the present article persons shall be released by order of the procurator supervising observance of the law in places of custody pending trial.

"An order, judgement or decision requiring a person's release from custody shall be given effect immediately it is received at the place of custody pending trial.

"Persons released from custody shall be provided by the administration of the place of custody pending trial with free passage to their place of residence. In necessary cases they shall be given monetary assistance and clothing."

"*Article 19.* Supervision by the procurators of observance of the law in places of custody pending trial

"Supervision of observance of the law in places of custody pending trial shall be effected by the Procurator General of the USSR and by the procurators under him in accordance with the legislation on the procurator's supervisory powers in the USSR."

The plenum of the Supreme Court of the USSR, on 30 June 1969, issued a decree *On court sentences.* What follows is an excerpt from that decree.

The court sentence is a most important act of socialist justice. In virtue of the law no one may be found guilty of committing an offence and have a criminal penalty inflicted upon him otherwise than by the sentence of a court. Pronounced in the name of the State in circumstances of full implementation of the democratic principles of legal procedure the sentence is of great educational and socio-political importance.

Performance of the tasks incumbent upon the Soviet court in regard to the administration of justice and the strengthening of socialist legality and socialist law and order requires of the court that the sentence should in every case be lawful and warranted and that where the accused is found guilty the penalty should be a just one...

... With a view to further improving the work of the courts, and to eliminating present shortcomings, the Plenum of the Supreme Court of the USSR resolves as follows:

1. To draw the attention of courts to the fact that the pronouncement of a sentence, the function of which is to ensure that the aims of criminal legal procedure are attained, requires that they should be aware of having a special responsibility for the sentence's being lawful and well-founded.

Courts shall decide all questions that require settlement in the sentence upon a basis of the law in conformity with the socialist sense of justice and the lofty principles of communist morality, in accordance with their inward conviction based upon a comprehensive, full and objective examination of all the circumstances of the case in their entirety in conditions precluding any outside influence upon the courts.

2. By virtue of article 43 of the Principles of Criminal Procedure of the USSR and of the Union Republics, a sentence of "guilty" may not be based upon supposition. Courts must proceed from the position that a sentence of "guilty" must be pronounced upon trustworthy evidence when all the various interpretations that have arisen in connexion with the case have been examined, and the discrepancies that exist have been explained and an assessment has been made of them.

Any doubt as to whether the charge has been proved, where it is impossible to remove such doubt, shall be interpreted in the accused's favour.

3. In conformity with article 43 of the Principles of Criminal Procedure of the USSR and of the Union Republics, a court sentence must be based exclusively upon evidence that has been examined at the session of the court. Statements by the accused, by the party against whom the offence has been committed and witnesses made by them during the inquiry or the preliminary investigation may be made public, but sound recordings of the statements may be played only where the law so allows (Code of Criminal Procedure of the RSFSR, articles 281 and 286, and corresponding articles of the Codes of Criminal Procedure of the other Union Republics). Facts in such statements, and other evidence, may be used as a basis for deductions and decisions in regard to the case only after they have been verified, investigated from all viewpoints and confirmed at the session of the court.

4. To draw the attention of the courts to the fact that, when a sentence is pronounced, an assessment must be made of all the evidence that has been examined during the session of the court. In the sentence it is necessary to set out the circumstances of the case which are recognized by the court as having been established including the motives and objects of the act committed, also the evidence upon which the court arrived at the conclusion that those circumstances did or did not in fact obtain. When considering cases in which there are several accused persons or cases in which the accused is charged with committing several offences, the court must give an analysis of the evidence on each charge and in respect of each accused person, making an assessment of it in the light of all the data in the case.

Courts must not only mention in the sentence the names of the witnesses, of the parties against whom the offence was committed and of other persons by whose depositions, in the opinion of the court, any particular factual circumstances are confirmed, but also set out the substance of such depositions. The court must also indicate in the sentence what evidence examined during the session of the court it has found to be unreliable, and give reasons for its conclusions.

5. When pronouncing sentence the court must bear in mind that an acknowledgement of guilt by the accused may provide the basis of a sentence of "guilty" only if it is confirmed by the whole of the other evidence brought together in connexion with the case.

In the event of the accused's altering statements he made during the preliminary investigation or the inquiry, the court must carefully verify such statements of his, explain the reasons for a statement's having been altered and, after thoroughly examining them in the light of the other evidence brought together in connexion with the case, make a suitable assessment of them.

6. To point out to the courts that the reasons for deciding that an offence comes under any particular article of criminal law, or section or paragraph thereof, must be given in the sentence.

In cases in which there are several accused persons or in cases in which the accused is charged with committing several offences, the court must state the grounds for determination of the offence in respect of each accused person and in respect of each offence.

7. Where the accused is charged with committing several offences provided for under several articles of criminal law and the charge of committing some of those offences has not been substantiated, the court shall, in the descriptive (the descriptive and explanatory) part of the sentence, give its reasons for finding the accused guilty of some offences and for acquitting him of the charge in respect of others, while in the judgement part of the sentence the corresponding judgement shall be given finding the accused guilty under some articles and acquitting him in respect of others.

In cases where the accused is charged with committing several offences qualified as coming under one article of criminal law (for example several thefts, or several instances of continuous criminal activity) and the charge in regard to some of them has not been substantiated, it shall be sufficient for the court, provided this does not entail altering the determination of the act committed, in the descriptive (the descriptive and explanatory, and the explanatory) part of the sentence to formulate, with the reasons therefor, the conclusion that this part of the charge has been found groundless.

Where the accused has committed one offence which has been erroneously qualified as coming under several articles of criminal law, the court must mention only in the descriptive (the descriptive and explanatory, and the explanatory) part of the sentence the elimination of the article of criminal law under which the accused was mistakenly charged, giving the reasons for its elimination.

8. Should it be necessary to qualify individual instances of an offence as coming under an article of law in respect of which no charge was brought against the accused, the court must proceed from the position that such an alteration of the determination of the offence is only permissible provided the acts of the accused that are being qualified as coming under the new article of law were those with which he was charged when committed for trial, that they contain no elements of a more serious offence and that they do not differ substantially in respect of factual circumstances from the charge upon which he was committed; and the alteration of the charge shall not prejudice the position of the accused or his right to defence. The reasons for altering the determination of the offence must be stated in the descriptive (the descriptive and explanatory, and the explanatory) part of the sentence.

9. If the court comes to the conclusion that it is necessary to alter the footing of the charge first brought against the accused and to bring it under articles of criminal law providing for answerability for offences, proceedings in regard to which are not instituted except on the complaint of the party against whom the offence has been committed, the court may, where such party has in the course of the proceedings entered a complaint or has made an oral application at the session of the court for the institution of criminal proceedings against the accused, also where there are other grounds as provided for by the Code of Criminal Procedure of the RSFSR, article 27, and the corresponding articles of the Codes of Criminal Procedure of the other Union Republics, re-determine the acts of the accused and qualify them as coming under the aforesaid article of the criminal law, and deliver a sentence of "guilty".

Where, in such instances, no complaint has been made by the party against whom the offence was committed, the court shall rule that the proceedings be abandoned by procedure on the grounds of the Code of Criminal Procedure of the RSFSR, article 5, paragraph 7, and of the corresponding articles of the Codes of Criminal Procedure of the other Union Republics. This shall not deprive the party against whom the offence has been committed of the right, in the event of the proceedings being abandoned on the aforementioned grounds, to submit an application for the institution of proceedings in the normal way.

10. To draw the attention of courts to the need for them strictly to observe, when pronouncing sentence, the principle of the individualization of punishment. In fixing the punishment the court must take into account the nature of the offence committed and the degree of public danger it involved, the character of the person found guilty, and mitigating or aggravating circumstances. It is necessary to indicate, in the sentence, what specific circumstances testifying to the nature and the degree of public danger of the offence, also to the character of the person found guilty, were taken into account by the court in selecting the penalty. Simply to mention in the sentence that the punishment was fixed "taking into account the character of the person found guilty" is not enough.

Courts must take account of the fact that the enumeration of aggravating circumstances contained in the law is exhaustive, and a court is not entitled, when giving the reasons for the penalty it selects, to make reference to circumstances on the subject of which the law is silent.

A court is entitled to give as a reason for its selecting a certain penalty only such circumstances as were enquired into and confirmed at the session of the court. . .

In addition to the instruments which have been mentioned, the Presidium of the Supreme Soviet of the USSR adopted the following edicts:

Edict of the Presidium of the Supreme Soviet of the USSR, of 22 January 1969, *On Ratification of the International Convention on the Elimination of All Forms of Racial Discrimination*:

"The International Convention on the Elimination of All Forms of Racial Discrimination adopted by the United Nations General Assembly on 21 December 1965 and signed on behalf of the USSR

on 7 March 1966, which has been approved by the Council of Ministers of the USSR and submitted for ratification, shall be ratified with the following reservation in regard to article 22:

"'The Union of Soviet Socialist Republics does not consider itself bound by the provisions of article 22 of the Convention, under which any dispute between two or more States Parties with respect to the interpretation or application of the Convention is, at the request of any of the parties to the dispute, to be referred to the International Court of Justice for decision, and states that in each individual case the consent of all parties to such a dispute is necessary for referral of the dispute to the International Court'; and with the following declaration on the subject of article 17, paragraph 1:

" 'The Union of Soviet Socialist Republics states that the provision of article 17, paragraph 1, of the Convention on the Elimination of All Forms of Racial Discrimination whereby a number of States are deprived of the opportunity to become Parties to the Convention is of a discriminatory nature, and holds that, in accordance with the principle of the sovereign equality of States, the Convention should be open to participation by all interested States without discrimination or restriction of any kind.' "

Edict of the Presidium of the Supreme Soviet of the USSR, of 18 June 1969, *On Ratification of Conventions of the International Labour Organisation*:

"The following Conventions of the International Labour Organisation which have been approved by the Council of Ministers of the USSR and submitted for ratification, namely:

"Convention 23, concerning the Repatriation of Seamen,

"Convention 27, concerning the Marking of the Weight on Heavy Packages Transported by Vessels,

"Convention 32, concerning the Protection against Accidents of Workers Employed in Loading or Unloading Ships (Revised 1932),

"Convention 69, concerning the Certification of Ship's Cooks,

"Convention 73, concerning the Medical Examination of Seafarers,

"Convention 92, concerning Crew Accommodation on Board Ship (Revised 1949),

"Convention 108, concerning Seafarers' National Identity Documents,

"Convention 113, concerning the Medical Examination of Fishermen,

"Convention 116, concerning the partial revision of the Conventions adopted by the General Conference of the International Labour Organisation at its first thirty-two sessions for the purpose of standardising the provisions regarding the preparation of reports by the Governing Body of the International Labour Office on the working of Conventions,

"Convention 119, concerning the Guarding of Machinery,

"Convention 123, concerning the Minimum Age for Admission to Employment Underground in Mines,

"Convention 124, concerning Medical Examination of Young Persons for Fitness for Employment Underground in Mines, and

"Convention 126, concerning Accommodation on Board Fishing Vessels, shall be ratified."

Edict of the Presidium of the Supreme Soviet of the USSR, of 10 October 1969, *On Ratification of the Treaty between the Union of Soviet Socialist Republics and the German Democratic Republic concerning regulation of the question of the citizenship of persons having dual citizenship*:

"The Treaty between the Union of Soviet Socialist Republics and the German Democratic Republic concerning regulation of the question of the citizenship of persons having dual citizenship, signed in Berlin on 11 April 1969, which has been approved by the Council of Ministers of the USSR and submitted for ratification, shall be ratified."

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

NOTE [1]

ARTICLE 2 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

On 10 July 1969 an 800-page report, entitled *Colour and Citizenship*, which is a comprehensive survey and analysis of race relations in Britain was published. It is the result of the biggest programme of research in this field ever undertaken in Britain and was sponsored by the Institute of Race Relations. The report includes an enquiry into the earnings and expenditure of 1,000 immigrant families and an examination of housing and employment conditions; an historical account of immigration and of government policies; and an examination of local practices in such fields as housing, employment and education. It also draws on a major survey of attitudes to colour and there is an examination of the economic effects of immigration.

Report of the Community Relations Commission

The Report published in June 1969 describes the work of the Commission's nine advisory panels in such fields as education, pre-school children, health and welfare, youth, community relations, training employment, housing and information work.

ARTICLE 3 OF THE UNIVERSAL DECLARATION

Abolition of the death penalty in Great Britain

The permanent abolition of the death penalty in Great Britain was decided by the United Kingdom Parliament after a motion in favour had been accepted by the House of Commons by a majority in a free vote on 16 December 1969 and by a majority in the House of Lords the following day.

ARTICLE 5 OF THE UNIVERSAL DECLARATION

The Genocide Act 1969

The Genocide Act 1969 enabled the United Kingdom to accede (in January 1970) to the United Nations Convention on the Prevention and the Punishment of Crimes of Genocide. As defined in Article 11, it made genocide an offence in United Kingdom Law and added this offence to the list of extradition crimes in the Extradition Act 1870 and the Fugitive Offenders Act 1967.

ARTICLE 8 OF THE UNIVERSAL DECLARATION

Criminal Injuries Compensation Scheme

A revised scheme to compensate victims of crimes of violence was announced by the Home Secretary in May 1969.

ARTICLE 13 OF THE UNIVERSAL DECLARATION

Immigration Appeals Act 1969

This Act introduced a system of appeals against decisions taken in the administration of immigration control. Under the new system the initiative on refusal of entry or deportation still remains with the Home Office but if a person chose to appeal against a specific decision an independent immigration tribunal, set up by the Act, would decide whether it should stand.

ARTICLE 16 OF THE UNIVERSAL DECLARATION

Divorce Act 1969

Under the new Act the only ground on which a petition for divorce may in future be presented is that the marriage has irretrievably broken down. Breakdown can now be established if the parties have lived apart for at least two years, immediately before the presentation of the petition and the respondent does not object to the grant of a decree, or if the parties have lived apart for at least five years immediately before the presentation of the petition.

Family Law Reform Act 1969

The Act has reduced the age of majority from 21 to 18 enabling all persons over the age of 18 to hold and dispose of property, to marry without parental or court consent and to make binding contracts and valid wills. The Act further provides that an illegitimate child and his parents should have the same right to share in each other's estates. It also gives illegitimate children the right to apply to the court for provision out of the estate of their

[1] Note furnished by the Government of the United Kingdom of Great Britain and Northern Ireland.

parents as if they were legitimate children. The Act moreover provides that in disputed paternity cases, the Court, on an application by any party to the proceedings, may direct that blood tests should be made and the report of those tests be receivable in evidence.

ARTICLE 21 OF THE UNIVERSAL DECLARATION

The Representation of the People Act 1969

This Act provides that the minimum age for voting at Parliamentary and Local Government elections should be reduced to 18 years.

Redcliffe-Maud report on local government reform

This Commission which was set up in 1966 reported in June 1969. Its main proposal is the establishment of 61 new local government areas within eight provinces to replace the existing fragmented forms of local government administration in England. It recommended that single unitary authorities (with elected councils) in 58 of these new areas should have responsibility for the whole spectrum of services provided locally. The report further recommended a special system of local government for the metropolitan areas around Birmingham, Liverpool and Manchester akin to that already in operation in Greater London. Shortly after its publication the Prime Minister announced the Government's acceptance in principle of the main recommendations of the report.

ARTICLE 24 OF THE UNIVERSAL DECLARATION

Report by Government Social Survey on Leisure

The survey published in September 1969 had two principal aims: to investigate the pattern of participation in and expenditure on outdoor and physical recreation, and to ascertain the frequency and manner of use of public open spaces among people in urban areas in England and Wales. The report is of considerable value to urban and environmental planners.

ARTICLE 25 OF THE UNIVERSAL DECLARATION

The Housing Act 1969

Improvement grants were increased and they can now cover repairs and replacements as well as improvements. Local authorities were provided with coherent and comprehensive powers for the improvement of whole areas of housing, including their environment, for example by tree planting or providing play space for children. Emphasis is now on public participation and voluntary action in environmental improvement. The Act also provided local authorities with new and strengthened powers for regulating the conditions of houses in multiple occupation, by limiting the number of inmates and enforcing proper means of escape from fire. It moreover provided grants, at the local authorities' discretion, for the installation of standard amenities (bath, w.c., piped water supply, etc.) in such houses. The Act introduced a new system governing the rents of privately rented dwellings which had been brought up to a satisfactory standard. The other main housing enactment of the year was the Rent (Control of Increases) Act, 1969, brought in to mitigate the effects on rents of the economic squeeze. This forbade local housing authorities to increase the rents of their houses beyond a certain limit without specific authority from the Minister of Housing and Local Government.

A major report entitled *Council Housing: Purposes, Procedure and Priorities* was published in 1969. It reviewed the practice of housing authorities in allocating tenancies and rehousing and suggested principles to be followed in these matters. It also dealt with special needs—those with large families, the elderly, the single, the students, the homeless—the special problems of London and the housing of immigrants.

Urban aid programme

The Local Government Grants Act 1969 provides for a new grant to be paid to local authorities in respect of expenditure incurred by them to improve areas of special social need within their boundaries. The purpose of the Act is to provide for the care of citizens who live in the poorest and most overcrowded parts of the cities and towns. To this end a total allocation of between £20 and £25 million over the four years 1968 to 1972 was made available.

Social security

Interest throughout the year was centred on the proposals published by the Government, in three White Papers, for the first reconstruction of the National Insurance Scheme since the original Act came into force in 1948. These proposals were incorporated in the National Superannuation and Social Insurance Bill published in December 1969, and if passed, it is expected to take effect in 1973. While relating both benefits and contributions to earnings it is hoped that people will normally be able to earn for themselves a pension big enough to live on without recourse to means-tested supplementation. All pensions and benefits under both the new and existing scheme will be reviewed every two years and increased to take account of changes in the cost of living. Special provision is made for the sick and disabled by the introduction of an invalidity pension to come into force after the drawing of 28 weeks' sickness benefit. There is a special benefit for those people who require help from another person by day and night, because of severe physical or mental disablement.

The Children and Young Persons Act 1969

Under this Act prosecution of children aged 10-14 will cease, except for homicide, and only care-proceedings will be made in Court for children of this age. For young persons aged 14-17 the decision whether to prosecute will be taken by the police after consultation with the local authority children's department, a magistrate and witnesses. The Act abolishes approved schools and provides for the establishment of a comprehensive system of community homes for children in the care of local authorities. Probation Orders for persons under 17

are also abolished and replaced by supervision orders directing the child to a period of residence at a community home for a maximum of 90 days. This type of treatment would be available where a short period away from home and family troubles seems desirable.

ARTICLE 26 OF THE UNIVERSAL DECLARATION

The Open University

The Open University received its Royal Charter in June 1969 making it an independent autonomous institution. The aims of the Open University are the provision of higher education at both undergraduate and post-graduate level to all those who for any reason have been prevented from achieving it through existing institutions. Students it is expected will be mainly adults. No formal academic qualifications will be required for registration of a student but it is intended that the degrees awarded by the Open University will be of the same standard as those of other British universities. Tuition will be by means of correspondence, radio and television broadcasting, discussion groups and short residential courses.

ARTICLE 27 OF THE UNIVERSAL DECLARATION

National Library Institutions

The Dainton Committee reported in June 1969 in favour of the establishment of a National Libraries Authority to co-ordinate the service and operation of the principal national library institutions in England.

UNITED REPUBLIC OF TANZANIA

THE FUGITIVE OFFENDERS (PURSUIT) ACT, 1969

Act No. 1 of 1969, assented to on 6 February 1969 [1]

...

3. Where the Minister is satisfied that reciprocal provision has been or will be made by or under the law of any contiguous country authorizing the police of the United Republic to enter such country in pursuit of a person who has committed or is reasonably suspected of having committed an extradition crime in the United Republic he may, by order published in the *Gazette*, declare that this Act shall apply in the case of that country subject to such conditions, exceptions and qualifications as may be specified in the order and this Act shall apply accordingly.

4. Where an order is made under section 3 in respect of any contiguous country the police of that country may enter such area of the United Republic as may be defined in the order in pursuit of any person who has committed, or is reasonably suspected of having committed, an extradition crime in that country and may arrest such person within such area.

5. Where the police of any contiguous country, acting under the powers conferred upon them by this Act, arrest any person, they shall forthwith deliver the person to a police officer in Tanganyika who shall, as soon as practicable after such delivery to him, bring such person before a magistrate having jurisdiction over the area within which such person was arrested.

6.—(1) Where a fugitive offender is brought before a magistrate pursuant to the provisions of section 5, and the magistrate is satisfied that such offender is required by the contiguous country for the trial of an extradition crime, he may, subject to such provisions of the Extradition Act, 1965 as shall apply by virtue of the provisions of section 7, order the offender to be returned to the contiguous country from which he is a fugitive and, for that purpose, to be delivered into the custody of the police of that country and to be held in custody and conveyed into that country.

(2) The magistrate shall, so far as is requisite for the exercise of the powers of this section, have the same power, including the power to remand and admit to bail an offender, as he has in the case of a person arrested under a warrant issued by him.

7.—(1) The provisions of Part III and Part IV of the Extradition Act, 1965 shall apply, *mutadis mutandis*:—

(*a*) In relation to the return, restrictions on return, escape from custody and discharge of every fugitive offender brought before a magistrate under this Act, as if such offender were a criminal fugitive arrested pursuant to a warrant or a provisional warrant under sections 12 or 13 of the Extradition Act, 1965;

(*b*) To all proceedings before a magistrate under this Act, as if such proceedings were proceedings under Part III of the Extradition Act, 1965, and a fugitive offender under this Act shall have the same right of appeal and the right to apply for directions in the nature of a writ of habeas corpus as has a fugitive criminal arrested pursuant to the provisions of Part III of the Extradition Act, 1965.

(2) The provisions of section 18 and section 19 of the Extradition Act, 1965 shall apply in respect of proceedings under this Act to the same extent as they apply to proceedings under Part III of the Extradition Act, 1965.

(3) Rules made under section 22 of the Extradition Act, 1965 shall, in so far as they may be applicable, govern appeals to the High Court under this Act.

8.—(1) If, in any case which is brought to his attention, the Minister is of the opinion that the circumstances of the case so require, he may, at any time before the offender has been conveyed to the contiguous country concerned, order the offender to be discharged and upon such order being made the offender shall forthwith be discharged and any proceedings against such offender under this Act, pending at the time when such order is made, shall be discontinued.

(2) An order made under this section shall be final and shall not be subject to review by any court.

...

[1] *Gazette of the United Republic of Tanzania*, No. 6, Vol. L, of 7 February 1969, Acts Supplement.

THE WITNESS SUMMONSES (RECIPROCAL ENFORCEMENT) ACT, 1969

Act No. 4 of 1969, assented to on 7 February 1969 [2]

2....

(2) Where a power is conferred or a duty is imposed by this Act upon a magistrate endorsing a summons in accordance with section 4, such power may be exercised and such duty may be performed by any other magistrate having jurisdiction over the area of jurisdiction of the magistrate endorsing the summons.

3. Where the Minister is satisfied that reciprocal provision has been or will be made by or under the law of any country for the enforcement of a summons issued by any court in the United Republic, he may, by order published in the *Gazette*, declare that this Act shall apply in the case of that country subject to such conditions, exceptions and qualifications as may be specified in the order, and this Act shall apply accordingly.

4.—(1) Where a summons has been issued by a court in a country to which this Act applies, requiring the attendance before such court for the purpose of giving evidence or producing any document in proceedings of a criminal nature pending before such court by a person who is or is suspected of being in or on the way to Tanzania, the court issuing the summons may forward the summons together with three copies thereof to the Attorney-General.

(2) On receipt of the documents referred to in subsection (1) the Attorney-General shall forward the same to the Registrar of the High Court of the United Republic, or, if the person to whom the summons is addressed is or is suspected of being in Zanzibar, to the Registrar of the High Court of Zanzibar, together with a request to cause the summons to be served on the person to whom it is addressed and stating the possible whereabouts of such person.

(3) On receipt of the summons under subsection (2) the Registrar shall forward the same together with the copies thereof to the magistrate within whose area of jurisdiction the person to whom the summons is addressed is or is suspected of being present.

(4) Where a magistrate receives a summons under this section he may, if he is satisfied—

(*a*) That the summons was issued by a person having lawful authority to issue it;

(*b*) That adequate provision has been made or will be made for the payment to the person to whom the summons is addressed of expenses for his travel to the court issuing the summons and for his return to his ordinary place of residence in Tanzania or to the place where the summons is served upon him under the provisions of this Act and for his subsistence during the journeys and for the period of his stay at the place where the court issuing the summons is situate; and

(*c*) That the provisions of this Act have been complied with, endorse such summons and all the copies thereof.

(5) An endorsement of a summons by a magistrate under subsection (4) shall be sufficient authority for the service of the summons in the manner prescribed in section 5.

5.—(1) A summons endorsed by a magistrate in accordance with the provisions of section 4 shall be served by a police officer or other public officer or other person as the magistrate endorsing the summons may direct, and shall be served personally on the person to whom it is addressed by delivering or tendering to him a copy thereof.

...

[2] *Ibid.*

THE EMPLOYMENT ORDINANCE (AMENDMENT) ACT, 1969

Act No. 5 of 1969, assented to on 6 February 1969
and entered into force on 1 March 1969 [3]

...

4. Section 77 of the Employment Ordinance is repealed and replaced by the following section:

"77.—(1) No child under the prescribed age shall be employed in any capacity whatsoever.

"(2) Any person who employs any child under the prescribed age shall be guilty of an offence against this Part of this Ordinance.

"(3) For the purposes of this section 'prescribed age' means the apparent age of twelve years or such age between twelve years and fifteen years as the Minister may from time to time by order published in the *Gazette* declare to be the prescribed age for the purposes of this section.

"(4) Nothing in this Part or in any other provision of this Ordinance or in any written law shall be construed as permitting employment of a child under the prescribed age."

[3] *Ibid.*

5. Section 83 of the Employment Ordinance is amended by deleting the first three lines of subsection (1) and substituting therefor the following:

"Subject to the provisions of section 84 no woman shall be employed between the hours of 10 p.m. and 6 a.m., and no young person shall be employed between the hours of 6 p.m. and 6 am., in any industrial undertaking except—."

. . .

THE RESETTLEMENT OF OFFENDERS ACT, 1969

Assented to on 6 February 1968 and entered into force on 7 February 1969 [4]

. . .

3. The Minister may, by notice in the *Gazette*, designate any place or area to be a resettlement centre for the purposes of this Act.

4.—(1) Where any person has been convicted by a court of competent jurisdiction of a scheduled offence the Minister may make a resettlement order in respect of such person.

(2) No resettlement order under this section shall be made—

(*a*) In respect of a person who has been convicted of a scheduled offence and sentenced to imprisonment for such offence, after the expiration of thirty days from the date on which the sentence of imprisonment is determined either by effluxion of time or otherwise;

(*b*) In respect of a person who has been convicted of a scheduled offence and has not been sentenced to imprisonment, after the expiration of thirty days from the date of conviction.

5.—(1) Notwithstanding the provisions of section 4 the Minister may make a resettlement order in respect of any person convicted of any offence whatsoever punishable with imprisonment for a term of two years or more, whether or not such offence is a scheduled offence, where the Commissioner for Social Welfare recommends that such order be made.

(2) No order under this section shall be made after the expiration of thirty days from the date of conviction of the person concerned, or, if such person has been sentenced to imprisonment, after thirty days from the date on which the sentence of imprisonment is determined either by effluxion of time or otherwise.

6.—(1) Where any person is ordered to give security for good behaviour under the provisions of section 45 and section 52 of the Criminal Procedure Code the Minister may make a resettlement order in respect of such person.

(2) No order under this section shall be made after the expiration of thirty days from the date of the order under section 52 of the Criminal Procedure Code.

7. Where a resettlement order is made in respect of any person under section 4, section 5 or section 6 and the conviction or order pursuant to which the resettlement order is made is set aside on appeal, the resettlement order shall cease to have effect:

Provided that a resettlement order shall not cease to have effect by reason only of the conviction being set aside if the court determining the appeal substitutes for such conviction a conviction for some other scheduled offence or, in the case of an order made under section 5, an offence punishable with imprisonment for two years or more.

8. Where a deportation order under the provisions of the Deportation Ordinance has been made in respect of any person, and such deportation order is subsisting, or, where an order has been made against any person under section 8 of the Witchcraft Ordinance requiring such person to reside within any specified area, and such order is subsisting, the Minister may make a resettlement order in respect of such person and upon a resettlement order being so made the deportation order or the order made under section 8 of the Witchcraft Ordinance, as the case may be, shall cease to have effect and shall be deemed to have been rescinded.

9. Every resettlement order shall take effect—

(*a*) Where the person in respect of whom it is made is serving a sentence of imprisonment for any offence whatsoever or is lawfully detained, upon the determination of such sentence, whether by effluxion of time or otherwise or upon his discharge from detention, as the case may be;

(*b*) In any other case immediately upon service of a copy of the order on the person in respect of whom it is made, or if the order is expressed to take effect upon any date specified therein, upon such date, whichever is the later.

. . .

11. Where the Minister has made a resettlement order in respect of any person and he is of the opinion that such person may not comply with such order, he may apply to a resident magistrate within whose jurisdiction such person resides or is detained for a warrant of arrest and upon such application being made the resident magistrate shall issue a warrant for the arrest of such person and for his detention in custody pending his transportation to the resettlement centre specified in the order.

12. Every person in respect of whom a resettlement order is made shall be provided with free transport from his residence or the prison where he is detained, as the case may be, to the resettlement centre.

13.—(1) Any person who, without reasonable excuse, fails to comply with any of the terms of a

[4] *Ibid.*

resettlement order, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 12 months.

(2) Conviction for an offence under subsection (1) shall not in any way affect the validity of the resettlement order and where the person convicted is sentenced to imprisonment the resettlement order shall take effect upon determination of his sentence either by effluxion of time or otherwise.

...

THE CRIMINAL PROCEDURE CODE (AMENDMENT) ACT, 1969

Act No. 10 of 1969, assented to on 6 February 1969 [5]

10. Section 164 of the Code is amended—

...

(*b*) By adding immediately below subsection (3) the following new subsection:

"(3A) When in the course of a preliminary inquiry the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall proceed to enquire into the fact of unsoundness of mind of the accused and for this purpose may order him to be detained in a mental hospital for medical examination or, in a case where bail may be granted, may admit him to bail on sufficient security as to his personal safety and that of the public and on condition that he submits himself to medical examination or observation by a medical officer as may be directed by the court.";

...

11. The Code is amended by adding the following new section immediately below section 168:—

"168A.—(1) Where any act or omission is charged against any person as an offence and it appears to the court during the trial of such person for that offence that such person may have been insane so as not to be responsible for his action at the time when the act was done or omission made, a court may, notwithstanding that no evidence has been adduced or given of such insanity, adjourn the proceedings and order the accused person to be detained in a mental hospital for medical examination.

"(2) The medical officer in charge of a mental hospital in which an accused person has been ordered to be detained pursuant to subsection (1) shall, within forty-two days of such detention, prepare and transmit to the court ordering the detention a written report on the mental condition of the accused stating whether, in his opinion, at the time when the offence was committed the accused was insane so as not to be responsible for his action and such written report purporting to be signed by the medical officer preparing the same may be admitted as evidence unless it is proved that the medical officer purporting to sign the same did not in fact sign it.

"(3) Where the court admits a medical report signed by the medical officer in charge of the mental hospital where the accused was detained, the accused and the prosecution shall be entitled to adduce such evidence relevant to the issue of insanity as they may consider fit.

"(4) If, on the evidence on record, it appears to the court that the accused did the act or made the omission charged but was insane so as not to be responsible for his action at the time when the act was done or omission made, the court shall make a special finding in accordance with the provisions of subsection (1) of section 168 and all the provisions of section 168 shall apply to every such case."

...

15. Section 196 of the Code is repealed and replaced by the following new section:

"196.—(1) Where any magistrate, after having heard and recorded the whole or any part of the evidence in any trial or conducted in whole or part any preliminary inquiry, ceases to exercise jurisdiction therein and is succeeded, whether by virtue of an order of transfer under the provisions of this Code or otherwise, by another magistrate who has and who exercises such jurisdiction, the magistrate so succeeding may act on the evidence or proceeding recorded by his predecessor, or partly recorded by his predecessor and partly by himself, or he may, in the case of a trial, re-summon the witnesses and recommence the trial or, in the case of an inquiry, recommence the inquiry:

"Provided that—

"(*a*) In any trial the accused may, when the second magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and reheard and shall be informed of such right by the second magistrate when he commences his proceedings;

"(*b*) The High Court may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the magistrate before the conviction was had, if it is of the opinion that the accused has been materially prejudiced thereby and may order a new trial.

(2) Nothing in subsection (1) shall be construed as preventing a magistrate who has heard and recorded the whole of the evidence in any trial and who has, before passing the judgment, ceased to exercise jurisdiction therein, from writing the judgment and forwarding the record of the proceedings together with the judgment to the magistrate who has succeeded him for the judgment to be read over and, in the case of conviction, for the sentence to be passed by such other magistrate."

...

17. Sections 218 to 231 (inclusive) of the Code are repealed and replaced by the following sections:—

[5] *Ibid.*

"218.—(1) The magistrate conducting a preliminary inquiry shall, at the commencement of such inquiry, read over and explain to the accused person the charge or charges set out in the charge sheet in respect of which the inquiry is being held, but the accused person shall not be required to make any reply thereto.

"(2) The Court shall, after having read and explained to the accused the charge or charges, address to him the following words or words to the like effect:

'This is not your trial. You will be tried later in the High Court where the evidence against you will be adduced. You will then be able to make your defence and call witnesses on your behalf.'

"219.—(1) After the charge has been read over and explained to the accused and the accused has been addressed as required by section 218, the court shall call upon the prosecutor to produce to the court statements of the witnesses whom the prosecution proposes to call at the trial.

"(2) The prosecutor shall produce to the court a copy or copies of the statement or statements made to the police by every witness whom the prosecution proposes to call at the trial and every such statement shall be read over to the accused and explained to him in the language understood by him.

"(3) When a witness whom the prosecution proposes to call at the trial has made no statement to the police the prosecutor shall produce to the court a document giving the substance of the evidence which such witness will give at the trial and for the purposes of this Code references to statements of witnesses produced at inquiry include any such document.

"(4) The prosecutor shall also produce to the court copies of all documents which he proposes to adduce in evidence at the trial and the contents of such documents shall be explained to the accused in a language understood by him.

"(5) After complying with the provisions of the foregoing subsections the court shall address to the accused person the following words or words to the like effect:

'You have now heard the substance of the evidence that the prosecution intends to call at your trial. You may either reserve your defence, which you are at liberty to do, or say anything which you may wish to say relevant to the charge against you. Anything you say will be taken down and may be used in evidence at your trial.'

"(6) Before the accused person makes any statement the court shall state to him and give him clearly to understand that he has nothing to hope from any promise of favour and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatsoever he then says may be given in evidence on his trial notwithstanding the promise or threat.

"(7) Everything that the accused person says shall be recorded in full and shall be shown or read over to him and he shall be at liberty to explain or add to anything contained in the record thereof.

"(8) When the record of the statement, if any, made by the accused is made conformable to what he declares is the truth, the record shall be attested by the magistrate who shall certify that such statement was taken in his presence and hearing and contains accurately the whole statement made by the accused person. The accused person shall sign or attest by his mark such record. If he refuses the court shall add a note of his refusal and the record may be used as if the accused had signed or attested it.

"220. Immediately after complying with the provisions of section 219 the court shall make a list of all witnesses copies of whose statements have been produced to the court and shall ask the accused person whether he intends to call witnesses at the trial and, if so, whether he desires to give their names and addresses so that they may be summoned. The court shall thereupon record the names and addresses of any such witnesses whom the accused may mention.

"221. When the provisions of section 220 have been complied with the court shall commit the accused person for trial to the Hight Court and shall, until the trial, either admit him to bail or send him to prison for safe-keeping. The warrant of such first named court shall be sufficient authority to the officer in charge of any prison appointed for the custody of prisoners committed for trial, although out of the jurisdiction of such court.

"222. In any preliminary inquiry a public prosecutor may at any time before the accused person is committed for trial, withdraw from the inquiry, and upon such withdrawal the accused person shall be discharged but such discharge shall not operate as a bar to subsequent proceedings against him on account of the same facts.

"223.—(1) If from any reasonable cause to be recorded in the proceedings the court considers it necessary or advisable to adjourn the proceedings the court may from time to time by warrant remand the accused for a reasonable time, not exceeding fifteen days at any one time, to some prison or other place of security.

"(2) Where the remand is for not more than three days, the court may, by word of mouth, order the officer or person in whose custody the accused person is, or any other fit officer or person, to continue to keep the accused in his custody and to bring him up at the time appointed for the commencement or continuance of the inquiry.

"(3) During a remand the court may at any time order the accused to be brought up before it.

"(4) Subject to the provisions of section 123 the court may on a remand admit the accused to bail.

"224.—(1) A person who has been committed for trial before the High Court shall be entitled at any time before the trial to have a copy of the record of the proceedings of the inquiry without payment.

"(2) The court shall at the time of committing him for trial inform the accused person of his right to a copy of the record of the proceedings without payment.

"(3) Every record of the proceedings supplied to the accused pursuant to this section shall contain a copy of the charge or charges, copies of the statements and documents produced to the court during the preliminary inquiry and a copy of the record of the proceedings before the court."

18. Section 232 of the Code is repealed and replaced by the following section:

"232. Where it appears to a magistrate that any person, who is dangerously ill or hurt and not likely to recover or who, for any other reason whatsoever, may not be available to give evidence at the trial, is able to and willing to give material evidence relating to any offence, such court may take in writing a statement on oath or affirmation of such person, and shall subscribe the same, and certify that it contains accurately the whole of the statement made by such person, and the magistrate taking the statement shall certify his reason for taking the same and shall state the date and place when and where the same was taken, and shall preserve such statement and file it for record:

"Provided that where the statement is that of a person who by reason of immature age or want of religious belief ought not, in the opinion of the magistrate, to be sworn or affirmed, the statement may be taken without oath or affirmation."

. . .

20. Sections 236 to 239 (inclusive) of the Code are repealed and replaced by the following sections:—

"236. When an accused person has been committed for trial the charge, copies of the statements and documents produced to the court during the inquiry, and the record of the proceedings of the inquiry, duly signed and authenticated by the magistrate, shall be transmitted without delay by the committing court to the Registrar of the High Court and authenticated copies of the charge, the statements, documents and proceedings aforesaid shall be forwarded to the Director of Public Prosecutions.

"237. The Director of Public Prosecutions may, at any time during a preliminary inquiry, or, if the preliminary inquiry has been concluded, at any time before the trial before the High Court, request the court which is conducting or which conducted the preliminary inquiry, to proceed to try the accused person on the charge in respect of which the inquiry is being or has been conducted, or where the charge is for an offence not triable by a subordinate court, on a charge for some other offence triable by a subordinate court and upon such request being made such court shall proceed to try the accused on such charge as if proceedings by way of preliminary inquiry had never been commenced."

. . .

22. Section 244 of the Code is amended in subsection (1) by deleting the comma after the words "subsequent sessions" which occur in the fifth line, substituting therefor a full-stop and deleting the remainder of the subsection.

23. The Code is amended by adding the following section immediately below section 246:

"246A. The Registrar of the High Court shall, before the commencement of the trial, issue summonses for the attendance at the trial of all witnesses whose statements were produced during the inquiry and all witnesses whose names and addresses were given to the committing magistrate by the accused."

. . .

27. Section 273 of the Code is repealed and replaced by the following new section:

"273.—(1) No witness whose statement was not produced at the preliminary inquiry shall be called by the prosecution at the trial unless the prosecution has given reasonable notice in writing to the accused person or his advocate of the intention to call such witness.

"(2) The notice shall state the name and address of the witness and the substance of the evidence which he intends to give.

"(3) The court shall determine what notice is reasonable, regard being had to the time when and the circumstances under which the prosecution became acquainted with the nature of the witness's evidence and determined to call him as a witness. No such notice need be given if the prosecution first became aware of the evidence which the witness would give on the date on which he is called."

31. Section 280 of the Code is repealed and replaced by the following section:

"280.—(1) In addition to the witnesses summoned pursuant to the provisions of section 246A the accused shall be allowed to examine any witness who is in attendance at the trial.

"(2) The accused shall not be entitled as of right to have any witness summoned other than the witnesses whose names and addresses were given by him to the magistrate conducting the preliminary inquiry, but any subordinate court may, after commital for trial and before the trial begins, and the court of trial may, either before or during the trial, issue a summons for the attendance of any person as a witness for the defence if the court is satisfied that his evidence is in any way material to the case."

. . .

33. The Code is amended by deleting the sub-heading "Case Stated" in Part X and by repealing sections 333 to 343 (inclusive) and replacing the same by the following sub-heading and sections:

"Appeals by Director of Public Prosecutions.

". . .

"334.—(1) Where the Director of Public Prosecutions is dissatisfied with any acquittal, finding, sentence or order made or passed by a subordinate court other than a subordinate court exercising its extended powers by virtue of an order made under section 13 of this Code he may appeal to the High Court.

"(2) An appeal to the High Court under this section may be on a matter of fact as well as on a matter of law.

". . .

"339.—(1) Where, on the day fixed for the hearing of an appeal under section 334 or any other date to which the hearing may be adjourned, the Director of Public Prosecutions does not appear when the appeal is called on for hearing, the High Court may make an order that the appeal be dismissed.

"(2) Where the Director of Public Prosecutions appears and the respondent or his advocate does not appear and the High Court is satisfied that the respondent or his advocate was duly served with notice of appeal, the High Court may proceed to hear the appeal *ex parte* or may adjourn the hearing to another date and give notice thereof to the respondent or his advocate.

"(3) When an appeal is dismissed under subsection (1) the Director of Public Prosecutions may

apply to the court for the re-admission of the appeal, and where he satisfies the court that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the High Court may re-admit the appeal.

"(4) Where at the hearing of an appeal the respondent does not appear personally the High Court may make an order requiring the personal attendance of the respondent and, if the respondent fails to comply with such order, may issue a warrant for the arrest and production of the respondent before the High Court on a date and time specified in the warrant.

"340.—(1) In dealing with an appeal under section 334 the High Court, if it thinks additional evidence is necessary, shall record its reasons and may either take such evidence itself or direct it to be taken by a subordinate court.

"(2) When the additional evidence is taken by a subordinate court such court shall certify such evidence to the High Court which shall thereupon proceed to dispose of the appeal.

"(3) No additional evidence shall be taken under this subsection save in the presence of the respondent or his advocate and such evidence shall be taken as if it were evidence taken at a trial before a subordinate court.

". . ."

THE EDUCATION ACT, 1969

Act No. 50 of 1969, assented to on 24 December 1969 [6]

. . .

3. The Minister shall, in accordance with the powers conferred and the duties imposed upon him by this Act, be responsible for the promotion of education, and for the progressive development of schools, in Tanganyika having regard at all times to the national interests and the interests of the people of the United Republic.

4. The local administration of the system of education provided for by this Act shall, in respect of primary education, be conducted by Local Education Authorities in accordance with the provisions of Part III of this Act, and such Local Education Authorities shall conduct such administration having regard to the national interests and to the interests of the people of the United Republic.

PART II

ADVISORY COMMITTEE

5. The Minister shall establish an Advisory Committee, to advise him upon matters relating to the educational policy in Tanganyika and in particular upon—

(*a*) The organization of educational facilities in Tanganyika;

(*b*) The promotion of education and development of schools in accordance with the principles set out in section 3 and section 4;

(*c*) Any proposed legislation relating to or affecting education which it is intended to submit to the National Assembly;

(*d*) Any other matter which may be referred to the Advisory Committee by the Minister.

PART III

LOCAL EDUCATION AUTHORITIES

6.—(1) Subject to the provisions of subsection (2) every local authority shall be the Local Education Authority for the primary schools within the area of its jurisdiction.

(2) The Minister may, by Order, direct that the local authority named in the Order shall be the Local Education Authority for any primary school or primary schools situated outside its area of jurisdiction and thereupon such school or schools shall, for the purposes of this section, be deemed to be situated within the area of jurisdiction of the local authority so named; and where such Order is made then, notwithstanding any other provision of this Act, the local authority, if any, within the area of jurisdiction of which any primary school or primary schools, the subject of such Order, is or are situate, shall not be the Local Education Authority for such school or schools while the Order is in force:

Provided that no Order shall be made under this subsection save after consultation with the local authority within whose area of jurisdiction the school or group of schools is to be deemed to be situate.

. . .

PART VI

MISCELLANEOUS

. . .

28.—(1) No person having control over admission of pupils to any school, whether Government, public or private, shall refuse admission to any pupil on the ground of his religion or race:

Provided that—

(*a*) This section shall not apply to any school in which the instruction imparted is wholly or mainly of a religious character if admission to such school is open to all members of the public professing that religion regardless of their race;

(*b*) It shall be lawful for public schools to give preference to the citizens of the United Republic.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and

[6] *Gazette of the United Republic of Tanzania*, No. 55, Vol. L, of 26 December 1969, Acts Supplement No. 7.

shall be liable on conviction to a fine not exceeding five hundred shillings.

29.—(1) If the parent of any pupil attending any school requests that he be excused from attendance at religious instruction or religious worship given or conducted in the school, then, until the request is withdrawn, the pupil shall be excused from such attendance.

(2) Where the parent of a pupil attending a public school desires him to attend religious instruction of a kind which is not provided in the school, the school shall, so far as may be practicable, accord facilities for the pupil to receive religious instruction from a teacher of religion appointed by a religious organization approved by the Minister and also accord facilities to the pupil to attend religious worship of the kind desired by the parent.

(3) No subvention or grant-in-aid shall be paid under this Act in respect of any religious instruction given in any school.

...

31. The Minister may, by order in writing, prohibit the use in any school of any book or material for any reason which he may think fit.

...

(4) If the Minister is satisfied by such evidence as he shall deem sufficient that any school is being conducted in a manner detrimental to the interests of peace, order or good government, or the physical, mental or moral welfare of the pupils attending it, or contrary to the national education policy, he may order that the school be closed.

...

33.—(1) Where any decision or order is made under the provisions of this Act by any Local Education Authority or by the Director or other officer of the Ministry, any person aggrieved by such decision or order may appeal thereagainst to the Minister within such time and in such manner as may be prescribed.

(2) The decision of the Minister on any appeal under this subsection shall be final and conclusive and shall not be subject to review by any court.

34. Nothing in this Act shall be construed as preventing the establishment or maintenance of Government schools within Tanganyika.

35.—(1) Subject to the provisions of subsection (2) the Minister may, by order in the *Gazette*, direct that the attendance at schools of pupils enrolled therein shall be compulsory and may, by the same or any other order, further direct that the enrolment of children as pupils in schools shall be compulsory.

(2) An order made under subsection (1) shall specify the age or ages and sex of the children to which it shall apply and may be made in respect of any area in Tanganyika.

(3) No order shall be made under this section in respect of any primary school except after consultation with the Local Education Authority for such school.

(4) Where the contravention of any order made under this section is declared to be an offence, such offence shall be triable by a court of resident magistrate, a district court or a primary court.

...

UNITED STATES OF AMERICA

A SELECTIVE SUMMARY OF PRINCIPAL DEVELOPMENTS RELATING TO THE PROTECTION AND ADVANCEMENT OF HUMAN RIGHTS [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. Because of the great mass of material the following survey for 1969 is necessarily selective and is confined to official acts of importance on the federal level. State and local governments, their executive and legislative bodies and the courts, function throughout the year to provide in their respective jurisdictional areas enforcement and protection of the basic human rights of all the people.

ENFORCEMENT OF CIVIL RIGHTS

During the year 1969 the United States Government continued to expand its programme of civil rights enforcement in the areas of employment, education, public accommodations, voting, housing and criminal interference. The Civil Rights Division of the Department of Justice filed 178 cases during the calendar year 1969, 47 more than were filed in 1968, an increase of 35.5 per cent.

EDUCATION

Fifty-seven school desegregation suits or interventions were filed during 1969.

Among the actions initiated was the first statewide suit filed by the Department of Justice under Title IV of the Civil Rights Act of 1964, seeking to require the Georgia State Board of Education to use its authority to work toward the disestablishment of the dual school systems in eighty districts. (The remaining 114 districts are already under court orders or are desegregated.)

The suit was filed on 1 August 1969. On 17 December, the United States District Court at Atlanta issued an order requiring the State Board to obtain desegregation plans from each of the eighty school districts. The order was the first specifically defining an "integrated school district" and included a formula defining the level of acceptable integration in each school facility and in the district as a whole.

Another unique feature of the order was the requirement that the State stop payment of funds to any district that does not comply with the terms of the order. The Court further required that the desegregation plans be completed by 1 May 1970, and fully implemented by 1 September 1970.

During 1969, the Department of Justice filed two suits against school districts in northern states, bringing the total of non-southern school suits filed by the Department to seven.

The two suits were filed against the school boards of Madison County District No. 12, Illinois, and Waterbury, Connecticut. The Waterbury suit was unusual in that it included allegations of discrimination against Negro and Puerto Rican children by the transportation of white children to non-public schools. Both suits were pending in the courts at the end of the year.

During 1969, the Justice Department worked toward improving co-ordination with the Department of Health, Education and Welfare in the area of school desegregation by increasing the degree of contact between the two Departments and by improving the process of referral of cases from HEW to Justice.

One result of the improved procedures was that for the first time, in the fall of 1969, the Justice Department, acting on referrals from HEW, filed 11 suits against school boards that had reneged on their agreements with HEW to implement desegregation plans in 1969-1970 in order to retain federal funds. Ten of the eleven cases have come to trial, and in all ten the Courts directed the school boards to desegregate their systems pursuant to the original agreements.

EMPLOYMENT

During 1969, the Department of Justice initiated sixteen cases alleging employment discrimination. Thirteen were original actions filed by the Department under Title VII of the Civil Rights Act of 1964; in the three other cases the Government participated as intervener or *amicus curiae*.

Defendants in the thirteen cases included five private employers and eight labour unions. In addition, several unions were joint defendants for purposes of relief in cases against private employers, and joint apprenticeship committees were often

[1] Summary furnished by the Government of the United States of America.

named as defendants in several of the suits against craft unions.

Among the cases filed was a statewide suit against Georgia Power Company, which provides electric power to all but two counties in Georgia and employs approximately 6760 persons. The complaint alleged a racially discriminatory system of hiring, promotion and advancement by the Company and seven locals of the International Brotherhood of Electrical Workers. This matter was referred to the Justice Department by the Equal Employment Opportunity Commission.

In January 1969, the Department of Justice filed suit against the International Longshoremen's Association (ILA) and thirty-seven locals in the Gulf coast region of Texas. This is the largest group of local unions named as defendants in a single Title VII lawsuit by the Department.

A suit was also filed during the year against the ILA and its local unions in Baltimore, Maryland. Both suits against the ILA alleged that the defendants discriminated against Negroes by maintaining separate unions for Negroes and whites and by dividing and apportioning available work and assigning persons to work in specific job areas on the basis of race.

In April 1969, a suit was filed against the Sheet Metal Workers International Association Local No. 10 and its associated Joint Apprenticeship Committee (JAC) in Newark, New Jersey. The complaint alleged that the union has not afforded to Negroes and Puerto Ricans the same job opportunities afforded to white persons, and that the JAC imposed on Negroes and Puerto Ricans more stringent requirements for admission than on white persons.

During 1969, the Department of Justice, in conjunction with the Equal Employment Opportunity Commission (EEOC), conducted an investigation into allegations of employment discrimination by the motion picture and television industries. The investigation began with public hearings conducted by the EEOC in Los Angeles. The Commission then referred the matter to the Department of Justice.

The Philadelphia Plan

In 1969 the Department of Labor instituted the "Philadelphia Plan", designed to expand job opportunities in craft union programmes. The Philadelphia Plan was drawn up to implement the provisions of Executive Order 11246 which requires a programme of equal employment opportunity by Federal contractors and subcontractors and Federally assisted construction contractors and subcontractors. The plan applies to all federal and federally assisted construction contractors for projects the estimated total cost of which exceeds $500,000, in the area of Philadelphia, Pennsylvania, and surrounding counties. The Philadelphia Plan implements the policy of the Office of Federal Contract Compliance that no contracts or subcontracts shall be awarded for federal and federally assisted construction in the Philadelphia area on projects whose cost exceeds $500,000 unless the bidder submits an acceptable affirmative action programme which shall include specific goals of minority manpower utilization. The Philadelphia Plan is designed to overcome the exclusionary practices of construction craft unions in which traditionally only small numbers of Negroes have been admitted to membership.

Federal Government employment

Executive Order 11478, issued on 12 August 1969, had as its purpose the furtherance of the existing policy of the United States Government to provide equal opportunity in federal employment on the basis of merit and fitness, without discrimination because of race, colour, religion, sex or national origin. In order to strengthen and assure full equal employment opportunity, the Executive Order called for the establishment of continuing affirmative programmes in each executive department and agency, under the leadership and guidance of the Civil Service Commission.

HOUSING

In 1969 the coverage of the fair housing law was expanded to prohibit discrimination in most of the nations' multi-unit dwellings, and it became illegal to make, publish or print any statement indicating racial or religious preference with respect to the sale or rental of housing.

Under the expanded coverage, the Department of Justice filed twenty-five Federal housing suits in 1969 seeking to end alleged discrimination against Negroes by rental managers, real estate agents, recreational developers and public housing authorities.

The Justice Department filed its first case to enforce the anti-blockbusting provisions of the fair housing law, which made it illegal to attempt to persuade someone to sell his home by representing to him that minority groups were moving into the area. An opinion and order entered late in the year ordered a Baltimore realty company to cease inducing or attempting to induce, for profit, any person to sell or rent any dwelling by representation regarding entry into the neighbourhood of a person or persons of a particular race or colour.

The Department of Justice also filed suit against the Public Housing Authorities of Albany, Georgia, and Gadsden, Alabama, charging them with violating Federal regulations which require them to adopt a nondiscriminatory plan for selecting and assigning tenants. Suits involving illegal racial practices in housing transactions were also brought against individual private sellers, a trailer park owner, large apartment building developments, and a suburban board of realtors.

PUBLIC ACCOMMODATIONS

Forty-five suits were filed in 1969 to end discrimination by restaurants, service stations, hotels and other places of public accommodation, compared with thirty-three suits in 1968.

During 1969, proprietors of forty-seven additional establishments formally agreed to comply with Title II of the Civil Rights Act of 1964 after the Justice Department determined that their practices were illegal.

While compliance with the public accommodations section of the 1964 Act by those establishments clearly falling within the Act's provisions has been generally widespread, those who seek to circumvent

the public accommodations provisions have turned to more sophisticated devices. However, the courts have consistently stricken down these devices, ruling, for example, that privately operated recreational areas which are in fact open to members of the general public, even though they may be denominated private clubs, are covered by Title II of the Civil Rights Act of 1964.

VOTING

Under the authority of the Voting Rights Act of 1965, federal election observers were sent to twelve counties to observe elections during 1969. Over 150 statutory changes by the states covered by the Act in voting or election procedures were reviewed by the Justice Department, resulting in objections being interposed to eighteen of these changes.

Additional Negro citizens were registered to vote in the five deep South states covered by the Voting Rights Act of 1965, and Negro participation and acceptance in the elective process showed a substantial increase.

Criminal interference

More than thirty criminal prosecutions were filed during 1969. The cases involved a wide range of situations in which individual private rights were interfered with by public authority or private persons. Police officers, prison wardens, process servers and penal institution officers were among the public authorities whose conduct was challenged in the cases.

COURT DECISIONS

The independent judiciary, which is an indispensable bulwark to the observance of human rights, functions in the United States at many levels, both within each State and within the Federal system. Court decisions upholding basic human rights are a regular occurrence throughout the United States, and such decisions are far too numerous to permit of more than a random sampling in this report. There follow summaries of illustrative key decisions handed down by the United States Supreme Court during 1969 which deal with the basic rights of all the people.

Freedom of expression and peaceful assembly

During the year 1969 the Supreme Court continued to pass upon the scope of guarantees contained in the First Amendment to the United States Constitution relating to the freedoms of speech and of peaceful assembly. The case of *Gregory et al.* v. *City of Chicago* (394 U.S. 111) dealt with the conduct of peaceful civil rights demonstrators who had been arrested by the Chicago police for failing to disperse. After affirming that a peaceful and orderly march by such demonstrators falls well within the sphere of conduct protected by the First Amendment, the Court examined the conviction of the defendants for disorderly conduct in refusing to obey a police order to disperse. The Court found that the persons concerned had in fact been judged and convicted by a lower court for holding a demonstration and not for refusal to obey a police officer. Consequently the conviction was reversed.

Another case involving the First Amendment's guarantee of freedom of expression was *Shuttlesworth* v. *City of Birmingham* (394 U.S. 147). This case involved a city ordinance regulating participation in parades on the city streets. Negroes participating in an orderly civil rights march had been arrested for violating the ordinance. The Court found that the ordinance in question had been so broadly worded that its administration had operated to deny or unwarrantedly abridge the First Amendment rights of the defendants. The Court stressed that picketing and parading may constitute methods of expression entitled to First Amendment protection, and the use of the streets for that purpose, though subject to regulation, may not be wholly denied.

In the case of *Stanley* v. *Georgia* (394 U.S. 557) the Supreme Court considered the applicability of First Amendment guarantees to the possession of obscene material. In this case the Court laid down the rule that a State may not make criminal the mere private possession of obscene material: "If the First Amendment means anything, it means that a State has no business telling a man, sitting alone in his own house, what books he may read or what films he may watch. Our whole constitutional heritage rebels at the thought of giving government the power to control men's minds." (394 U.S. 557 at 565.)

An important pronouncement on the scope of the guarantees of freedom of speech as embodied in the First Amendment was delivered by the Supreme Court in the case of *Brandenburg* v. *Ohio* (395 U.S. 444). The case involved a State statute which made criminal the advocacy of the duty, necessity or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform. The Court observed that the statute purported to punish mere advocacy as distinguished from incitement to imminent lawless action. The Court stated that "the constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." The statute in question was consequently declared contrary to the Constitution.

Self-incrimination

The Fifth Amendment to the United States Constitution safeguards the basic right of freedom from self-incrimination, whereby a person may not be compelled in any criminal case to be a witness against himself. In the case of *Orozco* v. *Texas* (394 U.S. 324) the Supreme Court found a violation of the self-incrimination clause of the Fifth Amendment in the use of prior admissions as evidence in a murder trial. These admissions had been obtained by officers who had questioned the defendant at the time of arrest about incriminating facts without first informing him of his right to remain silent, his right to have the advice of a lawyer before making any statement and his right to have a lawyer appointed to assist him if he could not afford to hire one. In making this decision the Supreme Court followed the landmark case *Miranda* v. *Arizona* (384 U.S. 436), decided in 1966, in which the Court laid down

the rules for police interrogation of suspects under the self-incrimination clause of the Fifth Amendment.

Search warrants—probable cause

In the case of *Spinelli* v. *United States* (393 U.S. 410) the United States Supreme Court dealt with the question of the Constitutional validity of searches and seizures. Under the Fourth Amendment to the United States Constitution the people are guaranteed the right to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. The Amendment further provides that no search warrants shall be issued except "upon probable cause. . .".

In a landmark case, decided in 1964 (*Aguilar* v. *Texas*, 378 U.S. 108), the Supreme Court laid down standards under which the Constitutional requirement of probable cause is to be measured. In the instant case the Court examined the adequacy of a search warrant which had been issued by a magistrate to search the apartment of the defendant *Spinelli* for evidence of illegal interstate gambling activities. The search warrant had been issued chiefly on the basis of an informant's tip. Applying the *Aguilar* standards the Supreme Court concluded that the tip was not sufficient to provide the basis for a finding of probable cause of criminal activity. There was no supporting evidence that the informant was reliable nor was there a sufficient statement of the underlying circumstances which had led the informant to allege probable criminal activity. No significant corroborative evidence was supplied. The Court stated: "We cannot sustain this warrant without diluting important safeguards that assure that the judgment of a disinterested judicial officer will interpose itself between the police and the citizenry."

Another case decided by the Supreme Court which involved the guarantees of the Fourth Amendment was *Davis* v. *Mississippi* (394 U.S. 721). Here the Court applied the rule that all evidence obtained by searches and seizures in violation of the Constitution is inadmissible in a state court. The defendant in the case had been arrested by police authorities who had not had a warrant nor had there been a basis for probable cause for the arrest. The Court consequently held that fingerprints taken from the defendant during the invalid arrest should not have been admitted in evidence at the subsequent criminal trial of the defendant.

Racial discrimination in public accommodations

The provisions of the Civil Rights Act of 1964 which prohibit racial discrimination at places of public accommodation whose operations affect commerce were considered by the Supreme Court in the case of *Daniel* v. *Paul* (395 U.S. 298). The case involved an action which had been brought by Negro residents of Little Rock, Arkansas, who had been denied admission to a recreational facility which styled itself as a "club". The club was widely patronized by white persons. The characteristics of the "club" were examined by the Court, which found it to be in fact a place of public accommodation whose operations affected commerce, within the meaning of provisions of the Civil Rights Act of 1964. The prohibitions in the Civil Rights Act were consequently held to apply.

School desegregation

The continuing role of the federal courts in supervising the process of racially integrating the schools within the United States was illustrated in the case of *United States* v. *the Montgomery Board of Education* (395 U.S. 225). Following upon an action brought in May 1964 by Negro children and their parents to secure their constitutional right to attend nonsegregated schools, a Federal District Judge had handed down a series of orders designed to assist the local school officials to achieve integration. In the instant case the Supreme Court approved the order of the Federal District Judge dealing with faculty and staff desegregation. The approved order provided that the school board must move toward a goal under which in each school the ratio of whites to Negro faculty members was substantially the same as it was throughout the whole school system.

On 29 October 1969 the Supreme Court, in a case involving several Mississippi school districts (*Alexander* v. *Board of Education*, 396 U.S. 19), declared that the "all deliberate speed" doctrine was no longer constitutionally permissible, and held that "the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools".

As a result of the Supreme Court decision, the Courts of Appeals for the Fourth and Fifth Circuits ordered accelerated deadlines for the disestablishment of dual school systems in several pending cases.

At year's end, the Justice Department dispatched a special team to Mississippi to help school districts work out administrative difficulties in districts affected by the court orders.

Voting

In June, the Supreme Court handed down a decision in the case of *Gaston County, North Carolina* v. *United States* (395 U.S. 285), a case filed pursuant to the Voting Rights Act of 1965, in which Gaston County sought to be removed from coverage of the Act. A three-judge Court for the District of Columbia had ruled that the inferior education provided to the County's voting-age Negro citizens resulted in a built-in handicap for Negroes under a literacy test requirement, and that the county was therefore not entitled to be removed from the Voting Rights Act provisions which prohibit the use of such tests. The ruling of the District Court was upheld by the Supreme Court.

In March, the Supreme Court reversed the decision of an Alabama District Court in the voting discrimination case of *Hadnott* v. *Amos* (394 U.S. 358), in which the United States participated as *amicus curiae*. The Supreme Court directed the District Court to order that the candidates of the National Democratic Party of Alabama, mostly Negroes, who prevailed in the 5 November 1968 elections in Etowah, Marengo and Sumter Counties, Alabama, be treated as duly elected; and that state and local officials promptly conduct a special election in Greene County, Alabama, with the names of the local NDPA candidates on the ballot. The names of certain NDPA candidates had been left off the ballots used in the November 1968 elections. The Court found that the State authorities had applied the same State laws unequally to different racial

groups, resulting in discrimination against Negro candidates.

Representative government—the will of the people

The United States Constitution in article I, section 2 requires that representatives in the Congress are to be apportioned among the several states according to their respective numbers. To carry out this provision the states create congressional districts which usually vary in population. The Supreme Court has in the past laid down the rule that "as nearly as is practicable" one man's vote in a Congressional election is to be worth as much as another's. At the same time the Court acknowledged that it may not be possible for the States to draw Congressional districts with mathematical precision. In two cases decided in 1969 the Court passed upon the constitutional adequacy of congressional redistricting statutes of Missouri and New York (*Kirkpatrick* v. *Preisler*, 394 U.S. 526 and *Wells* v. *Rockefeller*, 394 U.S. 542). In delivering its opinions the Court explained the extent to which states must apply the standard requiring that all districts must "as nearly as is practicable" assure that one man's vote equals another's. The Court stated that under this standard only limited population variances among districts would be allowable. These variances may be only those which are unavoidable despite a good faith effort to achieve absolute equality or for which special justification is shown.

UPPER VOLTA

NOTE [1]

An ordinance of 21 February 1969 by the Head of State to bring into force a Code of Criminal Procedure for the Upper Volta observes all principles relating to human rights.

[1] Note furnished by the Government of the Republic of the Upper Volta.

VENEZUELA

NOTE [1]

In 1969, there were no constitutional changes or amendments in the field of human rights to report. However, the following legal instruments were put into effect:

(1) An act partially to amend the act respecting the representation of workers in autonomous institutions and State-owned economic development bodies and undertakings. This act empowers the Political-Administrative Division of the Supreme Court of Justice to take cognizance of charges of non-compliance with its provisions brought by trade-union organizations.

(2) Presidential Decree No. 95 of 16 July 1969 providing for a commissioner appointed by the President of the republic to take cognizance of and initiate legal proceedings in connexion with charges, complaints and claims brought by citizens before the National Executive regarding the mismanagement of public services, influence peddling and administrative irregularities in general.

[1] Note furnished by the Government of Venezuela.

YUGOSLAVIA

DEVELOPMENTS IN 1969 OF LEGISLATION IN THE FIELD OF HUMAN RIGHTS [1]

In 1969, legislation in the Socialist Federal Republic of Yugoslavia (SFRY) continued to develop in accordance with the principles governing the self-management of the workers in all fields of social activity. It was during this period that a number of new texts were adopted in the field of medical protection.

This report will not be confined to the provisions of federal legislation, but will also describe the changes made in the constitutions of the federal republics regarding the protection of equality in the use of the languages and alphabets of the nationalities.

Besides legislative texts, we have selected decisions of the Constitutional Courts relevant to the interpretation of the constitutional provisions on human rights.

I. POLITICAL RIGHTS

1. Law on the Election of Federal Deputies

(Official Gazette of the SFRY, No. 3/1969)

This Law superseded the Law of 1963 *(Official Gazette of the SFRY, No. 14/1963)*, amended in 1964 and in 1967 *(Official Gazette of the SFRY, No. 46/1964 and No. 7/1967)*.

Before extracting from this vast legislative text the provisions dealing with the right to elect and to be elected, and with the organization of elections, we would recall some basic information on the Federal Assembly of the Socialist Federal Republic of Yugoslavia. The Assembly is composed of five chambers: the Socio-political Chamber, the Chamber of Nationalities, the Economic Chamber, the Chamber for Education and Culture, and the Chamber for Social Affairs and Health. Each of these chambers has 120 members (deputies), with the exception of the Chamber of Nationalities, to which each republic sends twenty representatives, and each of the self-governing provinces ten. Deputies are elected for four years. The rule under which half the total number of deputies for each of the chambers were elected was dropped from the new law (article 3, paragraph 1). At present, parliamentary elections are held every four years. No one may be elected a federal deputy more than twice in succession.

The texts of certain articles given below will be accompanied by observations relating to the manner in which the previous Law has been changed.

Article 4

The members of the Socio-political Chamber shall be elected on the basis of the right to universal equal and direct suffrage by the citizens of one or several communes representing an electoral district.

The members of the Economic Chamber, the Chamber for Education and Culture, and the Chamber for Social Affairs and Health (hereinafter termed the Chambers of the labour communities) shall be elected by an electoral college, comprising the members of the communal assembly and the delegates of the labour communities and of the other forms of associated labour, and also by the delegates of the other labour communities representing other sectors of activity, as determined by the present law.

The members of the Chamber of Nationalities shall be elected by the assembly of each of the republics at the common session of all the chambers and by the assemblies of each of the self-governing provinces at the common session of all the chambers.

Under the previous law, the members of the chambers of all labour communities were elected by the communal assemblies.

Article 5

Every citizen having the right to vote may be elected a member of the Socio-political Chamber and of the Chamber of Nationalities.

Article 6

The right to be elected a member of the Economic Chamber appertains to every worker or member of the managing bodies of the labour organizations and of the labour communities in the fields of production, transport and communications, of trade, the hotel industry, handicrafts, communal activities, banking, publishing, the Press, or other economic activities, and also to workers dealing with economic research in a labour organization, and to members of the managing bodies of such organization; to members of the managing bodies of the association of labour organizations in the field of economy; to farmers members of an agricultural co-operative or other labour organization and to the members of their household who are actively employed in agriculture; to farmers working permanently with a co-operative or other labour organization who, under the statutes of the co-operative or other labour organization,

[1] Note prepared by M. Budislav Vukas, Lecturer in the Faculty of Law at Zagreb, government-appointed correspondent for the *Yearbook on Human Rights*.

enjoy certain rights as regards the election of the managing bodies of the co-operative or labour organization; to craftsmen members of the handicrafts chamber; to labourers employed in agriculture in the handicrafts industry, or to labourers working outside the labour organization; and to all officers of the trade-union to which persons working in the economy are affiliated.

The new law has made new groups of persons eligible for election to the Economic Chamber; in this article, it mentions two categories of persons who, under the provisions of the previous law, could not be elected members of that Chamber, namely: (*a*) members of the household of a farmer belonging to an agricultural co-operative or other labour organization who are actively employed in agriculture; (*b*) labourers working outside the labour organization.

Article 7

The right to be elected a member of the Chamber for Education and Culture appertains to workers members of a labour organization or other labour community, and to members of the managing bodies or of the editorial board of a labour organization or other labour community in the fields of education, science, the arts, and other fields of culture and physical culture, with the exception of the Press and publishing undertakings; members of the editorial board or other corresponding managing body of the labour organization outside these fields; to free-lance scientific workers, to artists and other cultural workers; to regular students of a Faculty, an Arts academy, or a high school, and to regular pupils of a secondary school possessing such status under the school's statutes; to members of the managing bodies of the association of labour organizations in the economy, in science, the arts and other cultural fields; to members of the managing bodies of the community of education, as well as to the officers of the trade-union to which persons working in these fields are affiliated.

New groups of persons were added to those eligible under the previous Law for election to the Chamber for Education and Culture. Thus the right to be elected to this Chamber appertains: (*a*) to members of the editorial boards of the labour organization or of the labour community in the field of education, science... (*b*) to the regular students of the Faculties, arts academies, or high schools, and to the regular pupils of secondary schools... (*c*) to members of the managing bodies of educational communities.

Article 8

The right to be elected a member of the Chamber for Social Affairs and Health appertains to workers of the labour organization or other labour community, and to members of the managing bodies of the labour organization or labour community in the field of health and social services, and also to workers in the labour organization who do scientific research in the field of health and the social services, and to members of the managing bodies of such organizations; to members of the managing bodies of the association of labour organizations in the field of health and the social services; to members of the assembly of social security; and also to the officers of the trade-union to which the workers in these fields are affiliated.

The new group of persons eligible for election to the Chamber for Social Affairs and Health are the members of the assembly of social security.

Article 9

Citizens who fulfil the conditions laid down in articles 6, 7 or 8 of the present law shall have the right to be elected members of the council of the relevant communities if they have the right to vote.

Article 10

The Socialist Alliance of the Working People of Yugoslavia (hereinafter referred to as the Socialist Alliance) shall be the main promoter and organizer of socio-political activity at the time of the elections of deputies to the Federal Assembly as regards the nomination and confirmation of candidates. When discharging this function in the electoral process, the Socialist Alliance shall ensure the active participation of the citizens in the nomination and election of Deputies to the Federal Assembly and the exercise of their electoral rights.

It is in collaboration with the various socio-political and other organizations that the Socialist Alliance shall organize such forms of socio-political activities, enabling the workers and citizens to display the widest initiative and to participate directly in the presentation of candidates and the examination of nominations with a view to the confirmation of the candidates for the federal Assembly; that it shall inform the electors of nominations and ensure by its political activity the widest social agreement on the criteria relating to candidatures for nomination and to the confirmation of the candidates.

...

Article 28

The election and the recall of federal deputies shall take place by secret ballot, by means of voting papers. The electors shall vote in person.

Article 29

Citizens whose names appear on the register of electors may not be deprived of the right to vote at the elections, or the right to vote on recall, or be prevented from voting.

Article 30

The free choice of the electors and the secrecy of the ballot are guaranteed. No organ or officer of the State may call upon an elector to answer for his vote, or require him to declare for whom he has voted, or why he has not voted for or against recall.

2. Law on National Defence

(Official Gazette of the SFRY, No. 8/1969)

The new law on national defence supersedes the law of 1965 (Official Gazette of the SFRY, No. 32/1965). It is based on the concept of general national defence according to which "the defence of the independence, the territorial integrity, and the self-administering socialist system of the Socialist Federal Republic of Yugoslavia shall be the right and the duty of the citizens, peoples and nationalities, of the labour and mother organizations and the socio-political communities" (article 2).

Article 82 defines the rights and duties of the citizens: "The citizens of Yugoslavia shall have the

right and duty to participate in the preparations for the defence of the country, to prepare for the performance of their tasks in war and to take part in armed struggle and other forms of resistance, in the protection and rescue of the population and of material assets, and in the performance of other tasks relevant to national defence."

II. CULTURAL RIGHTS

The amendments adopted at the beginning of 1969 to the constitution of the republics contain certain provisions on the equality of peoples and nationalities in the use of their languages, the development of their national culture, and of teaching and education, provisions which supplement and spell out earlier constitutional provisions. Differences in the treatment of these questions in the constitutional provisions of certain republics are due to the actual situation prevailing in each.

Socialist Republic of Bosnia and Herzegovina

The XVIth constitutional amendment, adopted on 6 February 1969, proclaims the equality of all peoples and all nationalities. To this end, a law will guarantee the implementation of equality in the use of the languages and alphabets of the peoples and nationalities in the regions in which they live. The manner and conditions of their application will be decided in accordance with needs and particular circumstances. The laws of the republics will lay down the manner in which the rights of nationalities in regard to the use of their languages may be exercised before the organs of the republics and organizations discharging public functions *(Official Gazette of the Socialist Republic of Bosnia and Herzegovina, No. 5/1969)*.

Socialist Republic of Croatia

The provisions of article 21 of the Constitutional Law of 7 February 1969 amending the Constitution of the Socialist Republic of Croatia accord to the languages and alphabets of the peoples and nationalities the same status as that laid down in the 16th amendment to the Constitution of the Socialist Republic of Bosnia and Herzegovina. The application of these principles is not left solely to the law of the Republic, but the law is reinforced by the statutes of the communes and those of the labour and other organizations. At the same time, article 20 of the Constitutional Law determines the equality of peoples and nationalities in a wider sphere:

> "With a view to securing equality of peoples and nationalities and the freedom of the citizens to express their nationality and culture, each nationality is guaranteed the right to use and develop its language and culture freely and on an equal footing, to teach in the mother-tongue, to found institutions and organizations, and to make use of the other rights guaranteed by the Constitution *(Official Gazette of the Socialist Republic of Croatia, No. 6/1969)*."

People's Republic of Macedonia

The 14th amendment, of 31 January 1969, to the Constitution of the Socialist Republic of Macedonia lays down equal status for the languages and alphabets of the nationalities with the Macedonian language in public and social life, and also before the organs of State, in the regions where the nationalities live. Important documents issued by the communal assemblies and labour organizations, and the public notices in the regions where the nationalities live, will also be written in the languages of the nationalities. The socio-political communities take care of the development of teaching, the public information media, and the cultural and educational activity in the languages of the nationalities. The conditions for the application of such equality will be defined by the Law, the statutes of the communes and those of the labour organizations *(Official Gazette of the Socialist Republic of Macedonia, No. 4/1969)*.

Socialist Republic of Montenegro

The 14th amendment introduced only certain terminological changes in articles 64-68 of the Constitution of this Republic, which deal with the rights of the nationalities living in its territory *(Official Gazette of the Socialist Republic of Montenegro, No. 1/1969)*.

Socialist Republic of Slovenia

The 20th amendment of 17 February 1969 to the Constitution of the Socialist Republic of Slovenia guaranteed the equality of the Hungarian and Italian languages with the Slovenian language in the territory of this Republic, which is inhabited by Hungarians and Italians as well as Slovenians. Provisions relating to the exercise of these rights by the Italian and Hungarian nationalities will be laid down by the law, the statutes of the communes and those of the labour and other organizations.

The same amendment promulgated section III of the Constitution of the Socialist Federal Republic of Yugoslavia relating to human freedoms, rights, and duties, as an integral part of the Constitution of the Socialist Republic of Slovenia, for direct application in the territory of this Republic *(Official Gazette of the Socialist Republic of Slovenia, No. 5/1969)*.

Socialist Republic of Serbia

The text of the VIth amendment of 29 January 1969 to the Constitution of this Republic is almost identical with that of the XVIth amendment of the Socialist Republic of Bosnia and Herzegovina; in contradistinction to the latter Republic, equality in the use of languages and alphabets is guaranteed by the constitutional law of the self-governing provinces, by the statutes of the communes and those of the economic and other organizations *(Official Gazette of the Socialist Republic of Serbia, No. 5/1969)*.

III. LEGAL STATUS OF REFUGEES

Law of 16 January 1969 amending and supplementing the Law on the Movement and Sojourn of Aliens in Yugoslavia

(Official Gazette of the SFRY, No. 3/1969)

This Law amends and supplements the Law bearing the same name and adopted on 15 March

1965, a law already amended on 8 April 1967 *(Official Gazette of the SFRY No. 13/1965 and No. 17/1967)*. The present changes concern the status of refugees, which is at the same time defined by the Decree of the Federal Executive Council of 25 June 1969 relating to the amount of material assistance for the housing and maintenance of refugees *(Official Gazette of the SFRY No. 28/1969)*.

The federal Secretariat of the Interior, which under the earlier text was already competent to grant or to revoke the status of refugees, is responsible, by virtue of this new amendment, for the reception, housing and material security of regufees. It organizes reception centres for refugees and takes care of these centres and also of the material security of the refugees accommodated there.

However, refugees may also be housed outside the centres, in a locality chosen by the Secretariat of the Interior of the Republic. The competent federal authority dealing with public health and social policy, in collaboration with the federal Secretariat of the Interior, is responsible for the housing and material security of refugees and also for training them to become self-supporting.

The resources necessary for housing and the material security of refugees are provided by the Federation. The above-mentioned decree of the Executive Council determined the amount of aid to refugees and to those members of their families who are under age. A refugee will be entitled to assistance if he has no work and does not, from whatever source, derive an income such as would be required to cover the indispensable outlay on housing and maintenance.

Refugees may be granted more extensive assistance if they suffer from a permanent or temporary disability. If a refugee is sent on a course of technical training by the competent communal authority, it is the latter which is required to settle the question of assistance.

In conformity with these provisions and with a view to enabling refugees to earn their living, the provision relating to the period during which material assistance will be supplied to refugees has been amended. According to the earlier text of the law, such assistance was provided "until the refugee leaves for another State or obtains permission to reside permanently in Yugoslavia". Under the present amendment to the Law, financial assistance will be provided "until conditions enabling him to support himself exist".

Refugees enjoy health protection under the Law on the Health Protection of Foreign Citizens in Yugoslavia *(Official Gazette of the SFRY, No. 23/1967)*.

IV. HEALTH

The changes in the laws ensuring the protection of human health stem from the desire to render this protection more effective, to utilize resources efficiently and to give effect to the increasingly important rights to self-management. They also derive from a tendency to decentralize decision-making powers and the operation of the health services.

Federal legislation covers only basic principles, while the activities of the republics and of the other socio-political communities and the area covered by policies agreed with those participating in health protection, i.e. insured persons and other beneficiaries, health institutions and the health insurance community are steadily expanding.

In 1969, three important federal laws were adopted: the General Law on Public Health, the General Law on Health Insurance and Compulsory Forms of Health Protection for the Public, and the General Law on the Interruption of Pregnancy.

1. General Law on Public Health of 26 April 1969

(Official Gazette of the SFRY, No. 20/1969)

On the date of the entry into force of this Law, a number of earlier laws were abrogated, including the General Law on Health Protection and the Health Service *(Official Gazette of the SFRY, No. 9/1965)*.

I. *The protection of health*

Article 1

Health protection measures are intended to preserve and improve the physical and mental health of citizens. The organization and operation of health service units (zdravstvene radne organizacije) and of other bodies associated with them (hereinafter referred to as "health service units"), and the activity of health workers and others operating in the field of health protection, shall be governed by the principle of the unity of such protection.

Article 2

Protection of health as an organized social activity shall comprise:

(1) Control of environmental pollution and improvement of sanitational conditions affecting the citizen's way of life and activity;

(2) Raising the level of health education and of physical culture among the citizens;

(3) The establishment of satisfactory conditions for a healthy development of children and adolescents and for the protection of women, especially during pregnancy, confinement and after-confinement injuries;

(4) The detection and elimination of the causes of disease and of injuries, and the control of their after-effects;

(5) The treatment and rehabilitation of persons suffering from diseases, deficiencies, and the effects of injuries;

(6) The supervision of health;

(7) The supply of medicaments and medical equipment for prevention and treatment;

(8) The adoption of other measures likely to improve the state of public health.

Article 3

The protection of health shall be organized and applied in accordance with the needs and possibilities of the community and the achievements of science, under programmes drawn up in accordance with the principles of collective agreements by social and political units, the health insurance services, the

health service units and their branches and other units or organizations.

Article 4

The resources used to implement health protection shall be provided by the citizens associated in health service units, social and political units, enterprises and other organizations and also by individuals.

Health service units and other organizations participating in the implementation of health protection shall draw the resources necessary for their operation from their income.

Article 5

Protection of health shall be ensured and applied by the health service units, enterprises and other organizations and social and political units, within the framework of their rights and obligations, as laid down by law or by any other general text.

Health protection shall be directly provided by the health workers within the health service units and other organizations.

Exceptionally and subject to the conditions and limitations laid down by the law, health protection may be provided directly by health workers operating independently.

...

Article 8

Social and political units, health service units and other organizations shall take the measures required for the provision of emergency medical care.

Every professional health organization and every health worker are required to provide medical care in an emergency.

The manner in which the cost of emergency medical care is determined and paid shall be laid down by law.

Article 9

Respect for the personality and the dignity of persons for whom health protection is provided and the observance of professional secrecy in matters relating to such protection must be ensured.

Article 10

The social and political units shall, within the framework of their rights and obligations, establish the most satisfactory conditions of health protection possible, and they shall supervise the organization and efficient operation of the health service in their territory, and they shall also ensure technical supervision over the activities of health service units and health workers.

...

II. *Health establishments*

Article 12

Health service units shall be established in accordance with the conditions laid down by the law in order to carry out the work of health protection.

The categories of health service units and the manner in which they operate shall be determined by law.

The health service units shall fix the fees for the medical care they provide.

In so doing, the health service units shall adhere to the regulations and collective agreements defining the criteria for the determination of fees, taking into account the standards and norms as well as the classification of health service units.

The fees charged for medical care may also be fixed by contract.

The fees charged for medical care shall also include part of the resources set aside for the extension of the material basis of the health service unit concerned.

...

IV. *Rights and obligations of the citizens*

All citizens are entitled to health protection.

In order to obtain health protection, citizens shall be free to choose the health service unit and the health worker that will provide the services needed.

Article 24

Within the framework of the application of health protection and health benefits, steps must be taken to ensure:

(1) That the citizens may, subject to the conditions laid down, require a medical recheck, a consultation between doctors whom they have chosen themselves, as well as a technical check of the activities of the health service unit or health worker concerned;

(2) That surgical or other medical interventions may be performed only with the prior consent of the patient or of his parent or guardian if he is a minor or incapacitated. In urgent cases or where the life of the patient is in danger, surgical and other interventions may be undertaken even without the prior consent of the patient when his condition does not allow him to take a decision himself, and when by reason of the urgency it is not possible to obtain the consent of the parent or guardian.

Article 25

It shall be the duty of every citizen to provide first aid for others in an emergency within the limits of his own powers.

2. General Law on Health Insurance and Compulsory Forms of Health Protection for the Public

(Official Gazette of the SFRY, No. 20/1969 of 20 April 1969)

Introductory provisions

Article 1

Labourers, farmers, and persons exercising an independent professional activity (hereinafter referred to as the insured), and also members of their family, shall be covered by compulsory health insurance and be entitled to all other benefits deriving from health insurance.

The health of persons not covered by compulsory health insurance shall be protected in accordance with the law.

Article 2

Health insurance shall be governed by the principles of reciprocity and of the solidarity of the

insured persons, within the framework of the self-managing health insurance communities.

Within the health insurance communities, the insured shall combine their resources with a view to protecting health and to obtaining the other benefits deriving from health insurance.

Article 3

Insured workers shall decide freely, within the framework of the health insurance communities, for themselves and for the members of their family, in conformity with the General Law on Health, and also with the other rights and obligations deriving from health insurance, the scope and extent of the rights, the conditions and manner of exercising them, and also the other means necessary for securing these rights.

Article 4

Insured farmers and persons exercising an independent professional activity shall decide independently within the social insurance communities, for themselves and the members of their family, the rights and obligations deriving from health insurance, the scope and extent of the rights, the conditions, and manner of exercising them and also the means necessary for securing these rights.

Article 5

The insured shall decide, within the health insurance communities, the compulsory forms of health protection within the limits defined by the law as a minimum.

The compulsory forms of health protection defined by this Law shall also be guaranteed to persons not covered by compulsory health insurance (article 1, paragraph 2).

Article 6

Labour and other organizations, the State organs (hereinafter referred to as organizations) and private employers shall compulsorily insure the workers and the apprentices, that is the pupils of vocational schools in which, besides theoretical teaching, practical instruction is provided by the labour organization, the school or the private employer, such insurance covering occupational accidents or disease.

Article 7

Within the health insurance communities, the insured shall, on a basis of self-management, settle their mutual relations and establish such forms of organization and decision-making as will permit, in the most appropriate manner, the most direct participation of the insured in the organization and application of health insurance and in the definition of the rights and obligations deriving from health insurance, in the establishment and strengthening of the material basis with a view to guaranteeing and expanding health protection and the other rights deriving from health insurance.

The insured

Article 9

The following persons are regarded as workers within the meaning of article 1 of this Law:

(1) Persons working in Yugoslav territory, and Yugoslav nationals working abroad with Yugoslav organizations or in the households of the insured;

(2) Yugoslav nationals working abroad, if they are not covered by compulsory health insurance under the law of the country in which they are working, or under an international agreement;

(3) Members of the representative bodies and their organs, and elected officers of social, co-operative, and self-managing organizations, chambers of commerce, associations and others, if they receive a regular monthly remuneration for their work;

(4) Members of craft co-operatives and fishing co-operatives whose economic activity in the co-operative constitutes their sole or principal occupation;

(5) Persons who have temporarily ceased working, if they are regularly registered with an employment agency;

(6) Recipients of a pension and persons entitled to professional rehabilitation and to employment in accordance with the provisions on disablement insurance, as well as Yugoslav nationals receiving a retirement or disablement pension exclusively from foreign social insurance organs while staying in Yugoslav territory, if an international contract does not provide otherwise;

(7) Persons participating in practical work (voluntary workers without personal remuneration, if they are working full-time);

(8) Apprentices, and even the pupils of vocational schools in which, besides theoretical teaching, practical instruction is provided by the labour organization, the school, or the private employer. As members of the family are considered the members of the immediate family (the spouse, and the legitimate, illegitimate and adopted children and step-children of the insured person) and also any relatives maintained by the insured, under the conditions established by the health insurance community.

Compulsory health insurance shall also cover the members of the family of a Yugoslav national working abroad if they are not covered by the compulsory health insurance of a foreign social insurance body.

Article 12

Foreign nationals who are employed in Yugoslav territory by Yugoslav organizations or private employers or on the basis of an international agreement and the members of their family shall be covered by the system of health insurance under the same conditions as workers who are Yugoslav nationals.

Rights deriving from health insurance

Article 13

Within the framework of the health communities, the insured and the members of their family shall be entitled:

(1) To such health protection as they determine independently within the framework of the health insurance community;

(2) To such health protection as is compulsory under law and is provided by health insurance;

(3) To the monetary compensation and allowances which are laid down for insured persons under this Law, that is, fixed by the insurance community;

(4) To the other rights deriving from health insurance which are defined independently by the health insurance community.

Article 14

The compulsory forms of health protection covering all citizens by virtue of article 5 of the present Law, are as follows:

(*a*) The detection, prevention, medical care and treatment of tuberculosis, venereal diseases, and other contagious diseases which are subject to compulsory notification;

(*b*) The care and treatment of mentally ill persons who, in view of the nature and state of their illness, may endanger their lives or the lives of other persons or damage the material assets of their environment;

(*c*) The health protection of women in cases of pregnancy, confinement, maternity, and contraception;

(*d*) The complete health protection of new-born babies, children of tender age, and children below school age;

(*e*) The health protection of pupils attending school, juveniles of school age and regular students up to a certain age by means of regular medical inspection, of dental protection and care: of prevention, care and treatment of rheumatic fever, prosthesis and rehabilitation in cases of lesion, or visual or auditory anomalies or orthopaedic deformation;

(*f*) The detection of malignant diseases, of diabetes and their treatment;

(*g*) Activity in the field of the health education of the public.

The extent of the rights and criteria for the application of certain forms of health protection referred to in paragraph 1 of this article shall be defined by law.

...

Article 16

The insured shall choose the medical institution and the doctor that will provide health protection for them. The insured shall, within the framework of the health insurance communities, determine the terms and conditions for the use of the services of medical institutions and medical workers.

Where an insured person makes use of health protection in conditions and ways different from those provided for in paragraph 2 of this article, the expenses incurred by the health services provided shall be borne by the health insurance community, at least up to the amount corresponding to the cost of the health services which would have been provided by the medical institutions with which the health insurance community has concluded a contract for the provision of health protection.

Article 17

The health insurance communities may provide for participation of the insured in the cost of the use of health protection, provided that the introduction of such participation is professionally and socially justified and that the amount of such participation does not discourage the use of health protection by the insured.

The cost of compulsory forms of health protection (article 14) and of health protection in cases of occupational accidents and professional diseases (article 15) shall be borne entirely by the health insurance community.

Article 18

The health insurance communities shall freely determine the rights of the insured to financial compensation as part of health protection, its amount and the terms and conditions for the acquisition and exercise of such rights.

The acquisition of the right to compensation may, by law, be made conditional on previous membership of a social insurance scheme.

The social insurance communities of the workers shall be under an obligation to guarantee financial compensation in the cases and conditions defined by law.

...

The financing of health insurance

Article 25

The resources required to secure health protection and the other rights deriving from health insurance shall be provided by the contribution of the insured and of other taxpayers, the participation of the socio-political communities, and by means of other receipts.

Where not laid down by law, the basis of calculation shall be fixed by the health insurance community at its discretion.

...

Application of health insurance

Article 35

Health protection under health insurance shall be provided for the insured in medical institutions, in accordance with the terms specified in the contract signed between the community and the medical institution.

Article 36

Relations between the social insurance communities and the medical institutions as regards their rights and obligations in connexion with the application of health protection and the health services provided for the insured shall be governed by contracts, on a footing of equality, as business relations between the independent organizations in charge of health protection for the insured persons. The cost of health services, and the cost of the health measures and care stipulated in the contract for the health protection of the insured shall serve as a basis at the time of the conclusion of a contract.

Transitional and final provisions

...

Article 44

The following shall cease to be valid, on the day fixed by the law of the Republic for the beginning of the application of social insurance in conformity with the principles of this law, and not later than 31 December 1970:

1. Organic Law on Health Insurance *(Official Gazette of the SFRY No. 22/62 and 53/62, and Official Gazette of the SFRY No. 15/65, 29/66, 52/66 and 23/67)*;
2. Organic Law on the Health Insurance of Agricultural Labourers *(Official Gazette of the SFRY No. 2/68)*;
3. The Provisions of the Organic Law on the Organization and Financing of Health Insurance *(Official Gazette of the SFRY No. 24/65, 57/65, 52/66, 12/67 and 54/67* relating to the organization and financing of health insurance).

3. General Law on the Interruption of Pregnancy of 26 April 1969

(Official Gazette of the SFRY No. 20/1969)

Pregnancy may not be interrupted after a period of three months has elapsed following the day of conception, and it may be interrupted only in medical establishments satisfying all requirements as regards equipment, premises, qualified staff, and any other requirements to be imposed for this intervention and the post-operative care to be provided. The medical establishment must inform the pregnant woman and her husband of the detrimental effect of the interruption of pregnancy on the wife's health.

Pregnancy may be interrupted with the consent or at the request of the pregnant woman:

(*a*) When it is medically established that no other means can save her life or prevent serious impairment of her health, during pregnancy, or during or after confinement. In that case, pregnancy will be interrupted on medical advice, whatever may be the period of time which has elapsed since conception.

(*b*) When scientific knowledge suggests the conclusion that, owing to an illness of the parents, the child is liable to be born with serious physical or psychological defects. In that case, as in the cases referred to in the following paragraph, pregnancy may be interrupted after the lapse of three months following conception only if such interruption will not involve serious damage to the health of the pregnant woman or immediate danger to her life.

(*c*) When pregnancy has been caused by a criminal act (as defined in the Yugoslav penal code) such as rape, a sexual act with a person incapable of resisting, a sexual act with a minor, a sexual act involving misuse of authority, seduction or incest.

Pregnancy shall be interrupted at the request of a pregnant woman when she risks being placed, during pregnancy or after confinement, in difficult personal, family, material, or other conditions.

Throughout the interruption of pregnancy, professional secrecy and respect for the dignity of the person of the pregnant woman shall be assured.

V. CONSTITUTIONAL TRIBUNALS

1. Constitutional Court of Yugoslavia

Decision relating to the constitutionality and the legality of article 12, paragraph 2 of the decision on public order and tranquillity in the commune of Maribor of 8 July 1969 (Official Gazette of the SFRY No. 32/1969)

The editorial board of "Mladost", organ of the Youth Union of Yugoslavia, had submitted to the Constitutional Court of Yugoslavia a request for an opinion on the constitutionality of the decision adopted on 28 December 1967 by the Communal Assembly of Maribor. Among other points, it was emphasized that the provisions of articles 12, 13, and 14 of the above-mentioned decision were not in conformity with the Yugoslav Constitution because they restricted the freedom of movement of minors of less than sixteen years of age. Such minors are citizens and some of them are members of workers' organizations and, as workers, enjoy the right to elect and to be elected to the self-managing organs of the labour organizations.

Article 12 of the decision provides *inter alia* that parents and guardians must take care that children and minors less than sixteen years of age are not left without supervision in the streets or in public places after 8 p.m. from November to March and after 9 p.m. from April to October.

Article 14 prohibits children and minors unaccompanied by adults from attending, after 8 p.m., films and theatrical performances, concerts and other manifestations with the exception of those organized by youth or social organizations. Minors may not remain, after 8 p.m., alone or in the company of adults, at performances, balls, or night-clubs which, by reason of their programme or of the behaviour of the persons present, are obviously unsuitable for the education of youth.

During the procedure before the Constitutional Court of Yugoslavia, the Communal Assembly of Maribor stressed the fact that the adoption of the above-mentioned decision had been motivated by numerous instances of juvenile delinquency and that it aimed at suppressing them and protecting youth. It based its decision on article 57, paragraph 2 of the Yugoslav Constitution providing that minors whose parents take no care of them should be placed under the special protection of the social community, and on article 58, paragraph 3, stipulating the right and duty of parents to look after the education and instruction of their children.

The Constitutional Court of the Socialist Republic of Slovenia had asked the Constitutional Court of Yugoslavia to refer the matter to it in order that it might give a prior opinion on the conformity of the decision with the Constitution and the laws of the Socialist Republic of Slovenia. The procedure before the Constitutional Court was therefore temporarily suspended and the case referred to the Constitutional Court of the Socialist Republic of Slovenia. The Communal Assembly of Maribor made some minor amendments to its decision of 1967 during the proceedings before this Court. The Court expressed the opinion that the provisions of articles 12 and 14 were not contrary to the Constitution and the laws of the Socialist Republic of Slovenia (decision of the Court of 2 January 1969).

The Constitutional Court of Yugoslavia, however, considered that the decision was contrary to article 51 of the Yugoslav Constitution, which guarantees the freedom of movement of the citizens. Freedom of movement could be limited only in the cases provided for by the Constitution, and only a law,

not a decision of the commune, might lay down specific provisions concerning the application of these constitutional restrictions. The fact that the decision concerned minors could not justify an exception in this respect. "It is contrary to the basic principles of social and political organization and of the Constitution to consider that these principles contain an element of inequality regarding the freedoms and rights of various age groups. Quite the contrary, the Constitution is based on the principle of the equality of people and of the equality of human freedoms."

The Court also rejected the reference of the Communal Assembly of Maribor to articles 57, paragraph 2, and 58, paragraph 3, of the Constitution. In its opinion, these provisions do not apply to the constitutional principle of the freedom of movement and, moreover, concern a category of minors and not all minors (reference to article 57).

For these reasons the Constitutional Court of Yugoslavia annulled the above-mentioned provisions of the decision of the Maribor Communal Assembly.

2. Constitutional Court of Croatia

Decision of 31 October 1969—Narodne Novine (Official Gazette of the Socialist Republic of Croatia, No. 49/1969)

Following the request submitted by the Communal Assembly of Kostajnica and the Communal Educational Community of Petrinje for an opinion on the constitutionality and the legality of the conclusions of the Committee of the Educational Community of the city of Zagreb and of the Committee for Education and Culture of the Communal Assembly of Sisak laying down conditions for the enrolment of pupils in schools of grade 2, the Constitutional Court of Croatia decided that it was contrary to the Constitution and the law not to enrol pupils coming from a territory covered by another educational community, for the sole reason that the educational community to which the pupils belong did not meet its obligation to assist in the financing of the school at which those pupils wished to enrol.

In the first place, the Court noted that under the Law on Resources earmarked for Education in the Socialist Republic of Croatia *(Narodne Novine, No. 50/1966 and 7/1968)* the Educational Community of the city of Zagreb and the Committee for Education and Culture of the Communal Assembly of Sisak were not authorized to adopt Acts of a general nature (which, moreover, were not published in the appropriate manner). In addition, the contents of the above-mentioned Acts were compatible neither with that Law nor with the Constitution of the Socialist Republic of Croatia. Article 36 of the Constitution stipulated that citizens had the right to pursue, in the same conditions, studies at all schools and other educational establishments. Consequently, pupils must be allowed, in the same conditions, to enrol in schools of grade 2 regardless of their domicile. Therefore, any Act aimed at limiting the enrolment of pupils from the territories of other communes on the ground that the question of financial assistance had not been settled was contrary to the Constitution.

VI. INTERNATIONAL RELATIONS

1. Law of 12 February 1969 prohibiting the maintenance and establishment of economic relations with Southern Rhodesia

(Official Gazette of the SFRY, No. 8/1969)

Southern Rhodesia has repeatedly violated the rules of international law, aroused the indignation of the United Nations and has been condemned by the Organization for continuous violation of human rights and of fundamental freedoms. Yugoslavia has responded positively to the appeal of the United Nations to isolate that country by breaking off all economic relations.

Yugoslav individuals and corporations may not trade in goods and services (with the exception of medical equipment, scholastic supplies, and foodstuffs intended for humanitarian purposes), represent or serve as intermediaries where goods originating from Southern Rhodesia are concerned, or entertain any other economic relations with individuals and corporations in Southern Rhodesia.

Southern Rhodesian means of transport are not authorized to make use of the ports, roadsteads, airports and roads of Yugoslavia, and Yugoslav means of transport are not authorized to make use of the corresponding Southern Rhodesian facilities. Means of transport registered in Yugoslavia may not carry goods to third countries if it appears from the documents that these goods will be re-exported to Southern Rhodesia.

Holders of Rhodesian passports are not entitled to enter Yugoslavia or to cross its territory in transit, except in the case of a journey for a humanitarian purpose. Yugoslav shipping companies and airlines may not make reservations or sell combined travel tickets to foreign nationals who, on departure, use Yugoslav means of transport, and subsequently other means of transport to go to Southern Rhodesia.

Heavy fines are laid down for labour organizations and their officers and for citizens violating the above-mentioned provisions.

2. International Conventions

A. 1. In 1969, Yugoslavia ratified certain international Conventions relating to human rights.[2]

1. Convention on social security between the Socialist Federal Republic of Yugoslavia and the Kingdom of Sweden signed at Stockholm on 5 July 1968 *(Official Gazette of the SFRY No. 9/1969)*;

2. Agreement on social security between the Socialist Federal Republic of Yugoslavia and the Federal Republic of Germany, signed at Belgrade on 12 October 1968 *(Official Gazette of the SFRY No. 9/1969)*;

3. Agreement on unemployment insurance, signed at Belgrade on 12 October 1968, with the Federal Republic of Germany *(Official Gazette of the SFRY No. 9/1969)*;

[2] The Laws relating to the ratification of Conventions No. 1, 2 and 3 were adopted on 13 February 1969.

4. Agreement concerning the abolition of visas between the Government of the Socialist Federal Republic of Yugoslavia and the Government of the United Kingdom of Great Britain and Northern Ireland, concluded by exchange of notes of 29 April 1969 at Belgrade, ratified by the Decree of the Federal Executive Council of 7 May 1969, and brought into force on 13 May 1969 *(Official Gazette of the SFRY No. 38/1970)*;

5. Convention amending the Convention on Social Security of 1 November 1954 between the Socialist Federal Republic of Yugoslavia and Belgium, signed at Brussels on 12 March 1968, ratified by the Decree of the Federal Executive Council of 21 May 1969, and brought into force on 1 June 1970 *(Official Gazette of the SFRY, Treaties and Other International Agreements, No. 34/1970)*;

6. Agreement on the mutual abolition of fees for visas between the Socialist Federal Republic of Yugoslavia and Australia, signed on 13 June 1969 at Belgrade, and ratified by the Decree of the Federal Executive Council of 25 June 1969 *(Official Gazette of the SFRY, Treaties and other International Agreements, No. 22/1970)*;

7. Agreement on the abolition of visas between the Socialist Federal Republic of Yugoslavia and the Benelux countries, concluded at Belgrade on 17 June 1969, ratified by the Decree of the Federal Executive Council of 25 June 1969, and brought into force on 2 July 1969 *(Official Gazette of the SFRY, Treaties and Other International Agreements, No. 35/1970)*.

B. In 1969, Yugoslavia ratified two multilateral agreements of a general nature:

1. Convention No. 123 of the International Labour Organisation concerning the minimum age for admission to employment underground in mines, accompanied by Recommendations 124 and 125, signed in Geneva on 22 June 1965, and ratified by the Decree of the Federal Executive Council of 26 March 1969 *(Official Gazette of the SFRY, Treaties and Other International Agreements, No. 40/1970)*.

2. International Sanitary Regulations, adopted at the fourth World Health Assembly in 1951, amended at the VIIIth, IXth, XIIIth, XVIth and XVIIIth World Health Assemblies in 1955, 1956, 1960, 1963, and 1965, and ratified by the Decree of the Federal Executive Council of 4 June 1969 *(Official Gazette of the SFRY, Treaties and Other International Agreements, No. 17/1970)*.

ZAMBIA [1]

I. ACTS OF PARLIAMENT

1. THE REFERENDUM AMENDMENT ACT, 1969

Act No. 5 of 1969, assented to on 19 March 1969 and entered into force on 21 March 1969 [2]

2. Section *three* of the principal Act [3] is hereby repealed and the following section is substituted therefor:

"3. (1) All persons who at the time of a referendum are registered as voters and entitled to vote at elections to the National Assembly shall be entitled to vote in the referendum.

"(2) For the purpose of taking the poll at a referendum, the Republic shall be divided into the constituencies for the time being established by law for the purpose of electing members to the National Assembly, and the poll shall be taken separately in each such constituency.

"(3) For the purpose of taking the poll at a referendum, each constituency shall be divided into the polling districts for the time being established by law for the purpose of electing members to the National Assembly."

3. Section *four* of the principal Act is hereby repealed and the following section is substituted therefor.

"4. (1) There is hereby established a Referendum Commission (hereinafter in this Act referred to as 'the Commission') for the purpose of supervising the conduct of any referendum held pursuant to section *two*."

...

7. The conduct of every referendum shall be subject to the direction and supervision of the Commission.

...

13. A referendum petition may be presented to the High Court by one or more of the following persons—

(*a*) in the case of a petition in respect of the result of the voting in any one constituency, any person who lawfully voted or had a right to vote in that constituency at the referendum;

(*b*) in the case of a petition in respect of the declared result of the referendum, any person who voted at the referendum or had a right to vote at the referendum;

(*c*) in any case, the Attorney-General.

...

19. (1) Subject to the provisions of this Act, every referendum petition presented under this Act shall be tried and determined by the High Court.

(2) A referendum petition shall be tried in open court.

...

20. (1) At the trial of a referendum petition, the court trying the petition shall have power—

(*a*) to order any person who appears to the court to be concerned in or affected by the referendum petition to attend as a witness at such trial;

(*b*) to examine any witness or any person who is present at such trial although such witness or person is not called as a witness by any party to the proceedings:

Provided that after such examination by the court, such witness or person may be cross-examined by or on behalf of the petitioner or the respondent.

(2) Where any person is ordered to attend as a witness under subsection (1), the court may direct that a copy of the referendum petition be served on that person.

(3) A person who is called as a witness at the trial of a referendum petition shall not be excused from answering any question relating to any offence connected with the referendum on the ground that the answer thereto may tend to criminate him or on the ground of privilege:

Provided that—

(*a*) a witness who answers to the satisfaction of the court every question which he is required to answer under this section, and the answers to which may tend to criminate him, shall not be liable to prosecution for any offence committed by him in connection with the referendum and in respect of which he is so examined, and such witness shall be entitled to receive a certificate of indemnity under the hand of the Registrar stating that he is freed and discharged from liability to prosecution for that offence;

(*b*) an answer by a witness to a question before the court under this section shall not, except

---

[1] Text of laws and judicial decisions furnished by the Government of Zambia.

[2] *Supplement to the Republic of Zambia Government Gazette*, of 21 March 1969.

[3] "Principal Act" means the Referendum Act, 1967 (Act No. 39 of 1967).

in the case of any criminal proceedings for giving false evidence in respect of such evidence, be admissible in any proceedings, civil or criminal, in evidence against him.

(4) Where a person has received a certificate of indemnity under subsection (3), and any legal proceedings are at any time brought against him for any offence to which such certificate relates, the court having cognizance of the case shall, on proof of the certificate of indemnity, stay such proceedings and may award to that person such costs as he may have been put to in such proceedings.

(5) All reasonable expenses incurred by any person in attending at or appearing before the High Court to give evidence as a witness at the trial of a referendum petition shall be allowed to such person according to the scale of allowances and expenses appropriate in civil proceedings before the High Court.

21. (1) A petitioner may apply to the High Court upon the trial of a referendum petition for a scrutiny to be carried out by the High Court in such manner as the court may determine.

...

22. (1) At the trial of a referendum petition which questions the validity of the result of the voting in any one constituency, the court trying the petition may order that the referendum be taken again in that constituency,

...

23. (1) At the conclusion of the trial of a referendum petition, the court shall either—

(*a*) confirm without alteration the declared result of the referendum; or

(*b*) direct that the declared result of the referendum shall be amended in accordance with the findings of the court, including the result of any retaking of the referendum.

(2) The Registrar shall forthwith deliver to the Commission a certified copy of any order made under subsection (1).

...

26. No person who has voted at a referendum shall in any proceedings, whether brought under this Act or otherwise, be required to state how he has voted.

...

2. THE CONSTITUTION (AMENDMENT) (NO. 5) ACT, 1969

Act No. 33 of 1969, assented to on 21 October 1969 and entered into force on 23 October 1969 [4]

...

4. Section *eighteen* of the Constitution is repealed and the following section substituted therefor:

"18. (1) Save as hereinafter provided, 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 under the authority of an Act of Parliament which provides for payment of compensation for the property or interest or right to be taken possession of or acquired.

"...

"(3) An Act of Parliament such as is referred to in subsection (1) of this section shall, *inter alia*—

(i) provide that compensation shall be paid in money;

(ii) specify the principles on which the compensation is to be determined; and

(iii) provide that the amount of the compensation shall in default of agreement be determined by resolution of the National Assembly.

"(4) No compensation determined by the National Assembly in terms of any such law as is referred to in subsections (1) and (3) of this section shall be called in question in any court on the grounds that such compensation is not adequate."

...

6. Section *twenty-six* of the Constitution is repealed and the following section substituted therefor:

"26. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 15, 18, 19, 21, 22, 23, 24 or 25 of this Constitution to the extent that the law in question authorises the taking, during any period when the Republic is at war or when a declaration under section 29 of this Constitution is in force, of measures for the purpose of dealing with any situation existing or arising during that period; and nothing done by any person under the authority of any such law shall be held to be in contravention of any of the said provisions unless it is shown that the measures taken exceeded anything which, having due regard to the circumstances prevailing at the time, could reasonably have been thought to be required for the purpose of dealing with the situation in question."

7. The Constitution is amended by the insertion after section *twenty-six* of the following new section:

"26A. (1) Where a person's freedom of movement is restricted, or he is detained, under the authority of any such law as is referred to in section 24 or 26 of this Constitution as the case may be the following provisions shall apply:

"(*a*) he shall, as soon as is reasonably practicable and in any case not more than fourteen days after the commencement of his detention or restriction, be furnished with a statement in writing in a language that the understands specifying in detail the grounds upon which he is restricted or detained;

"(*b*) not more than one month after the commencement of his restriction or detention a notification shall be published in the *Gazette* stating that he has been restricted or detained and giving particulars of he provision of law under which his restriction or detention is authorised;

"(*c*) if he so requests at any time during the period of such restriction or detention not earlier than one year after the commencement thereof or after he last made such a request during that period, as the case may be, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, appointed

[4] *Supplement to the Republic of Zambia Government Gazette*, of 23 October 1969. For extracts from the Constitution, see *Yearbook on Human Rights for 1964*, pp. 305-312.

by the Chief Justice, who is or is qualified to be a judge of the High Court;

"(*d*) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the authority by which the restriction or detention was ordered or to any tribunal established for the review of his case;

"(*e*) at the hearing of his case by such tribunal he shall be permitted to appear in person or by a legal representative of his own choice.

"(2) On any review by a tribunal in pursuance of this section of the case of a restricted or detained person, the tribunal may make recommendations to the authority by which it was ordered concerning the necessity or expediency of continuing his restriction or detention but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

"(3) Nothing contained in subsection (1) (*d*) or (1) (*e*) of this section shall be construed as entitling a person to legal representation at the public expense.

"(4) Parliament may make or provide for the making of rules to regulate the proceedings of any such tribunal including, but without derogating from the generality of the foregoing, rules as to evidence and the admissibility thereof, the receipt of evidence (including written reports) in the absence of the restricted or detained person and his legal representative, and the exclusion of the public from the whole or any portion of the proceedings.

"(5) Subsections (10) and (11) of section 20 of this Constitution shall be read and construed subject to the provisions of this section."

8. (1) Section *twenty-nine* of the Constitution is repealed and the following section substituted therefor:

"29. (1) The President may at any time by Proclamation published in the *Gazette* declare that—

"(*a*) a state of public emergency exists; or

"(*b*) a situation exists which, if it is allowed to continue, may lead to a state of public emergency.

"(2) (i) A declaration made under this section shall cease to have effect on the expiration of a period of twenty-eight days commencing with the day on which the declaration is made unless before the expiration of such period it has been approved by a resolution of the National Assembly.

"(ii) In reckoning any period of twenty-eight days for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved.

"(3) A declaration made under this section may at any time before it has been approved by a resolution of the National Assembly be revoked by the President by a Proclamation published in the *Gazette*.

"(4) A declaration made under this section and approved by a resolution of the National Assembly in terms of subsection (2) of this section may at any time be revoked by a resolution of such Assembly supported by a majority of all the members thereof.

"(5) Whenever an election to the office of President results in a change in the holder of that office any declaration made under this section and in force immediately before the day on which the President assumes office shall cease to have effect on the expiration of seven days commencing with that day.

"(6) The expiry or revocation of any declaration made under this section shall not affect the validity of anything previously done under such declaration."

(2) Any declaration under section *twenty-nine* of the Constitution in force immediately before the commencement of this Act shall continue in force and shall be deemed to be a declaration, approved by a resolution of the National Assembly in terms of subsection (2) thereof, under the section hereby substituted.

...

10. Section *sixty-two* of the Constitution is amended in subsection (1)—

(i) at the end of paragraph (*c*), by the deletion of "or";

(ii) at the end of paragraph (*d*), by the deletion of the full-stop and the substitution therefor of "; or";

(iii) by the addition after paragraph (*d*) of the following new paragraph:

(*e*) whose freedom of movement is restricted, or who is detained, under the authority of any such law as is referred to in section 24 or section 26 of this Constitution as the case may be.

...

3. THE STATE SECURITY ACT, 1969

Act No. 36 of 1969, assented to on 21 October 1969 and entered into force on 23 October 1969 [5]

...

11. (1) If a magistrate 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 he may grant a search warrant . . . authorising any police officer named therein of or above the rank of assistant inspector, together with such other police officers and other persons who may be authorised by such named police officer, at any time to enter any premises, place, aircraft, ship, boat, train or other vehicle, or receptacle, as the case may be, named or described in the warrant, if necessary by force, and to search the same and every person or vehicle found thereon or therein or in the vicinity thereof, and to seize anything which he may find in the course of such search which is or may be evidence of an offence under this Act having been or being about to be committed or with regard to or in connection with which he has reasonable grounds for suspecting that an offence has been or is about to be committed.

...

12. (1) Any person who is found committing an offence under this Act or who is reasonably suspected of having committed or having attempted to commit or being about to commit such an offence may be arrested by any police officer and detained.

(2) Any person arrested under the provisions of this section shall, whether or not the police enquiries

[5] *Ibid.*

are completed, be brought before a magistrate as soon as practicable.

13. (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 by writing under his hand authorise a named police officer to require that person to give any information in his power relating to such suspected offence or anticipated 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 such police officer.

(2) Any person who, having been required in terms of subsection (1) to give information or to attend at a specified time and place, wilfully fails to comply with such requirement or knowingly gives false information shall be guilty of an offence.

14. Where any person is brought before a court on a charge under this Act no further proceedings in respect thereof shall be taken against him without the authority in writing of the Director, save such as may be necessary by remand to secure the due appearance of the person charged.

15. (1) If in the course of any proceedings, including proceedings on appeal, before any court against any person for an offence under this Act application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of such proceedings would be prejudicial to the interests of the Republic, that all or any portion of the public be excluded during the whole or any part of the hearing, the court shall make an order to that effect:

Provided that the passing of sentence shall take place in public.

(2) The powers of the court under this section shall be in addition to any other powers such court may have to exclude the public from any proceedings.

16. Any person convicted of an offence under this Act for which no penalty is provided shall be liable on conviction to imprisonment for a term not exceeding seven years.

17. (1) Where it appears to the President that it is expedient in the public interest so to do he may by warrant under his hand require any person who owns or controls any apparatus within the Republic used for the sending or receipt of telegrams to produce to the person named in the warrant the originals and transcripts of all telegrams or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, and all other papers relating to any such telegram.

(2) Any person who, on being required to produce any such original or transcript or paper as aforesaid, refuses or neglects to do so shall be guilty of an offence.

18. (1) Any act, omission or other conduct constituting an offence under this Act shall constitute such offence wherever such conduct took place, whether within or outside the Republic.

(2) An offence under this Act, for the purpose of determining the jurisdiction of a court to try the offence, shall be deemed to have been committed either at the place in which it was actually committed or at any place in the Republic in which the accused may be found.

19. Section *one hundred and sixteen* of the Criminal Procedure Code is amended by the addition of the following new subsection:

"(4) Notwithstanding anything in this section contained, no person shall be admitted to bail, either pending trial or pending appeal, if the Director of Public Prosecutions certifies that it is likely that the safety or interests of the Republic would thereby be prejudiced."

. . .

4. THE WORKMEN'S COMPENSATION (AMENDMENT) ACT, 1969

Act No. 37 of 1969, assented to on 10 November 1969 and entered into force on 14 November 1969 [6]

3. Sections *twelve* and *thirteen* of the principal Ordinance are repealed and the following new sections substituted therefor:

"12. (1) There is hereby established the Workmen's Compensation Fund Control Board . . .

"(3) The Board may, subject to the approval of the Minister, promote, establish and subsidise out of the Fund any organisation or scheme the objects of which consist of or include one or more of the following:

"(*a*) the prevention of accidents or of any diseases which are due to the nature of any occupation;

"(*b*) the promotion of the health or safety of workmen;

"(*c*) the provision of facilities designed to assist injured workmen to return to work or to reduce or remove any handicap resulting from their injuries."

. . .

6. Section *forty-one* of the principal Ordinance is amended by the repeal of subsection (3) and the insertion after subsection (2) of the following new subsections:

"(3) For the purposes of this Ordinance an accident shall be deemed to arise out of and in the course of his employment notwithstanding that the workman was at the time when the accident happened acting in contravention of any law applicable to his employment or of any instructions issued by or on behalf of his employer, or that he was acting without instructions from his employer, if—

"(*a*) the accident would have been deemed so to have arisen had the act not been done in contravention as aforesaid or without instructions from his employer, as the case may be; and

"(*b*) the act was done for the purposes of and in connection with the employer's trade or business.

"(4) An accident happening while a workman is, with the express or implied permission of his employer, travelling as a passenger by any vehicle to or from his place of work shall, notwithstanding

[6] *Supplement to the Republic of Zambia Government Gazette*, of 14 November 1969.

that he is under no obligation to his employer to travel by that vehicle, be deemed to arise out of and in the course of his employment if—

"(*a*) the accident would have been deemed so to have arisen had he been under such an obligation; and

"(*b*) at the time of the accident, the vehicle—

"(i) was being operated by or on behalf of his employer or some other person by whom it was provided in pursuance of arrangements made with his employer; and

"(ii) was not being operated in the ordinary course of a public transport service.

In this subsection references to a vehicle include references to a ship, vessel or aircraft.

"(5) An accident happening to a workman in or about any premises at which he is for the time being employed for the purposes of his employer's trade or business shall be deemed to arise out of and in the course of his employment if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, succour, assist or protect persons who are, or are thought to be or possibly be, injured or imperilled, or to avert or minimise serious damage to property.

"(6) For the purposes of this Act, an accident arising in the course of a workman's employment shall be deemed, in the absence of evidence to the contrary, also to have arisen out of that employment."

. . .

5. THE WIDOWS AND ORPHANS PENSION (AMENDMENT) ACT, 1969

Act No. 43 of 1969, assented to on 10 November 1969 and entered into force on 14 November 1969 [7]

. . .

12. Section *thirty* of the principal Ordinance is repealed and the following section is substituted therefor:

"30. All questions and disputes as to who is entitled to be deemed a contributor, or as to the right of a widow or child to a pension, or as to the amount of such pension, or as to the rights and liabilities of any person under this Ordinance shall be referred by the Crown Agents in the case of the contributors concerned serving or having last served—

"(*a*) in Zambia, to the appropriate Commission; and

"(*b*) in any other territory, the appropriate authority therein;

and the decision of the appropriate Commission, or the appropriate authority, as the case may be, shall be binding and conclusive on all parties, and shall be final to all intents and purposes and save as otherwise provided by the constitutional instruments, shall not be subject to appeal or to be questioned or revised by any court of justice."

. . .

[7] *Ibid.*

6. THE NATIONAL ARCHIVES ACT, 1969

Act No. 44 of 1969, assented to on 10 November 1969 and entered into force on 14 November 1969 [8]

. . .

Part II

NATIONAL ARCHIVES AND PLACES OF DEPOSIT

3. There is hereby established the National Archives of Zambia wherein shall be stored and preserved public archives other than those which are to be kept in some other place of deposit under the provisions of this Act.

. . .

Part IV

SELECTION OF AND ACCESS TO PUBLIC ARCHIVES

. . .

11. (1) Subject to any written law prohibiting or limiting the disclosure of information obtained from members of the public and to the provisions of this section, public archives which have been in existence for a period of not less than twenty years may be made available for public inspection and it shall be the duty of the Director to provide reasonable facilities at such times and on the payment of such fees as may be prescribed by regulations made under this Act for the public to inspect or obtain copies or extracts from public archives in the National Archives:

Provided that a donor of public archives other than public records shall be entitled to specify appropriate conditions for access to such archives.

(2) Notwithstanding the provisions of subsection (1), the Minister may, in respect of any public archives or any category thereof certified to him by the person by whom, or in charge of the office from which, the records concerned were transferred to the National Archives that—

(*a*) such public archives or category thereof ought not to be made available for public inspection, order that such public archives or category thereof shall not be made available for public inspection or shall not be made available for public inspection until the expiration of such further period as may be specified in that or any subsequent order; or

(*b*) such public archives or category thereof may be made available for public inspection notwithstanding that such public archives have not been in existence for at least twenty years, order that any such public archives or category thereof be made available for public inspection.

(3) The Minister may delegate to the Director his powers under subsection (2) to afford, restrict or withhold access to public archives.

(4) Nothing in this section shall be construed—

(*a*) as limiting any right of inspection of any records to which members of the public had

[8] *Supplement to the Republic of Zambia Government Gazette*, of 14 November 1969.

access before their transfer to the National Archives; or

(*b*) save to the extent provided by any such written law as is referred to in subsection (1), as precluding the Minister from permitting any person authorised by him to have access to any public archives or category thereof.

12. (1) Without the written authority of the Director, no person who is not an officer of the National Archives may inspect any public archives which—

(*a*) have been transferred to the National Archives; and

(*b*) (i) have been the subject of an order made by the Minister under the provisions of paragraph (*a*) of subsection (2) of section *eleven;* or (ii) have not been in existence for at least twenty years, unless they are the subject of an order made by the Minister under the provisions of paragraph (*b*) of subsection (2) of section *eleven.*

(2) Any person may inspect any public archives subject to—

(*a*) the provisions of subsection (1); and

(*b*) any condition or restriction imposed by the Director or the person from whom they were acquired.

(3) Subject to the provisions of subsections (1) and (2), the National Archives shall be open to the public for the inspection of public archives during such hours as may be fixed by the Director with the approval of the Minister.

...

7. THE MINES AND MINERALS ACT, 1969

Act No. 46 of 1969, assented to on 23 December 1969 [9]

Part II

A. Ownership of Minerals

3. (1) All rights of ownership in, of searching for, mining and disposing of, minerals, are hereby vested in the President on behalf of the Republic.

(2) The provisions of subsection (1) shall have effect notwithstanding any right of ownership or otherwise which any person may possess in and to the soil on or under which minerals are found or situated.

B. Acquisition of Rights and Interests

4. Subject to the provisions of this Act, rights of searching for, mining and disposing of, minerals may be acquired and held under and in accordance with the provisions of this Act.

5. (1) No mining right shall be granted to or held by—

(*a*) an individual who—

(i) is under the age of eighteen years;

(ii) is not a citizen of Zambia, or has not been ordinarily resident in Zambia for the prescribed period; or

(iii) is or becomes an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any written law;

(*b*) a company—

(i) unless, in the case of a mining licence, it has been incorporated under the Companies Ordinance;

(ii) which is in liquidation.

...

Part III

Administration

...

11. An authorised officer, the Director or any person authorised by him in writing, or the Deputy Director, may, at all reasonable times, enter upon any prospecting area, exploration area, mining area or mine, or any premises or workings thereon or thereunder, other than a dwelling house, for the purpose of—

(*a*) generally inspecting any such area, mine, premises or workings and examining prospecting or mining operations or the treatment of minerals being performed or carried out thereon;

(*b*) ascertaining whether the provisions of this Act are being complied with;

(*c*) ascertaining whether any nuisance exists upon such area or mine or in such premises or workings;

(*d*) giving directions and taking steps to enforce any provisions of this Act or to abate or remove any nuisance;

(*e*) taking soil samples or specimens of the rocks, ore, concentrates, tailings or mineral products situated upon such area, mine, premises or workings for the purpose of examination or assay; or

(*f*) subject to the provisions of section *thirteen* examining books, accounts, vouchers, documents or records of any kind.

12. Subject to the provisions of section *thirteen* the Engineer or the Director may direct the holder of a mining right to produce for perusal by him books, accounts, vouchers, documents or records of any type concerning the mining right, other than those relating to unpatented processes or processes upon which research work is being carried out:

Provided that records of the result of such processes may be examined.

13. (1) The holder of a mining right may object to the examination or production of any records on the ground that the records relate to unpatented processes or processes upon which research work is being carried out:

Provided that such an objection shall not be made in respect of records of the results of such processes.

(2) If the holder of a mining right and the person wishing to examine any records or have them produced are unable to agree about the nature of the

[9] *Ibid.*, of 24 December 1969.

records then either party may refer the matter to arbitration.

...

Part IX

MINING RIGHTS AND SURFACE RIGHTS

...

76. Whenever in the course of prospecting, exploration or mining operations any disturbance of the rights of the owner or occupier of lands or damage to any crops, trees, buildings, stock or works thereon is caused, the holder of the mining right by virtue of which such operations are or were carried out shall be liable to pay to such owner or occupier fair and reasonable compensation for such disturbance or damage according to their respective rights or interests (if any) in the property concerned...

79. (1) The President may by order published in the *Gazette* acquire by compulsion in his name private land or rights over or under private land for use by the holder of a mining licence.

...

80. (1) When the powers under section *seventy-nine* are exercised those persons who, in the opinion of the President, are persons having an interest in or right over the land concerned, shall be paid such compensation by the holder of the mining licence as the President may decide to be adequate.

(2) The holder of a mining licence shall, before entering into possession or enjoyment of any land or before exercising any right, make payment of compensation as determined in accordance with subsection (1) to the person or persons concerned, or if the whereabouts of the person or persons concerned or any of them are unknown, give such undertakings concerning the payment of compensation as the President may require.

...

II. STATUTORY INSTRUMENTS

1. THE PROTECTION OF FUNDAMENTAL RIGHTS RULES, 1969

Statutory Instrument No. 156 of 6 February 1969 [10]

...

2. An application under section *twenty-eight* of the Constitution shall be made by petition filed in the Registry of the High Court.

3. A petition shall set out—

(1) the name and address of the petitioner;

(2) the name and address of each person against whom redress is sought;

(3) the grounds upon which redress is sought and particulars of the facts, but not the evidence to prove such facts, relied on;

(4) the nature of the redress sought.

4. (1) A copy of the petition shall be served by or on behalf of the petitioner on each person against whom redress is sought.

(2) Where redress is sought against the Government a copy of the petition shall be served by or on behalf of the petitioner on the Attorney-General.

(3) Where redress is sought against a Minister or Junior Minister or any servant of the Government in respect of any matter arising out of the official duties or functions of such Minister, Junior Minister or servant, a copy of the petition shall also be served by or on behalf of the petitioner on the Attorney-General.

5. (1) The High Court shall set down the petition for hearing as soon as may be convenient after filing and shall notify the date of hearing to the petitioner and to each of the persons upon whom a copy of the petition is required to be served.

(2) The petitioner and any person on whom a copy of the petition is required to be served may appear either in person or by a legal practitioner at the hearing of the petition and may adduce evidence.

6. The High Court, may, in its discretion, receive evidence by affidavit in addition to or in substitution for oral evidence.

[10] *Supplement to the Republic of Zambia Government Gazette*, of 21 February 1969.

2. THE REFERENDUM REGULATIONS, 1969

Statutory Instrument No. 214 of 28 March 1969 [11]

...

Part II

PROCEDURE FOR THE POLL

7. At any referendum held pursuant to section *two* or subsection (1) (*a*) of section *twenty-two* of the Act, the poll shall be taken by means of a secret ballot and the result of such referendum shall be ascertained in accordance with the provisions of Part III.[12]

...

10. (1) A voter shall be entitled to vote in a referendum at the polling station appointed for the polling district in which he is registered and shall not be entitled to vote at any other polling station.

(2) At the taking of a poll in a referendum a voter shall be entitled to cast one, and only one, vote in respect of the question submitted to the referendum, and if a voter's name appears in error or for any other reason in more than one register of voters or more than once in the same register of voters he shall not be entitled to cast more than one vote in respect of such question.

...

[11] *Ibid.*, of 1 April 1969.

[12] Part III deals with the procedure for the count and declaration of result of referendum.

Part IV

CORRUPT PRACTICES AND REFERENDUM OFFENCES

39. (1) Any person who, directly or indirectly, by himself or any other person—

(*a*) gives, lends or procures, or agrees to give, lend or procure, or offers, promises or promises to procure any money to or for any person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting or who corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any referendum;

. . .

shall be guilty of the offence of bribery.

(2) Nothing in this regulation shall be construed as applying to any money paid or agreed to be paid for or on account of any expenditure *bona fide* and lawfully incurred in respect of the conduct or management of a referendum.

40. Any person who—

(*a*) at any referendum applies for a ballot paper in the name of some other person, living or dead, or of a fictitious person; or

(*b*) having voted once at any referendum applies again at the same referendum for a ballot paper; or

(*c*) votes or induces or procures any person to vote at any referendum knowing that he or that person is not entitled to vote at that referendum;

shall be guilty of the offence of personation.

41. Any person who corruptly by himself or by any other person either before, during or after a referendum, directly or indirectly, gives or provides or pays wholly or in part the expenses of giving or providing any food, drink, entertainment, lodging or provisions to or for any persons for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at a referendum shall be guilty of the offence of treating.

42. (1) Any person who directly or indirectly, himself or by any other person—

(*a*) makes use of or threatens to make use of any force, violence or restraint upon any other person; or

(*b*) inflicts or threatens to inflict by himself or by any other person, or by any supernatural or non-natural means or pretended supernatural or non-natural means, any temporal or spiritual injury, damage, harm or loss upon or against any person; or

(*c*) does or threatens to do anything to the disadvantage of any person;

in order to induce or compel that person to vote or refrain from voting or on account of that person having voted or refrained from voting at any referendum, shall be guilty of the offence of undue influence.

(2) Any person who, by abduction, duress, or any fraudulent device or contrivance, impedes or prevents the free exercise of his vote by any voter or thereby compels, induces or prevails upon any voter either to give or to refrain from giving his vote at any referendum, shall be guilty of the offence of undue influence.

43. Any person who is guilty of the offence of bribery, personation, treating or undue influence shall be guilty of a corrupt practice and shall be liable on conviction to a fine not exceeding four hundred kwacha or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

44. Any person who at a referendum obstructs a voter either at the polling station or on his way thereto or therefrom shall be guilty of an offence.

45. Any person who, at a lawful public meeting held in connection with a referendum prior to the holding of such referendum, acts or incites others to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is called, shall be guilty of an offence:

46. Any person who, with intent to influence persons to give or refrain from giving their votes at a referendum, uses or procures the use of any wireless transmitting station outside the Republic shall be guilty of an offence.

. . .

48. (1) Every person in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting at such station and shall not communicate, except for some purpose authorised by law, to any person any information as to the name or number on the register of voters of any voter who has or has not applied for a ballot paper or voted at such polling station, or as to the official mark or official seal at such polling station.

(2) No person, except a presiding officer acting under the provisions of regulation 21, shall obtain or attempt to obtain in a polling station information as to how any person in such polling station is about to vote or has voted or communicate at any time to any person any information obtained in a polling station as to how any person in such polling station is about to vote or has voted, or as to the number on the ballot paper issued to any person at such polling station.

(3) Every person in attendance at the counting of the votes shall maintain, and aid in maintaining, the secrecy of the voting and shall not ascertain or attempt to ascertain at such counting the number on any ballot paper or communicate any information obtained at such counting as to the vote signified by any particular ballot paper.

(4) Any person who contravenes any of the provisions of this regulation shall be guilty of an offence.

. . .

3. DECLARATION OF UNLAWFUL SOCIETIES

Statutory Instrument No. 307 of 19 June 1969 [13]

Whereas under section *twenty-one* (2) of the Societies Ordinance the Minister of Home Affairs may in his absolute discretion where he considers it to be essential in the public interest by order

[13] *Supplement to the Republic of Zambia Government Gazette*, of 20 June 1969.

declare to be unlawful any statutory society which in his opinion is being used for any purpose prejudicial to or incompatible with the maintenance of peace, order and good government;

And whereas the societies set out in the Schedule hereto (hereinafter referred to as the scheduled societies) are statutory societies; [14]

And whereas I am of the opinion that each of the scheduled societies is being used for purposes prejudicial to and incompatible with the maintenance of peace, order and good government;

And whereas I consider it to be essential in the public interest that each of the scheduled societies be declared to be unlawful:

Now, therefore, I hereby declare each of the scheduled societies to be unlawful.

[14] Listed in the Schedule are 30 societies.

[15] *Supplement to the Republic of Zambia Government Gazette*, of 25 August 1969.

4. THE PRESERVATION OF PUBLIC SECURITY (PROHIBITION OF CERTAIN ACTIVITIES) ORDER, 1969

Statutory Instrument No. 384 of 22 August 1969 [15]

. . .

2. No person shall enter without the express consent of the occupants for the time being thereof any dwelling or the curtilage thereof or any building and solicit or advocate adherence to or disseminate the teachings of the religion, organisation or society specified in the Schedule, whether by words or conduct.

3. No person shall in any public place solicit or advocate adherence to or disseminate the teachings of the religion, organisation or society specified in the Schedule, whether by words or conduct, whereby a breach of the peace is likely to be occasioned.

4. The prohibitions contained in regulations 2 and 3 shall apply throughout Zambia.

III. JUDICIAL DECISIONS

1. *Feliya Kachasu (an infant, by her father, and next friend, Paul Kachasu), Applicant* v. *Attorney-General, Respondent*

(Before the High Court of Zambia at Lusaka, judgement of 20 November 1967) [16]
Per *Blagden J.:*

"This is an application brought by Feliya Kachasu, a young girl aged between 11 and 12 years (whom I shall continue to refer to as "the applicant"), suing through her father, Paul Kachasu, as next friend, asking the High Court for an order against the State. The Attorney-General appears as respondent to the application in accordance with the provisions of the *State Proceedings Act, 1965, Section 12 (1).*

"The application is brought by way of originating notice of motion and although not so directly expressed it is an application for redress under *Section 28* of the *Constitution.*[17] This section relates to the enforcement of the provisions of *Section 13 to 26* (inclusive) of the *Constitution*—usually known as the protective provisions—which guarantee the protection of the fundamental rights and freedoms of the individual.

". . .

"To appreciate the nature of the relief which the applicant is seeking, it is necessary first to consider the facts. These are simple and substantially not in dispute.

"Paul Kachasu, the applicant's father and next friend is a Jehovah's witness and has been such for a number of years. In 1961 he was appointed a Congregation Overseer. The applicant herself has been brought up in the religion of Jehovah's Witnesses and she has been taught that it is against God's law to worship idols or to sing songs of praise or hymns to other than Jehovah God Himself. She and her father and many other Jehovah's Witnesses regard the singing of the national anthem as the singing of a hymn or prayer to someone other than Jehovah God Himself; they also regard the saluting of the national flag as worshipping an idol. To them the singing of the national anthem and the saluting of the national flag are religious ceremonies or observances in which they cannot actively take part because these ceremonies are in conflict with their own religious views and beliefs.

"Let me make it clear at this point that the State does not challenge the sincerity of these views and beliefs. It is fully accepted that the applicant and her father and other Jehovah's Witnesses sincerely and genuinely believe that the singing of the national anthem and the saluting of the national flag are religious ceremonies or observances and that it is contrary to their religion for them to take active part in them. Likewise, there is no suggestion in this case of Jehovah's Witnesses intending any disrespect to the national anthem or the national flag by their actions.

"The applicant has been schooling, without any complaints as to her conduct, since 1963 up to the time of the events which have given rise to these proceedings. On 2 September 1966, there was brought into force *The Education (Primary and Secondary Schools) Regulations, 1966.* . . .

"The regulations apply only to Government or aided schools at which primary or secondary education is provided [see *regulation 3 (1)*]. By *regulation 25*, pupils at these schools are required to sing the national anthem and salute the national flag on certain occasions. By *regulation 31 (1) (d)*, the head of a school is empowered to suspend from attendance at the school any pupil who wilfully refuses to sing the national anthem or to salute the national flag when lawfully required to do so.

"In October 1966 the applicant refused to sing the national anthem and she was suspended from the

[16] *Selected Judgment of Zambia*, No. 10, of 1969, 1967/HP/273.

[17] For extracts from the Constitution of Zambia, see *Yearbook on Human Rights for 1964*, pp. 305-312.

school. There followed some interviews between the applicant's father and the school authorities, in the course of which the father endeavoured to explain that the reason for the applicant's refusal to sing the national anthem was that it was against her religious conscience to do so. He asked for her to be reinstated at the school and to be excused from singing the national anthem or saluting the national flag. It was made clear to him, however, that the applicant could not be readmitted to school unless she agreed to comply with the regulations and sing the national anthem and salute the national flag when required to do so. She has not attended school since.

"By her notice of motion the applicant is now asking the Court to say that her suspension was unlawful, and that she is entitled to readmission to the school without having to give any undertaking that she will sing the national anthem or salute the national flag.

". . .

"To summarize my findings in relation to the relief claimed and the grounds therefor submitted in the originating notice of motion, I find that—

"(1) Regulations 25 and 31 (1) (*d*) of the Education (Primary and Secondary Schools) Regulations, 1966, are valid and within the rule-making powers conferred by section 12 of the Education Act 1966; further, that they do not conflict with any other provision of the Education Act 1966, nor are they in conflict with section 21 of the Constitution.

"(2) The applicant has suffered hindrance in the enjoyment of her freedom of conscience in that she has been coerced to sing the national anthem at Buyantanshi School contrary to her religious conscience; and that she has been suspended from school and denied re-admission thereto in consequence of her refusing to sing the national anthem or salute the national flag.

"(3) Such hindrance, however, does not constitute a contravention of her right to the enjoyment of freedom of conscience secured to her by section 21 of the Constitution inasmuch as that hindrance is reasonably justifiable in a democratic society and was authorised by laws which were both reasonably required in the interests of defence and for the purpose of protecting the rights and freedoms of other persons, and themselves reasonably justifiable in a democratic society.

"It follows that the applicant has not established that any of the provisions of Sections 13 to 26 (inclusive) in the Constitution have been, are being, or are likely to be, contravened in relation to her, and that she is not entitled to any redress under Section 28 of the Constitution. There must be judgment for the Attorney-General with costs."

2. *Cosmas Bwalya Chendaeka, Applicant* v. *Luanshya Municipal Council, Respondent*

(Before the High Court for Zambia at the Ndole District Registry, judgement of 7 May 1969) [18]
Per *Gardner J.*:

"In this case Mr. Cosmas Bwalya Chendaeka applies for relief to this court in the form of orders of *certiorari* and *mandamus* against the refusal of Luanshya Municipal Council to grant him a licence under the Trades Licensing Act, 1968 to opera e a stall in the Mikomfwa Market, Luanshya.

"The application is supported by an affidavit by the applicant sworn on 20 February 1969 to the effect that on 25 October 1968 he sent an application for a stall licence to the Luanshya Municipal Council accompanied by the prescribed fee under the Act. On 10 February 1969 Luanshya Municipal Council wrote a letter to the applicant informing him that his licence application was refused and returning his fee.

"The applicant complains in paragraph eight of his affidavit that at no time between the submission of his application and of his being informed of its rejection was he given an opportunity to appear before the Council to give evidence or to answer any objection.

"In paragraph nine of his affidavit the applicant says that he has had no official reason given to him for the rejection of his application but on or about 30 January 1969 one H. D. Kalyangile, whom he knows to be a councillor at the Council said to him, "No Jehovah's Witness under any circumstances will get his licence because you did not vote in the Municipal Elections of 1966." In considering this case the court does not take into account the allegation contained in the applicant's affidavit that one councillor told him that he would not receive a licence because he was a Jehovah's Witness. This was said by one councillor outside the council chamber and in the opinion of this court cannot be said to indicate the view of all the councillors who heard the application. It does not appear from the record whether the councillor who made this remark in fact voted in connection with this application.

". . .

"After considering all the arguments advanced by counsel I find that the applicant should have been given an opportunity to answer any possible objection by the licensing authority and should have been allowed to appear before the council in person or with a legal adviser if necessary; that solely because there have been delays in deciding appeals to the minister this court feels bound to entertain applications for prerogative writs.

"In view of these findings the court gives judgment in favour of the applicant and I make an order in the following terms:

"1. I find that in this case there was a proposal and there must have been an opposition on the very facts which have been adduced in evidence by the applicant's affidavit.

"2. There was a list before the respondent council in the course of considering the application.

"3. The licensing authority is a judicial or quasi judicial tribunal.

"4. It is ordered that the order made by the Luanshya Municipal Council on 10 February 1969, refusing to grant a trades licence to the applicant, be removed into the High Court for Zambia.

"5. And it is further ordered that thereupon the said order be quashed.

"6. It is further ordered that the said Luanshya Municipal Council do—and they are hereby commanded to—hear and determine forthwith the application by the applicant for a stall licence according to law namely within the terms of section 15 (1) of the Trades Licensing Act."

[18] *Selected Judgment of Zambia*, No. 14, of 1969, 1969/HN No. 160.

PART II

TRUST AND NON-SELF-GOVERNING TERRITORIES

A. Trust Territories

AUSTRALIA

NOTE [1]

TRUST TERRITORY OF NEW GUINEA

A. The principle of equal treatment

(Universal Declaration, Articles 2, 6, 7)

The *Discriminatory Practices (Amendment) Ordinance* 1969 (No. 84 of 1969) amends the principal Ordinance and inserts a new section prohibiting incitement to racial hatred.

B. Protection of the family

(Universal Declaration, Article 16 (3))

The *Adoption of Children Ordinance* 1968 (No. 8 of 1969) consolidates and amends the law relating to the adoption of children. The Ordinance forms part of a system of uniform adoption laws in Australia and its territories: for further information relating to this system, see the *Yearbooks* for 1964 and 1965.

---

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

B. Non-Self-Governing Territories

AUSTRALIA

NOTE [1]

TERRITORY OF PAPUA

The Ordinances described above in the notes relating to the Territory of New Guinea apply equally in the Territory of Papua, which is governed under an administrative union with the Territory of New Guinea under the name of the Territory of Papua and New Guinea.

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

THE NORTHERN TERRITORY

I. LEGISLATION

A. The principle of equal treatment

(Universal Declaration, articles 2, 6, 7)

The *Married Women's Property Ordinance* 1969 (No. 45 of 1969) and the *Married Persons (Torts) Ordinance* 1969 (No. 46 of 1969) remove all restrictions on the right of spouses to sue each other in tort.

B. Prohibition of slavery

(Universal Declaration, article 4)

The *Police and Police Offences Ordinance* (No. 2) 1969 (No. 43 of 1969) and the *Criminal Law Consolidation Amendment Ordinance* 1969 (No. 47 of 1969) were made as part of the programme to enable Australia to ratify the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others.

C. Conditions of work

(Universal Declaration, articles 23, 25)

The *Workmen's Compensation Ordinance (No. 3)* 1968 (No. 40 of 1969) and the *Workmen's Compensation Ordinance* 1969 (No. 41 of 1969) extend the scope of provisions made for workmen's compensation.

II. COURT DECISIONS

Right to own property

(Universal Declaration, article 17)

Aborigines — Rights to Possession and Enjoyment of Tribal Lands.

An action was brought in the Supreme Court of the Northern Territory by certain aboriginal natives of Australia against a mining company and the Commonwealth claiming relief in relation to the possession and enjoyment of certain areas of the Arnhem Land Aboriginal Reserve in the Gove Peninsula, over which certain mining rights had been granted by the Commonwealth to the company which was conducting mining operations in the area.

The two defendants in the action applied for summary judgement.

Held that summary judgement should be refused, on the ground that it had not been established to the satisfaction of the court that contentions of the plaintiffs in the action were unsound, namely (1) that the Crown, upon the acquisition of a new territory had a legal obligation to respect the interests of native inhabitants of the territory, (2) that the

plaintiffs had enjoyed possession of the land in question from time immemorial, and (3) that legal rights were acquired by the plaintiffs, as aboriginal natives, upon the establishment of the Arnhem Land Aboriginal Reserve and, accordingly, that certain statutory instruments and agreements relating to the acquisition by the Commonwealth and grant to the company of certain interests in the land in question were invalid and the mining operations of the company unlawful. Having regard to defects in the statement of claim it should be struck out, with leave to the plaintiffs to deliver a fresh one and to join further plaintiffs. *Mathaman and Others* v. *Nabalco Pty. Ltd. and Another* (1969) 14 F.L.R. 10.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

THE BAHAMA ISLANDS

THE CONSTITUTION OF THE COMMONWEALTH OF THE BAHAMA ISLANDS [1]

PART I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

1. Whereas every person in the Bahama Islands is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following namely—

(*a*) life, liberty, security of the person 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 subsequent provisions of this Part shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

2.—(1) No person shall be deprived intentionally of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) 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 a result of a lawful act of war.

3.—(1) No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in the Bahama Islands immediately before 7th January 1964.

4.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, "forced labour" does not include—

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour which that person is required by law to perform in place of such service;

(*c*) labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he is detained; or

(*d*) any labour required during a period of public emergency (that is to say, a period to which section 15 of this Constitution applies) or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

5.—(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases—

[1] Text contained in the Schedule to the Bahama Islands (Constitution) Order 1969 and published by Her Majesty's Stationery Office as Statutory Instrument 1969 No. 590 in *Statutory Instruments 1969*, London, 1969.

(*a*) in execution of the sentence or order of a court, whether established for the Bahama Islands or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;

(*b*) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;

(*c*) for the purpose of bringing him before a court in execution of the order of a court;

(*d*) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;

(*e*) in the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare;

(*f*) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(*g*) for the purpose of preventing the unlawful entry of that person into the Bahama Islands or for the purpose of effecting the expulsion, extradition or other lawful removal from the Bahama Islands of that person or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be informed as soon as is reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained in such a case as is mentioned in subsection (1) (*c*) or (*d*) of this section and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said paragraph (*d*) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

6.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged;

(*c*) shall be given adequate time and facilities for the preparation of his defence;

(*d*) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice or by a legal representative at the public expense where so provided by or under a law in force in the Bahama Islands;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge; and

(*g*) shall, when charged on information in the Supreme Court, have the right to trial by jury;

and except with his own consent the trial shall not take place in his absence unless he so conducts himself in the court as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed by law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been pardoned for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other adjudicating authority, the

case shall be given a fair hearing within a reasonable time.

(9) All proceedings instituted in any court for the determination of the existence or extent of any civil right or obligation, including the announcement of the decision of the court, shall be held in public.

(10) Nothing in subsection (9) of this section shall prevent the court from excluding from the proceedings persons other than the parties thereto and their legal representatives to such extent as the court—

(*a*) may be empowered by law 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 private lives of persons concerned in the proceedings;

(*b*) may be empowered or required by law to do so in the interests of defence, public safety or public order; or

(*c*) may be empowered or required to do so by rules of court and practice existing immediately before 7th January 1964 or by any law made subsequently to the extent that it makes provision substantially to the same effect as provision contained in any such rules.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(*a*) subsection (2) (*a*) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(*b*) subsection (2) (*e*) of this section to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(*c*) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In this section, "legal representative" means a person entitled to practise in the Bahama Islands as counsel and attorney of the Supreme Court.

7.—(1) Except with his 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*) which is reasonably required—

(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit; or

(ii) for the purpose of protecting the rights and freedoms of other persons;

(*b*) to enable an officer or agent of the Government of the Bahama Islands, a local government authority or 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*) 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.

8.—(1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his consent (or, if he is a person who has not attained the age of twenty-one years, the consent of his guardian) no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion other than his own.

(3) No religious body or denomination shall be prevented from or hindered in providing religious instruction for persons of that body or denomination in the course of any education provided by that body or denomination whether or not that body or denomination is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such course of education.

(4) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required—

(*a*) in the interests of defence, public safety, public order, public morality or public health; or

(*b*) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion without the unsolicited interference of members of any other religion,

and except so far as that provision or, as the case may be, the thing done under the authority thereof

is shown not to be reasonably justifiable in a democratic society.

9.—(1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of expression, and for the purposes of this section the said freedom includes freedom to hold opinions, to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) which is reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the rights, reputations and freedoms of other persons, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or

(*b*) which imposes restrictions upon persons holding office under the Crown or upon members of a disciplined force,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

10.—(1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to political parties or to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) which is reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the rights and freedoms of other persons; or

(*b*) which imposes restrictions upon persons holding office under the Crown or upon members of a disciplined force,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

11.—(1) Except with his consent, no person shall be hindered in the enjoyment of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout the Bahama Islands, the right to reside in any part thereof, the right to enter the Bahama Islands and immunity from expulsion therefrom.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) which is reasonably required—

(i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or the prevention of plant or animal diseases; or

(ii) for the purpose of protecting the rights and freedoms of other persons,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(*b*) for the removal of a person from the Bahama Islands to be tried outside the said Islands for a criminal offence or to undergo imprisonment in some other country in respect of a criminal offence of which he has been convicted;

(*c*) for the imposition of restrictions upon the movement or residence within the Bahama Islands of public officers or members of a disciplined force that are reasonably required for the purpose of the proper performance of their functions; or

(*d*) for the imposition of restrictions on the movement or residence within the Bahama Islands of any person who does not possess Bahamian status or the exclusion or expulsion therefrom of any such person.

(3) Any restriction on a person's freedom of movement which is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(4) For the purposes of paragraph (*c*) of subsection (2) of this section, "law" in that subsection includes directions in writing regarding the conduct of public officers generally or any class of public officer issued by the Government of the Bahama Islands.

12.—(1) Subject to the provisions of subsections (4), (5) and (8) of this section, no law shall make any provision which is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (8) and (9) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(*a*) for the appropriation of revenues or other funds of the Bahama Islands or for the imposition of taxation (including the levying of fees for the grant of licences); or

(*b*) with respect to the entry into or exclusion from, or the employment, engaging in any

business or profession, movement or residence within, the Bahama Islands of persons who do not possess Bahamian status; or

(*c*) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; or

(*d*) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society; or

(*e*) for authorising the granting of licences or certificates permitting the conduct of a lottery, the keeping of a gaming house or the carrying on of gambling in any of its forms subject to conditions which impose upon persons who possess Bahamian status disabilities or restrictions to which other persons are not made subject.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it requires a person to possess Bahamian status or to possess any other qualification (not being a qualification specifically relating to race, place of origin, political opinions, colour or creed) in order to be eligible for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established by 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) Subject to the provisions of subsection (4) (*e*) and of subsection (8) of this section, no person shall be treated in a discriminatory manner in respect of access to any of the following places to which the general public have access, namely, shops, hotels, restaurants, eating-houses, licensed premises, places of entertainment or places of resort.

(8) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 8, 9, 10 and 11 of this Constitution, being such a restriction as is authorised by section 7 (2) (*a*), 8 (5), 9 (2), 10 (2) or 11 (2) (*a*), as the case may be.

(9) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

13.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(*a*) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit or the economic well-being of the community; and

(*b*) the necessity therefor is such as to afford reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and

(*c*) provision is made by a law applicable to that taking of possession or acquisition—

(i) for the prompt payment of adequate compensation; and

(ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation; and

(*d*) any party to proceedings in the Supreme Court relating to such a claim is given by law the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(2) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property—

(*a*) in satisfaction of any tax, rate or due;

(*b*) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence under the law of the Bahama Islands;

(*c*) as an incident of a lease, tenancy, mortgage, charge, bill of sale, pledge or contract;

(*d*) upon the attempted removal of the property in question out of or into the Bahama Islands in contravention of any law;

(*e*) by way of the taking of a sample for the purposes of any law;

(*f*) where the property consists of an animal upon its being found trespassing or straying;

(*g*) by way of the vesting or administration of trust property, enemy property or the property of persons adjudged or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, bodies corporate or unincorporate in the course of being wound up, or defunct companies that have been struck off the Register of Companies;

(*h*) in the execution of judgments or orders of courts;

(*i*) by reason of its being in a dilapidated or dangerous state or injurious to the health of human beings, animals or plants;

(*j*) in consequence of any law making provision for the validation of titles to land or (without prejudice to the generality of the foregoing words) the confirmation of such titles, or for the extinguishment of adverse claims, or with respect to prescription or the limitation of actions; or

(*k*) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon—

(i) of work of reclamation, drainage, soil conservation or the conservation of other natural resources; or

(ii) of agricultural development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed to carry out.

(3) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided by the Legislature.

14.—(1) If any person alleges that any of the provisions of sections 2 to 13 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction—

(*a*) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and

(*b*) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said sections 2 to 13 (inclusive) to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law.

(3) If, in any proceedings in any court established for the Bahama Islands other than the Supreme Court or the Court of Appeal, any question arises as to the contravention of any of the provisions of the said sections 2 to 13 (inclusive), the court in which the question has arisen shall refer the question to the Supreme Court.

(4) No law of the Legislature shall make provision with respect to rights of appeal from any determination of the Supreme Court in pursuance of this section that is less favourable to any party thereto than the rights of appeal from determinations of the Supreme Court that are accorded generally to parties to civil proceedings in that Court sitting as a court of original jurisdiction.

(5) A law of the Legislature may confer upon the Supreme Court such additional or supplementary powers as may appear to be necessary or desirable for enabling the Court more effectively to exercise the jurisdiction conferred upon it by subsection (2) of this section and may make provision with respect to the practice and procedure of the Court while exercising that jurisdiction.

15.—(1) This section applies to any period when—

(*a*) Her Majesty is at war; or

(*b*) there is in force a proclamation (in this section referred to as a "proclamation of emergency") made by the Governor and published in the Gazette declaring that a state of public emergency exists for the purposes of this section.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 5, any provision of section 6 other than subsection (4) thereof, or any provision of sections 7 to 12 (inclusive) of this Constitution to the extent that the law in question makes in relation to any period to which this section applies provision, or authorises the doing during any such period of anything, which is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

. . .

(4) A proclamation of emergency shall, unless it is sooner revoked by the Governor, cease to be in force at the expiration of a period of fourteen days beginning on the date on which it was made or such longer period as may be provided under subsection (5) of this section, but without prejudice to the making of another proclamation of emergency at or before the end of that period.

(5) If at any time while a proclamation of emergency is in force (including any time while it is in force by virtue of the provisions of this subsection) a resolution is passed by each chamber of the Legislature approving its continuance in force for a further period, not exceeding three months, beginning on the date on which it would otherwise expire, the proclamation shall, if not sooner revoked, continue in force for that further period.

(6) Where any person who is lawfully detained in pursuance only of such a law as is referred to in subsection (2) of this section so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice.

. . .

16. . . .

(2) Any reference in sections 2, 5, 11 and 13 of this Constitution to a criminal offence shall be construed as including an offence against disciplinary law, and any such reference in subsections (2) to (7) (inclusive) of section 6 of this Constitution shall, in relation to proceedings before a court constituted by or under disciplinary law be construed in the same manner.

(3) In relation to any person who is a member of a disciplined force raised under a law of any country other than the Bahama Islands and lawfully present in the Bahama Islands, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Part.

PART III

THE LEGISLATURE

General

29. There shall be a Legislature for the Bahama Islands which shall consist of Her Majesty, a Senate and a House of Assembly.

The Senate

30.—(1) The Senate shall consist of sixteen members (in this Constitution referred to as "Senators") who shall be appointed by the Governor by instrument under the Public Seal in accordance with the provisions of this section.

(2) Of the sixteen Senators—

(*a*) nine shall be appointed by the Governor acting in accordance with the advice of the Prime Minister;

(*b*) four shall be appointed by the Governor acting in accordance with the advice of the leader of the opposition; and

(*c*) three shall be appointed by the Governor acting after consultation with the Prime Minister and such other persons as the Governor, acting in his discretion, may decide to consult.

31. Subject to the provisions of section 32 of this Constitution, a person shall be qualified to be appointed as a Senator if, and shall not be qualified to be appointed unless, he—

(*a*) is a British subject of the age of thirty years or upwards;

(*b*) possesses Bahamian status; and

(*c*) has been ordinarily resident in the Bahama Islands for a period of not less than five years immediately prior to his appointment.

32.—(1) No person shall be qualified to be appointed as a Senator who—

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

(*b*) is disqualified for membership of the Senate by any law of the Legislature enacted in pursuance of subsection (2) of this section;

(*c*) is a member of the House of Assembly;

(*d*) has been adjudged or otherwise declared bankrupt under any law in force in the Bahama Islands and has not been discharged;

(*e*) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Bahama Islands;

(*f*) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(*g*) is disqualified for membership of the House of Assembly by virtue of any law of the Legislature by reason of his having been convicted of any offence relating to elections; or

(*h*) is interested in any government contract and has not disclosed to the Governor the nature of such contract and of his interest therein.

(2) The Legislature may by law provide that, subject to such exceptions and limitations (if any) as may be prescribed therein, a person shall be disqualified for membership of the Senate by virtue of—

(*a*) his holding or acting in any office or appointment specified (either individually or by reference to a class of office or appointment) by such law;

(*b*) his belonging to any of the armed forces of the Crown specified by such law or to any class of person so specified that is comprised in any such force; or

(*c*) his belonging to any police force specified by such law or to any class of person so specified that is comprised in any such force.

(3) For the purposes of subsection (1) (*f*) of this section—

(*a*) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and

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

House of Assembly

36. The House of Assembly shall consist of thirty-eight members (in this Constitution referred to as "Representatives") who, being qualified for election as Representatives in accordance with the provisions of this Constitution, have been elected in the manner provided by or under any law for the time being in force in the Bahama Islands:

Provided that no person shall be permitted to cast more than one vote in any election of Representatives.

37. Subject to the provisions of section 38 of this Constitution, a person shall be qualified to be elected as a Representative if, and shall not be qualified to be so elected unless, he—

(*a*) is a British subject of the age of twenty-one years or upwards;

(*b*) possesses Bahamian status;

(*c*) has ordinarily resided in the Bahama Islands for a period of, or periods amounting in the

aggregate to, not less than five years before the date of his nomination for election; and

(*d*) has ordinarily resided in the Bahama Islands for a period of not less than six months immediately before the date of such nomination.

38.—(1) No person shall be qualified to be elected as a Representative who—

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

(*b*) is disqualified for membership of the House of Assembly by any law of the Legislature enacted in pursuance of subsection (2) of this section;

(*c*) has been adjudged or otherwise declared bankrupt under any law in force in the Bahama Islands and has not been discharged;

(*d*) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Bahama Islands;

(*e*) 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;

(*f*) is disqualified for membership of the House of Assembly by any law of the Legislature by reason of his holding, or acting in, any office the functions of which involve—

(i) any responsibility for, or in connection with, the conduct of any election; or

(ii) any responsibility for the compilation or revision of any electoral register;

(*g*) is disqualified for membership of the House of Assembly by virtue of any law of the Legislature by reason of his having been convicted of any offence relating to elections;

(*h*) is a Senator; or

(*i*) is interested in any government contract and has not disclosed the nature of such contract and of his interest therein by publishing a notice in the Gazette within one month before the day of election.

(2) The Legislature may by law provide that, subject to such exceptions and limitations (if any) as may be prescribed therein, a person shall be disqualified for membership of the House of Assembly by virtue of—

(*a*) his holding or acting in any office or appointment specified (either individually or by reference to a class of office or appointment) by such law;

(*b*) his belonging to any of the armed forces of the Crown specified by such law or to any class of person so specified that is comprised in any such force; or

(*c*) his belonging to any police force specified by such law or to any class of person so specified that is comprised in any such force.

(3) For the purposes of subsection (1) (*e*) of this section—

(*a*) two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one of such sentences exceeds that term they shall be regarded as one sentence; and

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

...

PART VIII

MISCELLANEOUS

...

128. For the purposes of this Constitution, a person shall possess Bahamian status if—

(*a*) he is a British subject and was born in the Bahama Islands; or

(*b*) he is a British subject and was born outside the Bahama Islands of a father or mother who was born in the Bahama Islands; or

(*c*) he is a person who possesses Bahamian status under the provisions of any law for the time being in force in the Bahama Islands; or

(*d*) he has obtained the status of a British subject by reason of the grant by the Governor of a certificate of naturalisation under the British Nationality and Status of Aliens Act 1914 or the British Nationality Act 1948; or

(*e*) she is the wife of a person to whom any of the foregoing paragraphs of this section applies not living apart from such person under a decree of a court or a deed of separation; or

(*f*) such person is the child, stepchild or lawfully adopted child under the age of eighteen years of a person to whom any of the foregoing paragraphs of this section applies.

...

GIBRALTAR

THE CONSTITUTION OF GIBRALTAR [1]

Chapter I

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

1. It is hereby recognised and declared that in Gibraltar 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 of 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.

2.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) 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.

3.—(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 Gibraltar 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;

(*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 Gibraltar, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Gibraltar or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

(*a*) for the purpose of bringing him before a court in execution of the order of a court; or

(*b*) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (*b*) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

[1] Text appears in annex 1 to the Gibraltar Constitution Order 1969, published by Her Majesty's Stationery Office, London, in *Statutory Instruments*, 1969.

4.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include—

(*a*) any labour required in consequence of the sentence or order of a court;

(*b*) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;

(*c*) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service; or

(*d*) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

5.—(1) No person shall be subjected to torture or to inhuman or degrading punishment or other 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 Gibraltar immediately before this section came into force.

6.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(*a*) the taking of possession or acquisition is necessary 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 imposed in respect of its remission) to any country of his choice outside Gibraltar.

...

7.—(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) 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, a local government authority, or a body corporate established by law for public purposes, 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, that local government 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.

8.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence;

(*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 private lives 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 this section, to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(*c*) subsection (5) of this section, to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction of 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 Gibraltar;

"legal representative" means a person lawfully in or entitled to be in Gibraltar and entitled to practise in Gibraltar as a barrister or, except in relation to proceedings before a court in which a solicitor has no right of audience, as a solicitor.

9.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is under the age of eighteen years, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.

(3) No religious community or denomination shall be prevented from making provision for the giving, by persons lawfully in Gibraltar, of religious instruc-

tion 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 subsection (1) or (3) 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.

10.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) 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 telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; 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.

11.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) 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;

(*c*) for the imposition of restrictions upon public officers;

(*d*) for the registration of trades unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such a register (including conditions as to the minimum number and qualifications of persons necessary to constitute a trade union qualified for registration); or

(*e*) for the imposition of restrictions upon persons who are not resident in Gibraltar with respect to the holding of office in a trade union or membership of the general committee of management of a trade union or with respect to voting in any proceedings of a trade union relating to or connected with the calling or financing of a strike,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

12.—(1) No 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 his child (including a person of whom he is the guardian) to any such school by reason only that the school is not a school established or maintained by the Government.

13.—(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 Gibraltar, the right to reside in any part of Gibraltar, the right to enter Gibraltar, the right to leave Gibraltar and immunity from expulsion from Gibraltar.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(*a*) for the imposition of restrictions, by order of a court, on the movements or residence within Gibraltar of any person either in consequence of his having been found guilty of a criminal offence under the law of Gibraltar 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 Gibraltar;

(*b*) for the imposition of restrictions on the movement or residence within Gibraltar of any person who does not belong to Gibraltar or the exclusion or expulsion from Gibraltar of any such person;

(*c*) for the imposition of restrictions on the acquisition or use by any person of land or other property in Gibraltar;

(*d*) for the imposition of restrictions on the movement or residence in Gibraltar or on the right to leave Gibraltar of persons generally or any class of persons that are reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health; or

(ii) for the purpose of protecting the rights and freedoms of other persons,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

(*e*) for the removal of a person from Gibraltar to be tried outside Gibraltar for a criminal offence or to undergo imprisonment outside Gibraltar in execution of the sentence of a court in respect of a criminal offence of which he has been convicted; or

(*f*) for the imposition of restrictions on the right of any person to leave Gibraltar 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.

14.—(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 Gibraltar;

(*b*) with respect to persons who do not belong to Gibraltar;

(*c*) for the application, in the case of persons of any such description as is mentioned in the last preceding subsection (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; or

(*d*) for conferring the status of a Gibraltarian for the purposes of the Gibraltarian Status Ordinance upon any person or for withdrawing that status from any person or for deeming a firm or company to be under non-Gibraltarian control for the purposes of the Trade Restriction Ordinance.

(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—

(*a*) it requires a person to belong to Gibraltar or to possess any other qualification (not being a qualification specifically relating to race, caste, place of origin, political opinions, colour or creed) in order to be eligible for appointment to any office in the public service or in a disciplined force or in the service of a local government authority or in a body corporate established by law for public purposes; or

(*b*) it makes reasonable provision for ensuring that persons holding office as aforesaid and giving instruction in schools maintained by the Government of Gibraltar and attended wholly or mainly by pupils of a particular religious community or denomination are acceptable on moral and religious grounds to that religious community or denomination, or to the authorities of that community or denomination.

(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 7, 9, 10, 11, 12 and 13 of this Constitution, being such a restriction as is authorised by section 7 (2), 9 (5), 10 (2), 11 (2), 12 (2) or 13 (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.

15.—(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.

(3) The Supreme Court shall have such powers in addition to those conferred by the preceding subsection 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).

16.—(1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Order in Council 1939, shall be held to be inconsistent with or in contravention of section 3, section 4 (2) or any provision of sections 7, 9, 10, 11 or 12, section 13 (1) or (3) or section 14 of this Constitution to the extent that the regulation in question makes in relation to any period of public emergency provision or authorises the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(2) Where any person who is lawfully detained in pursuance only of such a regulation as is referred to in the preceding subsection so requests at any time during the period of that detention (but if he has already made such a request during that period not earlier than six months after he last made such a request during that period), his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, entitled to practise as a barrister in Gibraltar, appointed by the Chief Justice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise prescribed, that authority shall not be obliged to act in accordance with any such recommendations.

...

Chapter III

THE LEGISLATURE

Part I—The Gibraltar House of Assembly

24. There shall be a Legislature for Gibraltar, which, subject to the provisions of this Chapter, shall consist of the Governor and the Assembly.

25.—(1) There shall be a House of Assembly for Gibraltar, which shall be styled the Gibraltar House of Assembly.

(2) The Assembly shall consist of—

(*a*) the Speaker;

(*b*) the Attorney-General and the Financial and Development Secretary, who shall be ex-officio members of the Assembly; and

(*c*) fifteen Elected Members elected in such manner as may be prescribed.

...

27. Subject to the provisions of the next following section of this Constitution, a person shall be qualified to be elected an Elected Member of the Assembly if, and shall not be qualified to be so elected unless, at the date of his nomination as a candidate for election, he is a British subject who has attained the age of twenty-one years.

28.—(1) No person shall be qualified to be elected as an Elected Member of the Assembly who—

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

(*b*) is a member of the regular armed forces of Her Majesty; or

(*c*) is a minister of religion; or

(*d*) holds, or is acting in, a public office; or

(*e*) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged; or

(*f*) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Gibraltar; or

(*g*) is under sentence of death imposed on him by a court of law in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended; or

(*h*) is not qualified to be registered as a voter at elections of Elected Members of the Assembly or, being so qualified, is not so registered; or

(*i*) is disqualified for election by any law for the time being in force in Gibraltar by reason of his holding, or acting in, any office the functions of which involve—

(i) any responsibility for, or in connection with, the conduct of any election; or

(ii) any responsibility for the compilation or revision of any electoral register; or

(*j*) is disqualified for election by any law in force in Gibraltar relating to offences connected with elections.

(2) For the purpose of paragraph (*g*) of the last foregoing subsection—

(*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;

(*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.

(3) The reference in subsection (1) (*b*) of this section to a member of the regular armed forces of Her Majesty shall not include a reference to an

officer of the Reserve of Officers of the Gibraltar Regiment or to a member of the Reserve of that Regiment or the Royal Naval Reserve except while he is called out for actual military or naval service.

(4) If it is so prescribed by the Legislature—

(*a*) a person shall not be disqualified for election as an Elected Member of the Assembly by virtue of his holding or acting in any public office specified (either individually or by reference to a class of office) by the Legislature;

(*b*) a person may stand as a candidate for election as such notwithstanding that he holds or is acting in any public office specified (in the manner aforesaid) by the Legislature if he undertakes to relinquish or, as the case may be, to cease to act in that office if he is elected as an Elected Member of the Assembly; or

(*c*) any office specified (in the manner aforesaid) by the Legislature being an office the emoluments of which are paid, directly or indirectly, out of public funds, but which would not otherwise be a public office for the purposes of this section, shall be deemed to be a public office for those purposes.

(5) Any law made in pursuance of paragraph (*b*) of the last foregoing subsection may contain incidental and consequential provisions, including provision that an Elected Member who has given such an undertaking as is referred to in that subsection shall be incapable of taking his seat in the Assembly until he has fulfilled that undertaking and shall vacate his seat if he has not fulfilled it within such time as is specified by such law; and for the avoidance of doubts it is hereby declared that, where provision is made in pursuance of paragraph (*c*) of that subsection in respect of any office, provision may also be made in pursuance of paragraph (*b*) of that subsection in respect of that office.

...

Chapter IV

THE EXECUTIVE

...

47.—(1) There shall be for Gibraltar a Council of Ministers, which shall consist of a Chief Minister and such number of other Ministers (not being less than four nor more than eight) as may be prescribed by the Governor, acting after consultation with the Chief Minister.

(2) The Governor, acting in his discretion, shall appoint as Chief Minister the Elected Member of the Assembly who in his judgment is most likely to command the greatest measure of confidence among the Elected Members of the Assembly.

(3) The Ministers other than the Chief Minister shall be appointed by the Governor, acting after consultation with the Chief Minister, from among the Elected Members of the Assembly.

(4) If occasion arises for making an appointment under this section while the Assembly is dissolved, a person who was an Elected Member of the Assembly immediately before the dissolution may be appointed as if he were still an Elected Member of the Assembly.

...

Chapter VIII

MISCELLANEOUS

...

78.—(1) There shall be a Mayor of Gibraltar, who shall be elected from among the members of the Assembly (other than the ex-officio members) by the Elected Members of the Assembly.

...

84. No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.

...

PART III

INTERNATIONAL AGREEMENTS

UNITED NATIONS

DECLARATION ON SOCIAL PROGRESS AND DEVELOPMENT

Resolution 2542 (XXIV) adopted by the General Assembly on 11 December 1969

PART I

PRINCIPLES

Article 1

All peoples and all human beings, without distinction as to race, colour, sex, language, religion, nationality, ethnic origin, family or social status, or political or other conviction, shall have the right to live in dignity and freedom and to enjoy the fruits of social progress and should, on their part, contribute to it.

Article 2

Social progress and development shall be founded on respect for the dignity and value of the human person and shall ensure the promotion of human rights and social justice, which requires:

(*a*) The immediate and final elimination of all forms of inequality, exploitation of peoples and individuals, colonialism and racism, including nazism and *apartheid*, and all other policies and ideologies opposed to the purposes and principles of the United Nations;

(*b*) The recognition and effective implementation of civil and political rights as well as of economic, social and cultural rights without any discrimination.

Article 3

The following are considered primary conditions of social progress and development:

(*a*) National independence based on the right of peoples to self-determination;

(*b*) The principle of non-interference in the internal affairs of States;

(*c*) Respect for the sovereignty and territorial integrity of States;

(*d*) Permanent sovereignty of each nation over its natural wealth and resources;

(*e*) The right and responsibility of each State and, as far as they are concerned, each nation and people to determine freely its own objectives of social development, to set its own priorities and to decide in conformity with the principles of the Charter of the United Nations the means and methods of their achievement without any external interference;

(*f*) Peaceful coexistence, peace, friendly relations and co-operation among States irrespective of differences in their social, economic or political systems.

Article 4

The family as a basic unit of society and the natural environment for the growth and well-being of all its members, particularly children and youth, should be assisted and protected so that it may fully assume its responsibilities within the community. Parents have the exclusive right to determine freely and responsibly the number and spacing of their children.

Article 5

Social progress and development require the full utilization of human resources, including, in particular:

(*a*) The encouragement of creative initiative under conditions of enlightened public opinion;

(*b*) The dissemination of national and international information for the purpose of making individuals aware of changes occurring in society as a whole;

(*c*) The active participation of all elements of society, individually or through associations, in defining and in achieving the common goals of development with full respect for the fundamental freedoms embodied in the Universal Declaration of Human Rights;

(*d*) The assurance to disadvantaged or marginal sectors of the population of equal opportunities for social and economic advancement in order to achieve an effectively integrated society.

Article 6

Social development requires the assurance to everyone of the right to work and the free choice of employment.

Social progress and development require the participation of all members of society in productive and socially useful labour and the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of exploitation of man, ensure equal rights to property for all and create conditions leading to genuine equality among people.

Article 7

The rapid expansion of national income and wealth and their equitable distribution among all members of society are fundamental to all social progress, and they should therefore be in the

forefront of the preoccupations of every State and Government.

The improvement in the position of the developing countries in international trade resulting, among other things, from the achievement of favourable terms of trade and of equitable and remunerative prices at which developing countries market their products is necessary in order to make it possible to increase national income and in order to advance social development.

Article 8

Each Government has the primary role and ultimate responsibility of ensuring the social progress and well-being of its people, of planning social development measures as part of comprehensive development plans, of encouraging and co-ordinating or integrating all national efforts towards this end and of introducing necessary changes in the social structure. In planning social development measures, the diversity of the needs of developing and developed areas, and of urban and rural areas, within each country, shall be taken into due account.

Article 9

Social progress and development are the common concerns of the international community, which shall supplement, by concerted international action, national efforts to raise the living standards of peoples.

Social progress and economic growth require recognition of the common interest of all nations in the exploration, conservation, use and exploitation, exclusively for peaceful purposes and in the interests of all mankind, of those areas of the environment such as outer space and the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, in accordance with the purposes and principles of the Charter of the United Nations.

PART II

Objectives

Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and in compliance with human rights and fundamental freedoms, through the attainment of the following main goals:

Article 10

(*a*) The assurance at all levels of the right to work and the right of everyone to form trade unions and workers' associations and to bargain collectively; promotion of full productive employment and elimination of unemployment and under-employment; establishment of equitable and favourable conditions of work for all, including the improvement of health and safety conditions; assurance of just remuneration for labour without any discrimination as well as a sufficiently high minimum wage to ensure a decent standard of living; the protection of the consumer;

(*b*) The elimination of hunger and malnutrition and the guarantee of the right to proper nutrition;

(*c*) The elimination of poverty; the assurance of a steady improvement in levels of living and of a just and equitable distribution of income;

(*d*) The achievement of the highest standards of health and the provision of health protection for the entire population, if possible free of charge;

(*e*) The eradication of illiteracy and the assurance of the right to universal access to culture, to free compulsory education at the elementary level and to free education at all levels; the raising of the general level of life-long education;

(*f*) The provision for all, particularly persons in low-income groups and large families, of adequate housing and community services.

Social progress and development shall aim equally at the progressive attainment of the following main goals:

Article 11

(*a*) The provision of comprehensive social security schemes and social welfare services; the establishment and improvement of social security and insurance schemes for all persons who, because of illness, disability or old age, are temporarily or permanently unable to earn a living, with a view to ensuring a proper standard of living for such persons and for their families and dependants;

(*b*) The protection of the rights of the mother and child; concern for the upbringing and health of children; the provision of measures to safeguard the health and welfare of women and particularly of working mothers during pregnancy and the infancy of their children, as well as of mothers whose earnings are the sole source of livelihood for the family; the granting to women of pregnancy and maternity leave and allowances without loss of employment or wages;

(*c*) The protection of the rights and the assuring of the welfare of children, the aged and the disabled; the provision of protection for the physically or mentally disadvantaged;

(*d*) The education of youth in, and promotion among them of, the ideals of justice and peace, mutual respect and understanding among peoples; the promotion of full participation of youth in the process of national development;

(*e*) The provision of social defence measures and the elimination of conditions leading to crime and delinquency, especially juvenile delinquency;

(*f*) The guarantee that all individuals, without discrimination of any kind, are made aware of their rights and obligations and receive the necessary aid in the exercise and safeguarding of their rights.

Social progress and development shall further aim at achieving the following main objectives:

Article 12

(*a*) The creation of conditions for rapid and sustained social and economic development, particularly in the developing countries; change in international economic relations; new and effective methods of international co-operation in which equality of opportunity should be as much a prerogative of nations as of individuals within a nation;

(*b*) The elimination of all forms of discrimination and exploitation and all other practices and ideol-

ogies contrary to the purposes and principles of the Charter of the United Nations;

(*c*) The elimination of all forms of foreign economic exploitation, particularly that practised by international monopolies, in order to enable the people of every country to enjoy in full the benefits of their national resources.

Social progress and development shall finally aim at the attainment of the following main goals:

Article 13

(*a*) Equitable sharing of scientific and technological advances by developed and developing countries, and a steady increase in the use of science and technology for the benefit of the social development of society;

(*b*) The establishment of a harmonious balance between scientific, technological and material progress and the intellectual, spiritual, cultural and moral advancement of humanity;

(*c*) The protection and improvement of the human environment.

PART III

Means and methods

On the basis of the principles set forth in this Declaration, the achievement of the objectives of social progress and development requires the mobilization of the necessary resources by national and international action, with particular attention to such means and methods as:

Article 14

(*a*) Planning for social progress and development, as an integrated part of balanced over-all development planning;

(*b*) The establishment, where necessary, of national systems for framing and carrying out social policies and programmes, and the promotion by the countries concerned of planned regional development, taking into account differing regional conditions and needs, particularly the development of regions which are less favoured or under-developed by comparison with the rest of the country;

(*c*) The promotion of basic and applied social research, particularly comparative international research applied to the planning and execution of social development programmes.

Article 15

(*a*) The adoption of measures to ensure the effective participation, as appropriate, of all the elements of society in the preparation and execution of national plans and programmes of economic and social development;

(*b*) The adoption of measures for an increasing rate of popular participation in the economic, social, cultural and political life of countries through national governmental bodies, non-governmental organizations, co-operatives, rural associations, workers' and employers' organizations and women's and youth organizations, by such methods as national and regional plans for social and economic progress and community development, with a view to achieving a fully integrated national society, accelerating the process of social mobility and consolidating the democratic system;

(*c*) Mobilization of public opinion, at both national and international levels, in support of the principles and objectives of social progress and development;

(*d*) The dissemination of social information, at the national and the international level, to make people aware of changing circumstances in society as a whole, and to educate the consumer.

Article 16

(*a*) Maximum mobilization of all national resources and their rational and efficient utilization; promotion of increased and accelerated productive investment in social and economic fields and of employment; orientation of society towards the development process;

(*b*) Progressively increasing provision of the necessary budgetary and other resources required for financing the social aspects of development;

(*c*) Achievement of equitable distribution of national income, utilizing, *inter alia*, the fiscal system and government spending as an instrument for the equitable distribution and redistribution of income in order to promote social progress;

(*d*) The adoption of measures aimed at prevention of such an outflow of capital from developing countries as would be detrimental to their economic and social development.

Article 17

(*a*) The adoption of measures to accelerate the process of industrialization, especially in developing countries, with due regard for its social aspects, in the interests of the entire population; development of an adequate organizational and legal framework conducive to an uninterrupted and diversified growth of the industrial sector; measures to overcome the adverse social effects which may result from urban development and industrialization, including automation; maintenance of a proper balance between rural and urban development, and in particular, measures designed to ensure healthier living conditions, especially in large industrial centres;

(*b*) Integrated planning to meet the problems of urbanization and urban development;

(*c*) Comprehensive rural development schemes to raise the levels of living of the rural populations and to facilitate such urban-rural relationships and population distribution as will promote balanced national development and social progress;

(*d*) Measures for appropriate supervision of the utilization of land in the interests of society.

The achievement of the objectives of social progress and development equally requires the implementation of the following means and methods:

Article 18

(*a*) The adoption of appropriate legislative, administrative and other measures ensuring to everyone not only political and civil rights, but also the full realization of economic, social and cultural rights without any discrimination;

(*b*) The promotion of democratically based social and institutional reforms and motivation for change

basic to the elimination of all forms of discrimination and exploitation and conducive to high rates of economic and social progress, to include land reform, in which the ownership and use of land will be made to serve best the objectives of social justice and economic development;

(*c*) The adoption of measures to boost and diversify agricultural production through, *inter alia*, the implementation of democratic agrarian reforms, to ensure an adequate and well-balanced supply of food, its equitable distribution among the whole population and the improvement of nutritional standards;

(*d*) The adoption of measures to introduce, with the participation of the Government, low-cost housing programmes in both rural and urban areas;

(*e*) Development and expansion of the system of transportation and communications, particularly in developing countries.

Article 19

(*a*) The provision of free health services to the whole population and of adequate preventive and curative facilities and welfare medical services accessible to all;

(*b*) The enactment and establishment of legislative measures and administrative regulations with a view to the implementation of comprehensive programmes of social security schemes and social welfare services and to the improvement and co-ordination of existing services;

(*c*) The adoption of measures and the provision of social welfare services to migrant workers and their families, in conformity with the provisions of Convention No. 97 of the International Labour Organisation and other international instruments relating to migrant workers;

(*d*) The institution of appropriate measures for the rehabilitation of mentally or physically disabled persons, especially children and youth, so as to enable them to the fullest possible extent to be useful members of society—these measures shall include the provision of treatment and technical appliances, education, vocational and social guidance, training and selective placement, and other assistance required—and the creation of social conditions in which the handicapped are not discriminated against because of their disabilities.

Article 20

(*a*) The provision of full democratic freedoms to trade unions; freedom of association for all workers, including the right to bargain collectively and to strike, recognition of the right to form other organizations of working people; the provision for the growing participation of trade unions in economic and social development; effective participation of all members of trade unions in the deciding of economic and social issues which affect their interests;

(*b*) The improvement of health and safety conditions for workers, by means of appropriate technological and legislative measures and the provision of the material prerequisites for the implementation of those measures, including the limitation of working hours;

(*c*) The adoption of appropriate measures for the development of harmonious industrial relations.

Article 21

(*a*) The training of national personnel and cadres, including administrative, executive, professional and technical personnel needed for social development and for over-all development plans and policies;

(*b*) The adoption of measures to accelerate the extension and improvement of general, vocational and technical education and of training and retraining, which should be provided free at all levels;

(*c*) Raising the general level of education; development and expansion of national information media, and their rational and full use towards continuing education of the whole population and towards encouraging its participation in social development activities; the constructive use of leisure, particularly that of children and adolescents;

(*d*) The formulation of national and international policies and measures to avoid the "brain drain" and obviate its adverse effects.

Article 22

(*a*) The development and co-ordination of policies and measures designed to strengthen the essential functions of the family as a basic unit of society;

(*b*) The formulation and establishment, as needed, of programmes in the field of population, within the framework of national demographic policies and as part of the welfare medical services, including education, training of personnel and the provision to families of the knowledge and means necessary to enable them to exercise their right to determine freely and responsibly the number and spacing of their children;

(*c*) The establishment of appropriate child-care facilities in the interest of children and working parents.

The achievement of the objectives of social progress and development finally requires the implementation of the following means and methods:

Article 23

(*a*) The laying down of economic growth rate targets for the developing countries within the United Nations policy for development, high enough to lead to a substantial acceleration of their rates of growth;

(*b*) The provision of greater assistance on better terms; the implementation of the aid volume target of a minimum of 1 per cent of the gross national product at market prices of economically advanced countries; the general easing of the terms of lending to the developing countries through low interest rates on loans and long grace periods for the repayment of loans, and the assurance that the allocation of such loans will be based strictly on socio-economic criteria free of any political considerations;

(*c*) The provision of technical financial, and material assistance, both bilateral and multilateral, to the fullest possible extent and on favourable terms, and improved co-ordination of international assistance for the achievement of the social objectives of national development plans;

(*d*) The provision to the developing countries of technical, financial and material assistance and of favourable conditions to facilitate the direct exploitation of their national resources and natural wealth by those countries with a view to enabling the peoples

of those countries to benefit fully from their national resources;

(*e*) The expansion of international trade based on principles of equality and non-discrimination, the rectification of the position of developing countries in international trade by equitable terms of trade, a general non-reciprocal and non-discriminatory system of preferences for the exports of developing countries to the developed countries, the establishment and implementation of general and comprehensive commodity agreements, and the financing of reasonable buffer stocks by international institutions.

Article 24

(*a*) Intensification of international co-operation with a view to ensuring the international exchange of information, knowledge and experience concerning social progress and development;

(*b*) The broadest possible international technical, scientific and cultural co-operation and reciprocal utilization of the experience of countries with different economic and social systems and different levels of development, on the basis of mutual advantage and strict observance of and respect for national sovereignty;

(*c*) Increased utilization of science and technology for social and economic development; arrangements for the transfer and exchange of technology, including know-how and patents, to the developing countries.

Article 25

(*a*) The establishment of legal and administrative measures for the protection and improvement of the human environment at both national and international levels;

(*b*) The use and exploitation, in accordance with the appropriate international régimes, of the resources of areas of the environment such as outer space and the sea-bed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, in order to supplement national resources available for the achievement of economic and social progress and development in every country, irrespective of its geographical location, special consideration being given to the interests and needs of the developing countries.

Article 26

Compensation for damages, be they social or economic in nature—including restitution and reparations—caused as a result of aggression and of illegal occupation of territory by the aggressor.

Article 27

(*a*) The achievement of general and complete disarmament and the channelling of the progressively released resources to be used for economic and social progress for the welfare of people everywhere and, in particular, for the benefit of developing countries;

(*b*) The adoption of measures contributing to disarmament, including, *inter alia*, the complete prohibition of tests of nuclear weapons, the prohibition of the development, production and stockpiling of chemical and bacteriological (biological) weapons, and the prevention of the pollution of oceans and inland waters by nuclear wastes.

INTERNATIONAL LABOUR ORGANISATION

CONVENTION CONCERNING MEDICAL CARE AND SICKNESS BENEFITS

Convention No. 130, adopted on 25 June 1969 by the International Labour Conference at its Fifty-third 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-third Session on 4 June 1969, and

Having decided upon the adoption of certain proposals with regard to the revision of the Sickness Insurance (Industry) Convention, 1927, and the Sickness Insurance (Agriculture) Convention, 1927, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-fifth day of June of the year one thousand nine hundred and sixty-nine the following Convention, which may be cited as the Medical Care and Sickness Benefits Convention, 1969:

PART I. GENERAL PROVISIONS

Article 1

In this Convention—

(*a*) the term "legislation" includes any social security rules as well as laws and regulations;

(*b*) the term "prescribed" means determined by or in virtue of national legislation;

(*c*) the term "industrial undertaking" includes all undertakings in the following branches of economic activity: mining and quarrying; manufacturing; construction; electricity, gas and water; and transport, storage and communication;

(*d*) the term "residence" means ordinary residence in the territory of the Member and the term "resident" means a person ordinarily resident in the territory of the Member;

(*e*) the term "dependent" refers to a state of dependency which is presumed to exist in prescribed cases;

(*f*) the term "wife" means a wife who is dependent on her husband;

(*g*) the term "child" covers—

(i) a child under school-leaving age or under 15 years of age, whichever is the higher: provided that a Member which has made a declaration under article 2 may, while such declaration is in force, apply the Convention as if the term covered a child under school-leaving age or under 15 years of age; and

(ii) a child under a prescribed age higher than that specified in clause (i) of this subparagraph and who is an apprentice or student or has a chronic illness or infirmity disabling him for any gainful activity, under prescribed conditions: provided that this requirement shall be deemed to be met where national legislation defines the term so as to cover any child under an age appreciably higher than that specified in clause (i) of this subparagraph;

(*h*) the term "standard beneficiary" means a man with a wife and two children;

(*i*) the term "qualifying period" means a period of contribution, or a period of employment, or a period of residence, or any combination thereof, as may be prescribed;

(*j*) the term "sickness" means any morbid condition, whatever its cause;

(*k*) the term "medical care" includes allied benefits.

Article 2

1. A Member whose economy and medical facilities are insufficiently developed may avail itself, by a declaration accompanying its ratification, of the temporary exceptions provided for in article 1, subparagraph (*g*), clause (i); article 11; article 14; article 20; and article 26, paragraph 2. Any such declaration shall state the reason for such exceptions.

2. Each Member which has made a declaration under paragraph 1 of this article shall include in its reports upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation a statement in respect of each exception of which it avails itself—

(*a*) that its reason for doing so subsists; or

(*b*) that it renounces its right to avail itself of the exception in question as from a stated date.

[1] Text furnished by the International Labour Office. Other instruments adopted in 1969 include the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133) and the Medical Care and Sickness Benefits Recommendation, 1969 (No. 134).

3. Each Member which has made a declaration under paragraph 1 of this article shall, as appropriate to the terms of such declaration and as circumstances permit—

(*a*) increase the number of persons protected;

(*b*) extend the range of medical care provided;

(*c*) extend the duration of sickness benefit.

Article 3

1. Any Member whose legislation protects employees may, by a declaration accompanying its ratification, temporarily exclude from the application of this Convention the employees in the sector comprising agricultural occupations who, at the time of the ratification, are not yet protected by legislation which is in conformity with the standards of this Convention.

2. Each Member which has made a declaration under paragraph 1 of this article shall indicate in its reports upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation to what extent effect is given and what effect is proposed to be given to the provisions of the Convention in respect of the employees in the sector comprising agricultural occupations and any progress which may have been made with a view to the application of the Convention to such employees or, where there is no change to report, shall furnish all the appropriate explanations.

3. Each Member which has made a declaration under paragraph 1 of this article shall increase the number of employees protected in the sector comprising agricultural occupations to the extent and with the speed that the circumstances permit.

Article 4

1. Any Member which ratifies this Convention may, by a declaration accompanying its ratification, exclude from the application of the Convention—

(*a*) seafarers, including sea fishermen,

(*b*) public servants,

where these categories are protected by special schemes which provide in the aggregate benefits at least equivalent to those required by this Convention.

2. Where a declaration under paragraph 1 of this Article is in force, the Member may—

(*a*) exclude the persons belonging to the category or categories excluded from the application of the Convention from the number of persons taken into account when calculating the percentages specified in article 5, subparagraph (*c*); article 10, subparagraph (*b*); article 11; article 19, subparagraph (*b*); and article 20;

(*b*) exclude the persons belonging to the category or categories excluded from the application of the Convention, as well as the wives and children of such persons, from the number of persons taken into account when calculating the percentage specified in article 10, subparagraph (*c*).

3. Any Member which has made a declaration under paragraph 1 of this article may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of this Convention in respect of a category or categories excluded at the time of its ratification.

Article 5

Any Member whose legislation protects employees may, as necessary, exclude from the application of this Convention—

(*a*) persons whose employment is of a casual nature;

(*b*) members of the employer's family living in his house, in respect of their work for him;

(*c*) other categories of employees, which shall not exceed in number 10 per cent of all employees other than those excluded under subparagraphs (*a*) and (*b*) of this Article.

Article 6

For the purpose of compliance with this Convention, a Member may take account of protection effected by means of insurance which, although not made compulsory by its legislation at the time of ratification for the persons to be protected—

(*a*) is supervised by the public authorities or administered, in accordance with prescribed standards, by joint operation of employers and workers;

(*b*) covers a substantial proportion of the persons whose earnings do not exceed those of the skilled manual male employee defined in Article 22, paragraph 6; and

(*c*) complies, in conjunction with other forms of protection, where appropriate, with the provisions of the Convention.

Article 7

The contingencies covered shall include—

(*a*) need for medical care of a curative nature and, under prescribed conditions, need for medical care of a preventive nature;

(*b*) incapacity for work resulting from sickness and involving suspension of earnings, as defined by national legislation.

PART II. MEDICAL CARE

Article 8

Each Member shall secure to the persons protected, subject to prescribed conditions, the provision of medical care of a curative or preventive nature in respect of the contingency referred to in subparagraph (*a*) of article 7.

Article 9

The medical care referred to in article 8 shall be afforded with a view to maintaining, restoring or improving the health of the person protected and his ability to work and to attend to his personal needs.

Article 10

The persons protected in respect of the contingency referred to in subparagraph (*a*) of article 7 shall comprise—

(*a*) all employees, including apprentices, and the wives and children of such employees; or

(*b*) prescribed classes of the economically active population, constituting not less than 75 per cent of the whole economically active population, and the wives and children of persons in the said classes; or

(*c*) prescribed classes of residents constituting not less than 75 per cent of all residents.

Article 11

Where a declaration made in virtue of article 2 is in force, the persons protected in respect of the contingency referred to in subparagraph (*a*) of article 7 shall comprise—

(*a*) prescribed classes of employees, constituting not less than 25 per cent of all employees, and the wives and children of employees in the said classes; or

(*b*) prescribed classes of employees in industrial undertakings, constituting not less than 50 per cent of all employees in industrial undertakings, and the wives and children of employees in the said classes.

Article 12

Persons who are in receipt of a social security benefit for invalidity, old age, death of the breadwinner or unemployment, and, where appropriate, the wives and children of such persons, shall continue to be protected, under prescribed conditions, in respect of the contingency referred to in subparagraph (*a*) of article 7.

Article 13

The medical care referred to in article 8 shall comprise at least—

(*a*) general practitioner care, including domiciliary visiting;

(*b*) specialist care at hospitals for in-patients and out-patients, and such specialist care as may be available outside hospitals;

(*c*) the necessary pharmaceutical supplies on prescription by medical or other qualified practitioners;

(*d*) hospitalisation where necessary;

(*e*) dental care, as prescribed; and

(*f*) medical rehabilitation, including the supply, maintenance and renewal of prosthetic and orthopaedic appliances, as prescribed.

Article 14

Where a declaration made in virtue of article 2 is in force, the medical care referred to in article 8 shall comprise at least—

(*a*) general practitioner care, including, wherever possible, domiciliary visiting;

(*b*) specialist care at hospitals for in-patients and out-patients, and, wherever possible, such specialist care as may be available outside hospitals;

(*c*) the necessary pharmaceutical supplies on prescription by medical or other qualified practitioners; and

(*d*) hospitalisation where necessary.

Article 15

Where the legislation of a Member makes the right to the medical care referred to in article 8 conditional upon the fulfilment of a qualifying period by the person protected or by his breadwinner, the conditions governing the qualifying period shall be such as not to deprive of the right to benefit persons who normally belong to the categories of persons protected.

Article 16

1. The medical care referred to in article 8 shall be provided throughout the contingency.

2. Where a beneficiary ceases to belong to the categories of persons protected, further entitlement to medical care for a case of sickness which started while he belonged to the said categories may be limited to a prescribed period which shall not be less than 26 weeks: provided that the medical care shall not cease while the beneficiary continues to receive a sickness benefit.

3. Notwithstanding the provisions of paragraph 2 of this article, the duration of medical care shall be extended for prescribed diseases recognised as entailing prolonged care.

Article 17

Where the legislation of a Member requires the beneficiary or his breadwinner to share in the cost of the medical care referred to in article 8, the rules concerning such cost sharing shall be so designed as to avoid hardship and not to prejudice the effectiveness of medical and social protection.

PART III. SICKNESS BENEFIT

Article 18

Each Member shall secure to the persons protected, subject to prescribed conditions, the provision of sickness benefit in respect of the contingency referred to in subparagraph (*b*) of article 7.

Article 19

The persons protected in respect of the contingency specified in subparagraph (*b*) of article 7 shall comprise—

(*a*) all employees, including apprentices; or

(*b*) prescribed classes of the economically active population, constituting not less than 75 per cent of the whole economically active population; or

(*c*) all residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of article 24.

Article 20

Where a declaration made in virtue of article 2 is in force, the persons protected in respect of the contingency referred to in subparagraph (*b*) of article 7 shall comprise—

(*a*) prescribed classes of employees, constituting not less than 25 per cent of all employees; or

(*b*) prescribed classes of employees in industrial undertakings, constituting not less than 50 per cent of all employees in industrial undertakings.

Article 21

The sickness benefit referred to in article 18 shall be a periodical payment and shall—

(*a*) where employees or classes of the economically active population are protected, be calculated in such a manner as to comply either with the requirements of article 22 or with the requirements of article 23;

(*b*) where all residents whose means during the contingency do not exceed prescribed limits are protected, be calculated in such a manner as to comply with the requirements of article 24.

Article 22

1. In the case of a periodical payment to which this article applies, the rate of the benefit, increased by the amount of any family allowances payable during the contingency, shall be such as to attain for the standard beneficiary, in respect of the contingency referred to in subparagraph (*b*) of article 7, at least 60 per cent of the total of the previous earnings of the beneficiary and of the amount of any family allowances payable to a person protected with the same family responsibilities as the standard beneficiary.

2. The previous earnings of the beneficiary shall be calculated according to prescribed rules, and, where the persons protected are arranged in classes according to their earnings, their previous earnings may be calculated from the basic earnings of the classes to which they belonged.

3. A maximum limit may be prescribed for the rate of the benefit or for the earnings taken into account for the calculation of the benefit, provided that the maximum limit is fixed in such a way that the provisions of paragraph 1 of this article are complied with where the previous earnings of the beneficiary are equal to or lower than the wage of a skilled manual male employee.

4. The previous earnings of the beneficiary, the wage of the skilled manual male employee, the benefit and any family allowances shall be calculated on the same time basis.

5. For the other beneficiaries the benefit shall bear a reasonable relation to the benefit for the standard beneficiary.

6. For the purpose of this article, a skilled manual male employee shall be—

(*a*) a fitter or turner in the manufacture of machinery other than electrical machinery; or

(*b*) a person deemed typical of skilled labour selected in accordance with the provisions of the following paragraph; or

(*c*) a person whose earnings are such as to be equal to or greater than the earnings of 75 per cent of all the persons protected, such earnings to be determined on the basis of annual or shorter periods as may be prescribed; or

(*d*) a person whose earnings are equal to 125 per cent of the average earnings of all the persons protected.

7. The person deemed typical of skilled labour for the purposes of subparagraph (*b*) of the preceding paragraph shall be a person employed in the major group of economic activities with the largest number of economically active male persons protected in the contingency referred to in subparagraph (*b*) of article 7 in the division comprising the largest number of such persons; for this purpose, the International Standard Industrial Classification of All Economic Activities adopted by the Economic and Social Council of the United Nations at its Seventh Session on 27 August 1948, as amended up to 1968 and reproduced in the Annex to this Convention, or such classification as at any time further amended, shall be used.

8. Where the rate of benefit varies by region, the skilled manual male employee may be determined for each region in accordance with paragraphs 6 and 7 of this article.

9. The wage of the skilled manual male employee shall be determined on the basis of the rates of wages for normal hours of work fixed by collective agreements, by or in pursuance of national legislation, where applicable, or by custom, including cost-of-living allowances if any; where such rates differ by region but paragraph 8 of this article is not applied, the median rate shall be taken.

Article 23

1. In the case of a periodical payment to which this article applies, the rate of the benefit, increased by the amount of any family allowances payable during the contingency, shall be such as to attain for the standard beneficiary, in respect of the contingency referred to in subparagraph (*b*) of article 7, at least 60 per cent of the total of the wage of an ordinary adult male labourer and of the amount of any family allowances payable to a person protected with the same family responsibilities as the standard beneficiary.

2. The wage of the ordinary adult male labourer, the benefit and any family allowances shall be calculated on the same time basis.

3. For the other beneficiaries, the benefit shall bear a reasonable relation to the benefit for the standard beneficiary.

4. For the purpose of this article, the ordinary adult male labourer shall be—

(*a*) a person deemed typical of unskilled labour in the manufacture of machinery other than electrical machinery; or

(*b*) a person deemed typical of unskilled labour selected in accordance with the provisions of the following paragraph.

5. The person deemed typical of unskilled labour for the purpose of subparagraph (*b*) of the preceding paragraph shall be a person employed in the major group of economic activities with the largest number of economically active male persons protected in the contingency referred to in subparagraph (*b*) of article 7 in the division comprising the largest number of such persons; for this purpose, the International Standard Industrial Classification of All Economic Activities adopted by the Economic and Social Council of the United Nations at its Seventh Session on 27 August 1948, as amended up to 1968 and reproduced in the Annex to this Convention, or such classification as at any time further amended, shall be used.

6. Where the rate of benefit varies by region, the ordinary adult male labourer may be determined for each region in accordance with paragraphs 4 and 5 of this article.

7. The wage of the ordinary adult male labourer shall be determined on the basis of the rates of wages for normal hours of work fixed by collective agreements, by or in pursuance of national legislation, where applicable, or by custom, including cost-of-living allowances, if any; where such rates differ by region but paragraph 6 of this article is not applied, the median rate shall be taken.

In the case of a periodical payment to which this article applies—

(*a*) the rate of the benefit shall be determined according to a prescribed scale or a scale fixed by the competent public authority in conformity with prescribed rules;

(*b*) such rate may be reduced only to the extent by which the other means of the family of the beneficiary exceed prescribed substantial amounts or substantial amounts fixed by the competent public authority in conformity with prescribed rules;

(*c*) the total of the benefit and any other means, after deduction of the substantial amounts referred to in subparagraph (*b*), shall be sufficient to maintain the family of the beneficiary in health and decency, and shall be not less than the corresponding benefit calculated in accordance with the requirements of article 23;

(*d*) the provisions of subparagraph (*c*) shall be deemed to be satisfied if the total amount of sickness benefits paid under this Convention exceeds by at least 30 per cent the total amount of benefits which would be obtained by applying the provisions of article 23 and the provisions of subparagraph (*b*) of article 19.

Article 25

Where the legislation of a Member makes the right to the sickness benefit referred to in article 18 conditional upon the fulfilment of a qualifying period by the person protected, the conditions governing the qualifying period shall be such as not to deprive of the right to benefit persons who normally belong to the categories of persons protected.

Article 26

1. The sickness benefit referred to in article 18 shall be granted throughout the contingency: Provided that the grant of benefit may be limited to not less than 52 weeks in each case of incapacity, as prescribed.

2. Where a declaration made in virtue of article 2 is in force, the grant of the sickness benefit referred to in article 18 may be limited to not less than 26 weeks in each case of incapacity, as prescribed.

3. Where the legislation of a Member provides that sickness benefit is not payable for an initial period of suspension of earnings, such period shall not exceed three days.

Article 27

1. In the case of the death of a person who was in receipt of, or qualified for, the sickness benefit referred to in article 18, a funeral benefit shall, under prescribed conditions, be paid to his survivors, to any other dependants or to the person who has borne the expense of the funeral.

2. A member may derogate from the provision of paragraph 1 of this Article where—

(*a*) it has accepted the obligations of Part IV of the Invalidity, Old-Age and Survivors' Benefits Convention, 1967;

(*b*) it provides in its legislation for cash sickness benefit at a rate of not less than 80 per cent of the earnings of the persons protected; and

(*c*) the majority of persons protected are covered by voluntary insurance which is supervised by the public authorities and which provides a funeral grant.

PART IV. COMMON PROVISIONS

Article 28

1. A benefit to which a person protected would otherwise be entitled in compliance with this Convention may be suspended to such extent as may be prescribed—

(*a*) as long as the person concerned is absent from the territory of the Member;

(*b*) as long as the person concerned is being indemnified for the contingency by a third party, to the extent of the indemnity;

(*c*) where the person concerned has made a fraudulent claim;

(*d*) where the contingency has been caused by a criminal offence committed by the person concerned;

(*e*) where the contingency has been caused by the serious and wilful misconduct of the person concerned;

(*f*) where the person concerned, without good cause, neglects to make use of the medical care or the rehabilitation services placed at his disposal, or fails to comply with rules prescribed for verifying the occurrence or continuance of the contingency or for the conduct of beneficiaries;

(*g*) in the case of the sickness benefit referred to in article 18, as long as the person concerned is maintained at public expense or at the expense of a social security institution or service; and

(*h*) in the case of the sickness benefit referred to in article 18, as long as the person concerned is in receipt of another social security cash benefit, other than a family benefit, subject to the part of the benefit which is suspended not exceeding the other benefit.

2. In the cases and within the limits prescribed, part of the benefit otherwise due shall be paid to the dependants of the person concerned.

Article 29

1. Every claimant shall have a right of appeal in the case of refusal of the benefit or complaint as to its quality or quantity.

2. Where in the application of this Convention a government department responsible to a legislature is entrusted with the administration of medical care, the right of appeal provided for in paragraph 1 of this article may be replaced by a right to have a complaint concerning the refusal of medical care or

the quality of the care received investigated by the appropriate authority.

Article 30

1. Each Member shall accept general responsibility for the due provision of the benefits provided in compliance with this Convention and shall take all measures required for this purpose,

2. Each Member shall accept general responsibility for the proper administration of the institutions and services concerned in the application of this Convention.

Article 31

Where the administration is not entrusted to an institution regulated by the public authorities or to a government department responsible to a legislature—

(*a*) representatives of the persons protected shall participate in the management under prescribed conditions;

(*b*) national legislation shall, where appropriate, provide for the participation of representatives of employers;

(*c*) national legislation may likewise decide as to the participation of representatives of the public authorities.

Article 32

Each Member shall, within its territory, assure to non-nationals who normally reside or work there equality of treatment with its own nationals as regards the right to the benefits provided for in this Convention.

Article 33

1. A Member—

(*a*) which has accepted the obligations of this Convention without availing itself of the exceptions and exclusions provided for in article 2 and article 3,

(*b*) which provides over-all higher benefits than those provided in this Convention and whose total relevant expenditure on medical care and sickness benefits amounts to at least 4 per cent of its national income, and

(*c*) which satisfies at least two of the three following conditions:

(i) it covers a percentage of the economically active population which is at least ten points higher than the percentage required by article 10, subparagraph (*b*), and by article 19, subparagraph (*b*), or a percentage of all residents which is at least ten points higher than the percentage required by article 10, subparagraph (*c*),

(ii) it provides medical care of a curative and preventive nature of an appreciably higher standard than that prescribed by article 13,

(iii) it provides sickness benefit corresponding to a percentage at least ten points higher than is required by articles 22 and 23,

may, after consultation with the most representative organisations of employers and workers, where such exist, make temporary derogations from particular provisions of Parts II and III of this Convention on condition that such derogation shall neither fundamentally reduce nor impair the essential guarantees of this Convention.

2. Each Member which has made such a derogation shall indicate in its reports upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation the position of its law and practice as regards such derogation and any progress made towards complete application of the terms of the Convention.

Article 34

This Convention shall not apply to—

(*a*) contingencies which occurred before the coming into force of the Convention for the Member concerned;

(*b*) benefits in contingencies occurring after the coming into force of the Convention for the Member concerned in so far as the rights to such benefits are derived from periods preceding that date.

PART V. FINAL PROVISIONS

Article 35

This Convention revises the Sickness Insurance (Industry) Convention, 1927, and the Sickness Insurance (Agriculture) Convention, 1927.

Article 36

1. In conformity with the provisions of article 75 of the Social Security (Minimum Standards) Convention, 1952, Part III of that Convention and the relevant provisions of other Parts thereof shall cease to apply to any Member having ratified this Convention as from the date at which this Convention is binding on that Member and no declaration under article 3 is in force.

2. Acceptance of the obligations of this Convention shall, on condition that no declaration under article 3 is in force, be deemed to constitute acceptance of the obligations of Part III of the Social Security (Minimum Standards) Convention, 1952, and the relevant provisions of other Parts thereof, for the purpose of article 2 of the said Convention.

Article 37

If any Convention which may be adopted subsequently by the Conference concerning any subject or subjects dealt with in this Convention so provides, such provisions of this Convention as may be specified in the said Convention shall cease to apply to any Member having ratified the said Convention as from the date at which the said Convention comes into force for that Member.

Article 38

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 39

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 40

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this article.

Article 41

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 42

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 43

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 44

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(*a*) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 40 above, if and when the new revising Convention shall have come into force;

(*b*) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 45

The English and French versions of the text of this Convention are equally authoritative.

COUNCIL OF EUROPE

EUROPEAN AGREEMENT RELATING TO PERSONS PARTICIPATING IN PROCEEDINGS OF THE EUROPEAN COMMISSION AND COURT OF HUMAN RIGHTS

Done at London, on 6 May 1969 [1]

The member States of the Council of Europe, signatory hereto,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4th November 1950 (hereinafter referred to as "the Convention");

Considering that it is expedient for the better fulfilment of the purposes of the Convention that persons taking part in proceedings before the European Commission of Human Rights (hereinafter referred to as "the Commission") or the European Court of Human Rights (hereinafter referred to as "the Court") shall be accorded certain immunities and facilities;

Desiring to conclude an Agreement for this purpose,

Have agreed as follows:

Article 1

1. The persons to whom this Agreement applies are:

(*a*) agents of the Contracting Parties and advisers and advocates assisting them;

(*b*) persons taking part in proceedings instituted before the Commission under Article 25 of the Convention, whether in their own name or as representatives of one of the applicants enumerated in the said Article 25;

(*c*) barristers, solicitors or professors of law, taking part in proceedings in order to assist one of the persons enumerated in sub-paragraph (*b*) above;

(*d*) persons chosen by the delegates of the Commission to assist them in proceedings before the Court;

(*e*) witnesses, experts and other persons called upon by the Commission or the Court to take part in proceedings before the Commission or the Court.

2. For the purposes of this Agreement, the terms "Commission" and "Court" shall include a Sub-Commission or Chamber, or members of either body carrying out their duties under the terms of the Convention or of the rules of the Commission or of the Court, as the case may be; and the term "taking part in proceedings" shall include making communications with a view to a complaint against a State which has recognised the right of individual petition under Article 25 of the Convention.

3. If in the course of the exercise by the Committee of Ministers of its functions under Article 32 of the Convention, any person mentioned in paragraph 1 of this Article is called upon to appear before, or to submit written statements to the Committee of Ministers, the provisions of this Agreement shall apply in relation to him.

Article 2

1. The persons referred to in paragraph 1 of Article 1 of this Agreement shall have immunity from legal process in respect of oral or written statements made, or documents or other evidence submitted by them before or to the Commission or the Court.

2. This immunity does not apply to the communication, outside the Commission or the Court, by or on behalf of any person entitled to immunity under the preceding paragraph, of any such statements, documents or evidence or any part thereof submitted by that person to the Commission or the Court.

Article 3

1. The Contracting Parties shall respect the right of the persons referred to in paragraph 1 of Article 1 of this Agreement to correspond freely with the Commission and the Court.

2. As regards persons under detention, the exercise of this right shall in particular imply that:

(*a*) if their correspondence is examined by the competent authorities, its despatch and delivery shall nevertheless take place without undue delay and without alteration;

(*b*) such persons shall not be subject to disciplinary measures in any form on account of any communication sent through the proper channels to the Commission or the Court;

(*c*) such persons shall have the right to correspond, and consult out of hearing of other persons, with a lawyer qualified to appear before the courts of the country where they are detained in regard to an application to the

[1] Text published in *European Treaty Series*, No. 67 and furnished by the Secretariat of the Council of Europe.

Commission, or any proceedings resulting therefrom.

3. In application of the preceding paragraphs, there shall be no interference by a public authority except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, for the detection or prosecution of a criminal offence or for the protection of health.

Article 4

1. (*a*) The Contracting Parties undertake not to hinder the free movement and travel, for the purpose of attending and returning from proceedings before the Commission or the Court, of persons referred to in paragraph 1 of Article 1 of this Agreement whose presence has in advance been authorised by the Commission or the Court.

(*b*) No restrictions shall be placed on their movement and travel other than such as are in accordance with the law and necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others,

2. (*a*) Such persons shall not, in countries of transit and in the country where the proceedings take place, be prosecuted or detained or be subjected to any other restriction of their personal liberty in respect of acts or convictions prior to the commencement of the journey.

(*b*) Any Contracting Party may at the time of signature or ratification of this Agreement declare that the provisions of this paragraph will not apply to its own nationals. Such a declaration may be withdrawn at any time by means of a notification addressed to the Secretary General of the Council of Europe.

3. The Contracting Parties undertake to re-admit on his return to their territory any such person who commenced his journey in the said territory.

4. The provisions of paragraphs 1 and 2 of this Article shall cease to apply when the person concerned has had for a period of 15 consecutive days from the date when his presence is no longer required by the Commission or the Court the opportunity of returning to the country from which his journey commenced.

5. Where there is any conflict between the obligations of a Contracting Party resulting from paragraph 2 of this Article and those resulting from a Council of Europe Convention or from an extradition treaty or other treaty concerning mutual assistance in criminal matters with other Contracting Parties, the provisions of paragraph 2 of this Article shall prevail.

Article 5

1. Immunities and facilities are accorded to the persons referred to in paragraph 1 of Article 1 of this Agreement solely in order to ensure for them the freedom of speech and the independence necessary for the discharge of their functions, tasks or duties, or the exercise of their rights in relation to the Commission and the Court.

2. (*a*) The Commission or the Court, as the case may be, shall alone be competent to waive, in whole or in part, the immunity provided for in paragraph 1 of Article 2 of this Agreement; they have not only the right but the duty to waive immunity in any case where, in their opinion, such immunity would impede the course of justice and waiver in whole or in part would not prejudice the purpose defined in paragraph 1 of this Article.

(*b*) The immunity may be waived by the Commission or by the Court, either *ex officio* or at the request, addressed to the Secretary General of the Council of Europe, of any Contracting Party or of any person concerned.

(*c*) Decisions waiving immunity or refusing the waiver shall be accompanied by a statement of reasons.

3. If a Contracting Party certifies that waiver of the immunity provided for in paragraph 1 of Article 2 of this Agreement is necessary for the purpose of proceedings in respect of an offence against national security, the Commission or the Court shall waive immunity to the extent specified in the certificate.

4. In the event of the discovery of a fact which might, by its nature, have a decisive influence and which at the time of the decision refusing waiver of immunity was unknown to the author of the request, the latter may make a new request to the Commission or the Court.

Article 6

Nothing in this Agreement shall be construed as limiting or derogating from any of the obligations assumed by the Contracting Parties under the Convention.

Article 7

1. This Agreement shall be open to signature by the member States of the Council of Europe, who may become Parties to it either by:

(*a*) signature without reservation in respect of ratification or acceptance, or

(*b*) signature with reservation in respect of ratification or acceptance, followed by ratification or acceptance.

2. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.

Article 8

1. This Agreement shall enter into force one month after the date on which five member States of the Council shall have become Parties to the Agreement, in accordance with the provisions of Article 7.

2. As regards any member States who shall subsequently sign the Agreement without reservation in respect of ratification or acceptance or who shall ratify or accept it, the Agreement shall enter into force one month after the date of such signature or after the date of deposit of the instrument of ratification or acceptance.

Article 9

1. Any Contracting Party may at the time of signature or when depositing its instrument of ratification or acceptance, specify the territory or territories to which this Agreement shall apply.

2. Any Contracting Party may, when depositing its instrument of ratification or acceptance or at any later date, by declaration addressed to the Secretary

General of the Council of Europe, extend this Agreement to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 10 of this Agreement.

Article 10

1. This Agreement shall remain in force indefinitely.

2. Any Contracting Party may, insofar as it is concerned, denounce this Agreement by means of a notification addressed to the Secretary General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification. Such a denunciation shall not have the effect of releasing the Contracting Parties concerned from any obligation which may have arisen under this Agreement in relation to any person referred to in paragraph 1 of Article 1.

Article 11

The Secretary General of the Council of Europe shall notify the member States of the Council of:

(*a*) any signature without reservation in respect of ratification or acceptance;

(*b*) any signature with reservation in respect of ratification or acceptance;

(*c*) the deposit of any instrument of ratification or acceptance;

(*d*) any date of entry into force of this Agreement in accordance with Article 8 thereof;

(*e*) any declaration received in pursuance of the provisions of paragraph 2 of Article 4 and of paragraphs 2 and 3 of Article 9;

(*f*) any notification of withdrawal of a declaration in pursuance of the provisions of paragraph 2 of Article 4 and any notification received in pursuance of the provisions of Article 10 and the date on which any denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at London, this 6th day of May 1969, in the English and French languages, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory States.

ORGANIZATION OF AFRICAN UNITY

MANIFESTO ON SOUTHERN AFRICA

Adopted by the Assembly of Heads of State and Government of the Organization of African Unity, at its sixth ordinary session held in Addis Ababa from 6 to 10 September 1969 [1]

1. When the purpose and the basis of States' international policies are misunderstood, there is, introduced into the world, a new and unnecessary disharmony, disagreements, conflicts of interest, or different assessments of human priorities, which provoke an excess of tension in the world, and disastrously divide mankind, at a time when united action is necessary to control modern technology and put it to the service of man. It is for this reason that, discovering widespread misapprehension of our attitudes and purposes in relation to southern Africa, we, the leaders of East and Central African States meeting at Lusaka, on 16 April 1969, have agreed to issue this Manifesto.

2. By this Manifesto we wish to make clear, beyond all shadow of doubt, our acceptance of the belief that all men are equal, and have equal rights to human dignity and respect, regardless of colour, race, religion or sex. We believe that all men have the right and the duty to participate, as equal members of the society, in their own Government. We do not accept that any individual or group has any right to govern any other group of sane adults, without their consent, and we affirm that only the people of a society, acting together as equals, can determine what is, for them, a good society and a good social, economic, or political organization.

3. On the basis of these beliefs we do not accept that any one group within a society has the right to rule any society without the continuing consent of all the citizens. We recognize that at any one time there will be, within every society, failures in the implementation of these ideals. We recognize that for the sake of order in human affairs, there may be transitional arrangements while a transformation from group inequalities to individual equality is being effected. But we affirm that without an acceptance of these ideals—without a commitment to these principles of human equality and self-determination —there can be no basis for peace and justice in the world.

4. None of us would claim that within our own States we have achieved that perfect social, economic and political organization which would ensure a reasonable standard of living for all our people and establish individual security against avoidable hardship or miscarriage of justice. On the contrary, we acknowledge that within our own States the struggle towards human brotherhood and unchallenged human dignity is only beginning. It is on the basis of our commitment to human equality and human dignity, not on the basis of achieved perfection, that we take our stand of hostility towards the colonialism and racial discrimination which is being practised in southern Africa. It is on the basis of their commitment of these universal principles that we appeal to other members of the human race for support.

5. If the commitment to these principles existed among the States holding power in southern Africa, any disagreements we might have about the rate of implementation, or about isolated acts of policy, would be matters affecting only our individual relationships with the States concerned. If these commitments existed, our States would not be justified in the expressed and active hostility towards the régimes of southern Africa such as we have proclaimed and continue to propagate.

6. The truth is, however, that in Mozambique, Angola, Rhodesia, Namibia and the Republic of South Africa, there is an open and continued denial of the principles of human equality and national self-determination. This is not a matter of failure in the implementation of accepted human principles. The effective administration in all these territories are not struggling towards these difficult goals. They are fighting the principles; they are deliberately organizing their societies so as to try to destroy the hold of these principles in the minds of men. It is for this reason that we believe the rest of the world must be interested. For the principle of human equality, and all that flows from it, is either universal or it does not exist. The dignity of all men is destroyed when the manhood of any human being is denied.

7. Our objectives in southern Africa stem from our commitment to this principle of human equality. We are not hostile to the administrations of these States because they are manned and controlled by white people. We are hostile to them because they are systems of minority control which exist as a result of, and in the pursuance of, doctrines of human inequality. What we are working for is the right of self-determination for the people of those territories. We are working for a rule in those countries which is based on the will of all the people and an acceptance of the equality of every citizen.

[1] Text published in document A/7754 of 7 November 1969.

8. Our stand towards southern Africa thus involves a rejection of racialism, not a reversal of the existing racial domination. We believe that all the peoples who have made their homes in the countries of southern Africa are Africans, regardless of the colour of their skins; and we would oppose a racialist majority government which adopted a philosophy of deliberate and permanent discrimination between its citizens on grounds of racial origin. We are not talking racialism when we reject the colonialism and *apartheid* policies now operating in those areas; we are demanding an opportunity for all the people of these States, working together as equal individual citizens, to work out for themselves the institutions and the system of government under which they will, by general consent, live together and work together to build a harmonious society.

9. As an aftermath of the present policies, it is likely that different groups within these societies will be self-conscious and fearful. The initial political and economic organizations may well take account of these fears, and this group self-consciousness. But how this is to be done must be a matter exclusively for the peoples of the country concerned, working together. No other nation will have a right to interfere in such affairs. All that the rest of the world has a right to demand is just what we are now asserting, that the arrangements within any State which wishes to be accepted into the community of nations must be based on an acceptance of the principles of human dignity and equality.

10. To talk of the liberation of Africa is thus to say two things. First, that the peoples in the territories still under colonial rule shall be free to determine for themselves their own institutions of self-government. Secondly, that the individuals in southern Africa shall be freed from an environment poisoned by the propaganda of racialism, and given an opportunity to be men, not white men, brown men, yellow men or black men.

11. Thus the liberation of Africa for which we are struggling does not mean a reverse racialism. Nor is it an aspect of African imperialism. As far as we are concerned the present boundaries of the States of southern Africa are the boundaries of what will be free and independent African States. There is no question of our seeking or accepting any alterations to our own boundaries at the expense of these future free African nations.

12. On the objectives of liberation as thus defined, we can neither surrender nor compromise. We have always preferred, and we still prefer, to achieve it without physical violence. We would prefer to negotiate rather than destroy, to talk rather than kill. We do not advocate violence, we advocate an end to the violence against human dignity which is now being perpetrated by the oppressors of Africa. If peaceful progress to emancipation were possible, or if changed circumstances were to make it possible in the future, we would urge our brothers in the resistance movements to use peaceful methods of struggle even at the cost of some compromise on the timing of change. But while peaceful progress is blocked by actions of those at present in power in the States of southern Africa, we have no choice but to give the peoples of those territories all the support of which we are capable in their struggle against their oppressors. This is why the signatory States participate in the movement for the liberation of Africa under the aegis of the Organization of African Unity. However, the obstacle to change is not the same in all the countries of southern Africa, and it follows therefore that the possibility of continuing the struggle through peaceful means varies from one country to another.

13. In Mozambique and Angola, and in so-called Portuguese Guinea, the basic problem is not racialism but a pretence that Portugal exists in Africa. Portugal is situated in Europe; the fact that it is a dictatorship is a matter for the Portuguese to settle. But no decree of the Portuguese dictator, nor legislation passed by any Parliament in Portugal, can make Africa part of Europe. The only thing which could convert a part of Africa into a constituent unit in a union which also includes a European State would be the freely expressed will of the people of that part of Africa. There is no such popular will in the Portuguese colonies. On the contrary, in the absence of any opportunity to negotiate a road to freedom, the peoples of all three territories have taken up arms against the colonial Power. They have done this despite the heavy odds against them, and despite the great suffering they know to be involved.

14. Portugal, as a European State, has naturally its own allies in the context of the ideological conflict between West and East. However, in our context, the effect of this is that Portugal is enabled to use her resources to pursue the most heinous war and degradation of man in Africa. The present Manifesto must, therefore, lay bare the fact that the inhuman commitment of Portugal in Africa and her ruthless subjugation of the people of Mozambique, Angola and the so-called Portuguese Guinea are not only irrelevant to the ideological conflict of power-politics, but it is also diametrically opposed to the politics, the philosophies and the doctrines practised by her Allies in the conduct of their own affairs at home. The peoples of Mozambique, Angola and Portuguese Guinea are not interested in communism or capitalism; they are interested in their freedom. They are demanding an acceptance of the principles of independence on the basis of majority rule, and for many years they called for discussions on this issue. Only when their demand for talks was continually ignored did they begin to fight. Even now, if Portugal should change her policy and accept the principle of self-determination, we would urge the liberation movements to desist from their armed struggle and to co-operate in the mechanics of a peaceful transfer of power from Portugal to the peoples of the African territories.

15. The fact that many Portuguese citizens have immigrated to these African countries does not affect this issue. Future immigration policy will be a matter for the independent Governments when these are established. In the meantime, we would urge the liberation movements to reiterate their statements that all those Portuguese people who have made their homes in Mozambique, Angola or Portuguese Guinea, and who are willing to give their future loyalty to those States, will be accepted as citizens. And an independent Mozambique, Angola or Portuguese Guinea may choose to be as friendly with Portugal as Brazil is. That would be the free choice of a free people.

16. In Rhodesia the situation is different in so far as the metropolitan Power has acknowledged the colonial status of the territory. Unfortunately, however, it has failed to take adequate measures to reassert its authority against the minority which has seized power with the declared intention of maintaining white domination. The matter cannot rest there. Rhodesia, like the rest of Africa, must be free, and its independence must be on the basis of majority rule. If the colonial Power is unwilling or unable to effect such a transfer of power to the people, then the people themselves will have no alternative but to capture it as and when they can. And Africa has no alternative but to support them. The question which remains in Rhodesia is therefore whether Great Britain will reassert her authority in Rhodesia and then negotiate the peaceful progress to majority rule before independence. In so far as Britain is willing to make this second commitment, Africa will co-operate in her attempts to reassert her authority. This is the method of progress which we would prefer; it could involve less suffering for all the peoples of Rhodesia, both black and white. But until there is some firm evidence that Britain accepts the principles of independence on the basis of majority rule and is prepared to take whatever steps are necessary to make it a reality, Africa has no choice but to support the struggle for the people's freedom by whatever means are open.

17. Just as a settlement of the Rhodesian problem with a minimum of violence is a British responsibility, so a settlement in Namibia with a minimum of violence is a United Nations responsibility. By every canon of international law and by every precedent, Namibia should now have been a sovereign, independent State with a government based on majority rule. South West Africa was a German colony until 1919, just as Tanganyika, Rwanda and Burundi, Togoland and Cameroon were German colonies. It was a matter of European politics that when the mandatory system was established after Germany had been defeated, the administration of South West Africa was given to the white minority Government of South Africa, while the other ex-German colonies in Africa were put into the hands of the British, Belgian or French Governments. After the Second World War every mandated territory except South West Africa was converted into a Trust Territory and has subsequently gained independence. South Africa, on the other hand has persistently refused to honour even the international obligation it accepted in 1919 and has increasingly applied to South West Africa the inhuman doctrines and organization of *apartheid*.

18. The United Nations General Assembly has ruled against this action, and in 1966 terminated the Mandate under which South Africa had a legal basis for its occupation and domination of South Africa. The General Assembly declared that the territory is now the direct responsibility of the United Nations, and set up an *ad hoc* committee to recommend practical means by which South West Africa would be administered, and the people enabled to exercise self-determination and to achieve independence.

19. Nothing could be clearer than this decision, which no permanent member of the Security Council voted against. Yet, since that time no effective measures have been taken to enforce it. Namibia remains in the clutches of the most ruthless minority Government in Africa. Its people continue to be oppressed, and those who advocate even peaceful progress to independence continue to be persecuted. The world has an obligation to use its strength to enforce the decision which all the countries co-operated in making. If they do this there is hope that the change can be effected without great violence. If they fail, then sooner or later the people of Namibia will take the law into their own hands. The people have been patient beyond belief, but one day their patience will be exhausted. Africa, at least, will then be unable to deny their call for help.

20. South Africa is itself an independent, sovereign State and a member of the United Nations. It is more highly developed and richer than any other nation in Africa. On every legal basis its internal affairs are a matter exclusively for the people of South Africa. Yet, the purpose of law is people and we assert that the actions of the South African Government are such that the rest of the world has a responsibility to take some action in defence of humanity.

21. There is one thing about South African oppression which distinguishes it from other oppressive regimes. The *apartheid* policy adopted by its Government, and supported to a greater or lesser extent by almost all its white citizens, is based on a rejection of man's humanity. A position of privilege or the experience of oppression in the South African society depends on the one thing which it is beyond the power of any man to change. It depends upon a man's colour, his parentage and his ancestors. If you are black you cannot escape this categorization, nor can you escape it if you are white. If you are a black millionaire and a brilliant political scientist, you are still subject to the pass laws and still excluded from political activity. If you are white, even protests against the system and an attempt to reject segregation will lead you only to the segregation and the comparative comfort of a white jail. Beliefs, abilities, and behaviour are all irrelevant to a man's status; everything depends upon race. Manhood is irrelevant. The whole system of government and society in South Africa is based on the denial of human equality. And the system is maintained by a ruthless denial of the human rights of the majority of the population and thus, inevitably, of all.

22. These things are known and are regularly condemned in the United Nations and elsewhere. But it appears that for many countries international law takes precedence over humanity; therefore no action follows the words. Yet even if international law is held to exclude active assistance to the South African opponents of *apartheid*, it does not demand that the comfort and support of human and commercial intercourse should given be to a Government which rejects the manhood of most humanity. South Africa should be excluded from the United Nations agencies, and even from the United Nations itself. It should be ostracized by the world community. It should be isolated from world trade patterns and left to be self-sufficient if it can. The South African Government cannot be allowed both to reject the very concept of mankind's unity and to benefit by the strength given through friendly international relations. And certainly Africa cannot acquiesce in the maintenance of the present policies against people of African descent.

23. The signatories of this Manifesto assert that the validity of the principles of human equality and dignity extend to South Africa just as they extend to the colonial territories of southern Africa. Before a basis for peaceful development can be established on this continent, these principles must be acknowledged by every nation and in every State there must be a deliberate attempt to implement them.

24. We reaffirm our commitment to these principles of human equality and human dignity and to the doctrines of self-determination and non-racialism. We shall work for their extension within our own nations and throughout the continent of Africa.

ORGANIZATION OF AMERICAN STATES

AMERICAN CONVENTION ON HUMAN RIGHTS

Signed at the Inter-American Specialized Conference on Human Rights at San José, Costa Rica, on 22 November 1969 [1]

PREAMBLE

The American states signatory to the present Convention,

Reaffirming their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

Recognizing that the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;

Considering that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed and refined in other international instruments, worldwide as well as regional in scope;

Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights; and

Considering that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters,

Have agreed upon the following:

[1] Text furnished by the Inter-American Commission on Human Rights, Pan American Union, Washington, D.C.

PART I — STATE OBLIGATIONS AND RIGHTS PROTECTED

CHAPTER I—GENERAL OBLIGATIONS

Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

2. For the purposes of this Convention, "person" means every human being.

Article 2. Domestic Legal Effects

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

CHAPTER II—CIVIL AND POLITICAL RIGHTS

Article 3. Right to Juridical Personality

Every person has the right to recognition as a person before the law.

Article 4. Right to Life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be reestablished in states that have abolished it.

4. In no case shall capital pinishment be inflicted for political offences or related common crimes.

5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

Article 5. Right to Humane Treatment

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

3. Punishment shall not be extended to any person other than the criminal.

4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors.

6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

Article 6. Freedom from Slavery

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.

2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.

3. For the purposes of this article, the following do not constitute forced or compulsory labor:

(*a*) work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;

(*b*) military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;

(*c*) service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or

(*d*) work or service that forms part of normal civic obligations.

Article 7. Right to Personal Liberty

1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for non-fulfillment of duties of support.

Article 8. Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

(*a*) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;

(*b*) prior notification in detail to the accused of the charges against him;

(*c*) adequate time and means for the preparation of his defense;

(*d*) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

(*e*) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;

(*f*) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

(*g*) the right not to be compelled to be a witness against himself or to plead guilty; and

(*h*) the right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a non appealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except in so far as may be necessary to protect the interests of justice.

Article 9. Freedom from Ex Post Facto *Laws*

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

Article 10. Right to Compensation

Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice.

Article 11. Right to Privacy

1. Everyone has the right to have his honor respected and his dignity recognized.

2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

3. Everyone has the right to the protection of the law against such interference or attacks.

Article 12. Freedom of Conscience and Religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 13. Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

(*a*) respect for the rights or reputations of others; or

(*b*) the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of children and adolescents.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin, shall be considered as offenses punishable by law.

Article 14. Right of Reply

1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.

3. For the effective protection of honor and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges.

Article 15. Right of Assembly

The right of peaceful assembly, without arms, is recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and necessary in a democratic society in the interest of national security, public safety or public order, or to protect public health or morals or the rights or freedoms of others.

Article 16. Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

Article 17. Rights of the Family

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.

2. The right of men and women of marriageable age to marry and to raise a family shall be recognized, if they meet the conditions required by domestic laws, insofar as such conditions do not affect the principle of nondiscrimination established in this Convention.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. The States Parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.

5. The law shall recognize equal rights for children born out of wedlock and those born in wedlock.

Article 18. Right to a Name

Every person has the right to a given name and to the surnames of his parents or that of one of them. The law shall regulate the manner in which this right shall be ensured for all, by the use of assumed names if necessary.

Article 19. Rights of the Child

Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

Article 20. Right to Nationality

1. Every person has the right to a nationality.

2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.

3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

Article 21. Right to Property

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

3. Usury and any other from of exploitation of man by man shall be prohibited by law.

Article 22. Freedom of Movement and Residence

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

2. Every person has the right to leave any country freely, including his own.

3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.

4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.

5. No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it.

6. An alien lawfully in the territory of a State Party to this Convention may be expelled from it only pursuant to a decision reached in accordance with law.

7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.

8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.

9. The collective expulsion of aliens is prohibited.

Article 23. Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:

(*a*) to take part in the conduct of public affairs, directly or through freely chosen representatives;

(*b*) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expresion of the will of the voters; and

(*c*) to have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

Article 25. Right to Judicial Protection

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

(*a*) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;

(*b*) to develop the possibilities of judicial remedy; and

(*c*) to ensure that the competent authorities shall enforce such remedies when granted.

Chapter III—Economic, Social and Cultural Rights

Article 26. Progressive Development

The States Parties undertake to adopt measures, both internally and through international cooperation; especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

Chapter IV—Suspension of Guarantees, Interpretation, and Application

Article 27. Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from *Ex Post Facto* Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.

Article 28. Federal Clause

1. Where a State Party is constituted as a federal state, the national government of such State Party shall implement all the provisions of the Convention over whose subject matter it exercises legislative and judicial jurisdiction.

2. With respect to the provisions over whose subject matter the constituent units of the federal state have jurisdiction, the national government shall immediately take suitable measures, in accordance with its constitution and its laws, to the end that the competent authorities of the constituent units may adopt appropriate provisions for the fulfillment of this Convention.

3. Whenever two or more States Parties agree to form a federation or other type of association, they shall take care that the resulting federal or other compact contains the provisions necessary for continuing and rendering effective the standards of this Convention in the new state that is organized.

Article 29. Restrictions Regarding Interpretation

No provision of this Convention shall be interpreted as:

(*a*) permitting any State Party; group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;

(*b*) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;

(*c*) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or

(*d*) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

Article 30. Scope of Restrictions

The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

Article 31. Recognition of Other Rights

Other rights and freedoms recognized in accordance with the procedures established in Articles 76 and 77 may be included in the system of protection of this Convention.

Chapter V—Personal Responsibilities

Article 32. Relationship between Duties and Rights

1. Every person has responsibilities to his family, his community, and mankind.

2. The rights of each person are limited by the rights of others, by the security of all, and by the

just demands of the general welfare, in a democratic society.

PART II—MEANS OF PROTECTION

CHAPTER VI—COMPETENT ORGANS

Article 33

The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

(*a*) the Inter-American Commission on Human Rights, referred to as "The Commission"; and

(*b*) the Inter-American Court of Human Rights, referred to as "The Court".

CHAPTER VII—INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Section 1. Organization

Article 34

The Inter-American Commission on Human Rights shall be composed of seven members, who shall be persons of high moral character and recognized competence in the field of human rights.

Article 35

The Commission shall represent all the member countries of the Organization of American States.

Article 36

1. The members of the Commission shall be elected in a personal capacity by the General Assembly of the Organization from a list of candidates proposed by the governments of the member states.

2. Each of those governments may propose up to three candidates, who may be nationals of the states proposing them or of any other member state of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

Article 37

1. The members of the Commission shall be elected for a term of four years and may be reelected only once, but the terms of three of the members chosen in the first election shall expire at the end of two years. Immediately following that election the General Assembly shall determine the names of those three members by lot.

2. No two nationals of the same state may be members of the Commission.

Article 38

Vacancies that may occur on the Commission for reasons other than the normal expiration of a term shall be filled by the Permanent Council of the Organization in accordance with the provisions of the Statute of the Commission.

Article 39

The Commission shall prepare its Statute, which it shall submit to the General Assembly for approval. It shall establish its own Regulations.

Article 40

Secretariat services for the Commission shall be furnished by the appropriate specialized unit of the General Secretariat of the Organization. This unit shall be provided with the resources required to accomplish the tasks assigned to it by the Commission.

Section 2. Functions

Article 41

The main function of the Commission shall be to promote respect for and defence of human rights. In the exercise of its mandate, it shall have the following functions and powers:

(*a*) to develop an awareness of human rights among the peoples of America;

(*b*) to make recommendations to the governments of the member states, when it considers such action advisable, for the adoption of progressive measures in favor of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights;

(*c*) to prepare such studies or reports as it considers advisable in the performance of its duties;

(*d*) to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights;

(*e*) to respond, through the General Secretariat of the Organization of American States, to inquiries made by the member states on matters related to human rights and, within the limits of its possibilities, to provide those states with the advisory services they request;

(*f*) to take action on petitions and other communications pursuant to its authority under the provisions of Articles 44 through 51 of this Convention; and

(*g*) to submit an annual report to the General Assembly of the Organization of American States.

Article 42

The States Parties shall transmit to the Commission a copy of each of the reports and studies that they submit annually to the Executive Committees of the Inter-American Economic and Social Council and the Inter-American Council for Education, Science, and Culture, in their respective fields, so that the Commission may watch over the promotion of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

Article 43

The States Parties undertake to provide the Commission with such information as it may request of them as to the manner in which their domestic law ensures the effective application of any provisions of this Convention.

Section 3. Competence

Article 44

Any person or group of persons, or any non-governmental entity legally recognized in one of more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

Article 45

1. Any State Party may, when it deposits its instrument of ratification of or adherence to this Convention, or at any later time, declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed a violation of a human right set forth in this Convention.

2. Communications presented by virtue of this article may be admitted and examined only if they are presented by a State Party that has made a declaration recognizing the aforementioned competence of the Commission. The Commission shall not admit any communication against a State Party that has not made such a declaration.

3. A declaration concerning recognition of competence may be made to be valid for an indefinite time, for a specified period, or for a specific case.

4. Declarations shall be deposited with the General Secretariat of the Organization of American States, which shall transmit copies thereof to the member states of that Organization.

Article 46

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

(*a*) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;

(*b*) that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;

(*c*) that the subject of the petition or communication is not pending in another international proceeding for settlement; and

(*d*) that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person or persons or of the legal representative of the entity lodging the petition.

2. The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:

(*a*) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

(*b*) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or

(*c*) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

Article 47

The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if:

(*a*) any of the requirements indicated in Article 46 has not been met;

(*b*) the petition or communication does not state facts that tend to establish a violation of the rights guaranteed by this Convention;

(*c*) the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order; or

(*d*) the petition or communication is substantially the same as one previously studied by the Commission or by another international organization.

Section 4. Procedure

Article 48

1. When the Commission receives a petition or communication alleging violation of any of the rights protected by this Convention, it shall proceed as follows:

(*a*) If it considers the petition or communication admissible, it shall request information from the government of the state indicated as being responsible for the alleged violations and shall furnish that government a transcript of the pertinent portions of the petition or communication. This information shall be submitted within a reasonable period to be determined by the Commission in accordance with the circumstances of each case.

(*b*) After the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed.

(*c*) The Commission may also declare the petition or communication inadmissible or out of order on the basis of information or evidence subsequently received.

(*d*) If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.

(*e*) The Commission may request the states concerned to furnish any pertinent information and, if so requested, shall hear oral statements or receive written statements from the parties concerned.

(*f*) The Commission shall place itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter

on the basis of respect for the human rights recognized in this Convention.

2. However, in serious and urgent cases, only the presentation of a petition or communication that fulfills all the formal requirements of admissibility shall be necessary in order for the Commission to conduct an investigation with the prior consent of the state in whose territory a violation has allegedly been committed.

Article 49

If a friendly settlement has been reached in accordance with paragraph 1.f of Article 48, the Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication: This report shall contain a brief statement of the facts and of the solution reached. If any party in the case so requests, the fullest possible information shall be provided to it.

Article 50

1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report.

2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it.

3. In transmitting the report, the Committee may make such proposals and recommendations as it sees fit.

Article 51

1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

2. Where appropriate, the Commission shall make pertinent recommendations and shall prescribe a period within which the state is to take the measures that are incumbent upon it to remedy the situation examined.

3. When the prescribed period has expired, the Commission shall decide by the vote of an absolute majority of its members whether the state has taken adequate measures and whether to publish its report.

Chapter VIII—Inter-American Court of Human Rights

Section 1. Organization

Article 52

1. The Court shall consist of seven judges, nationals of the member states of the Organization, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions in conformity with the law of the state of which they are nationals or of the state that proposes them as candidates.

2. No two judges may be nationals of the same state.

Article 53

1. The judges of the Court shall be elected by secret ballot by an absolute majority vote of the States Parties to the Convention, in the General Assembly of the Organization, from a panel of candidates proposed by those states.

2. Each of the States Parties may propose up to three candidates, nationals of the state that proposes them or of any other member state of the Organization of American States. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the one proposing the slate.

Article 54

1. The judges of the Court shall be elected for a term of six years and may be reelected only once. The term of three of the judges chosen in the first election shall expire at the end of three years: Immediately after the election, the names of the three judges shall be determined by lot in the General Assembly.

2. A judge elected to replace a judge whose term has not expired shall complete the term of the latter.

3. The judges shall continue in office until the expiration of their term. However, they shall continue to serve with regard to cases that they have begun to hear and that are still pending, for which purposes they shall not be replaced by the newly elected judges.

Article 55

1. If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case.

2. If one of the judges called upon to hear a case should be a national of one the States Parties to the case, any other State Party in the case may appoint a person of its choice to serve on the Court as an *ad hoc* judge.

3. If among the judges called upon to hear a case none is a national of any of the States Parties to the case, each of the latter may appoint an *ad hoc* judge.

4. An *ad hoc* judge shall possess the qualifications indicated in Article 52.

5. If several States Parties to the Convention should have the same interest in a case, they shall be considered as a single party for purposes of the above provisions. In case of doubt, the Court shall decide.

Article 56

Five judges shall constitute a quorum for the transaction of business by the Court.

Article 57

The Commission shall appear in all cases before the Court.

Article 58

1. The Court shall have its seat at the place determined by the States Parties to the Convention in the General Assembly of the Organization; however, it may convene in the territory of any member state of the Organization of American States when a majority of the Court consider it desirable, and with the prior consent of the state concerned. The seat of the Court may be changed by the States Parties to the Convention in the General Assembly by a two-thirds vote.

2. The Court shall appoint its own Secretary.

3. The Secretary shall have his office at the place where the Court has its seat and shall attend the meetings that the Court may hold away from its seat.

Article 59

The Court shall establish its Secretariat, which shall function under the direction of the Secretary of the Court, in accordance with the administrative standards of the General Secretariat of the Organization in all respect not incompatible with the independence of the Court. The staff of the Court's Secretariat shall be appointed by the Secretary General of the Organization, in consultation with the Secretary of the Court.

Article 60

The Court shall draw up its Statute which it shall submit to the General Assembly for approval. It shall adopt its own Rules of Procedure.

Section 2. Jurisdiction and Functions

Article 61

1. Only the States Parties and the Commission shall have the right to submit a case to the Court.

2. In order for the Court to hear a case, it is necessary that the procedures set forth in Articles 48 to 50 shall have been completed.

Article 62

1. A State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare that it recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention.

2. Such declaration may be made unconditionally, on the condition of reciprocity, for a specified period, or for specific cases. It shall be presented to the Secretary General of the Organization, who shall transmit copies thereof to the other member states of the Organization and to the Secretary of the Court.

3. The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

Article 63

1. If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

Article 64

1. The member states of the Organization may consult the Court regarding the interpretation of this Convention or of other treaties concerning the protection of human rights in the American states. Within their spheres of competence, the organs listed in Chapter X of the Charter of the Organization of American States, as amended by the Protocol of Buenos Aires, may in like manner consult the Court.

2. The Court, at the request of a member state of the Organization, may provide that state with opinions regarding the compatibility of any of its domestic laws with the aforesaid international instruments.

Article 65

To each regular session of the General Assembly of the Organization of American States the Court shall submit, for the Assembly's consideration, a report on its work during the previous year. It shall specify, in particular, the cases in which a state has not complied with its judgments, making any pertinent recommendations.

Section 3. Procedure

Article 66

1. Reasons shall be given for the judgment of the Court.

2. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to have his dissenting or separate opinion attached to the judgment.

Article 67

The judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

Article 68

1. The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.

2. That part of a judgment that stipulates compensatory damages may be executed in the country concerned in accordance with domestic procedure governing the execution of judgments against the state.

Article 69

The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the States Parties to the Convention.

CHAPTER IX—COMMON PROVISIONS

Article 70

1. The judges of the Court and the members of the Commission shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law. During the exercise of their official function they shall, in addition, enjoy the diplomatic privileges necessary for the performance of their duties.

2. At no time shall the judges of the Court or the members of the Commission be held liable for any decisions or opinions issued in the exercise of their functions.

Article 71

The position of judge of the Court or member of the Commission is incompatible with any other activity that might affect the independence or impartiality of such judge or member, as determined in the respective statutes.

Article 72

The judges of the Court and the members of the Commission shall receive emoluments and travel allowances in the form and under the conditions set forth in their statutes, with due regard for the importance and independence of their office. Such emoluments and travel allowances shall be determined in the budget of the Organization of American States, which shall, also include the expenses of the Court and its Secretariat. To this end, the Court shall draw up its own budget and submit it for approval to the General Assembly through the General Secretariat. The latter may not introduce any changes in it.

Article 73

The General Assembly may, only at the request of the Commission or the Court, as the case may be, determine sanctions to be applied against members of the Commission or judges of the Court when there are justifiable grounds for such action as set forth in the respective statutes. A vote of a two-thirds majority of the member states of the Organization shall be required for a decision in the case of members of the Commission and, in the case of judges of the Court, a two-thirds majority vote of the States Parties to the Convention shall also be required.

PART III—GENERAL AND TRANSITORY PROVISIONS

CHAPTER X—SIGNATURE, RATIFICATION, RESERVATIONS, AMENDMENTS, PROTOCOLS, AND DENUNCIATION

Article 74

1. This Convention shall be open for signature and ratification by or adherence of any member state of the Organization of American States.

2. Ratification of or adherence to this Convention shall be made by the deposit of an instrument of ratification or adherence with the General Secretariat of the Organization of American States. As soon as eleven states have deposited their instruments of ratification or adherence, the Convention shall enter into force. With respect to any state that ratifies or adheres thereafter, the Convention shall enter into force on the date of the deposit of its instrument of ratification or adherence.

3. The Secretary General shall inform all member states of the Organization of the entry into force of the Convention.

Article 75

This Convention shall be subject to reservations only in conformity with the provisions of the Vienna Convention on the Law of Treaties signed on May 23, 1969.

Article 76

1. Proposals to amend this Convention may be submitted to the General Assembly for the action it deems appropriate by any State Party directly, and by the Commission or the Court through the Secretary General.

2. Amendments shall enter into force for the states ratifying them on the date when two-thirds of the States Parties to this Convention have deposited their respective instruments of ratification. With respect to the other States Parties, the amendments shall enter into force on the dates on which they deposit their respective instruments of ratification.

Article 77

1. In accordance with Article 31, any State Party and the Commission may submit proposed protocols to this Convention for consideration by the States Parties at the General Assembly with a view to gradually including other rights and freedoms within its system of protection.

2. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.

Article 78

1. The States Parties may denounce this Convention at the expiration of a five-year period starting from the date of its entry into force and by means of notice given one year in advance. Notice of the denunciation shall be addressed to the Secretary General of the Organization, who shall inform the other States Parties.

2. Such a denunciation shall not have the effect of releasing the State Party concerned from the obligations contained in this Convention with respect to any act that may constitute a violation of those obligations and that has been taken by that state prior to the effective date of denunciation.

CHAPTER XI—TRANSITORY PROVISIONS

Section 1. Inter-American Commission on Human Rights

Article 79

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each

member state of the Organization to present, within ninety days, its candidates for membership on the Inter-American Commission on Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented, and transmit it to the member states of the Organization at least thirty days prior to the next session of the General Assembly.

Article 80

The members of the Commission shall be elected by secret ballot of the General Assembly from the list of candidates referred to in Article 79. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the member states shall be declared elected. Should it become necessary to have several ballots in order to elect all the members of the Commission, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the General Assembly.

Section 2. Inter-American Court of Human Rights

Article 81

Upon the entry into force of this Convention, the Secretary General shall, in writing, request each State Party to present, within ninety days, its candidates for membership on the Inter-American Court of Human Rights. The Secretary General shall prepare a list in alphabetical order of the candidates presented and transmit it to the States Parties at least thirty days prior to the next session of the General Assembly.

Article 82

The judges of the Court shall be elected from the list of candidates referred to in Article 81, by secret ballot of the States Parties to the Convention in the General Assembly. The candidates who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties shall be declared elected. Should it become necessary to have several ballots in order to elect all the judges of the Court, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the States Parties.

STATEMENTS AND RESERVATIONS

Statement of Chile

The Delegation of Chile signs this Convention, subject to its subsequent parliamentary approval and ratification, in accordance with the constitutional rules in force.

Statement of Ecuador

The Delegation of Ecuador has the honor of signing the American Convention on Human Rights. It does not believe that it is necessary to make any specific reservation at this time, without prejudice to the general power set forth in the Convention itself that leaves the governments free to ratify it or not.

Reservation of Uruguay

Article 80.2 of the Constitution of Uruguay provides that citizenship is suspended for a person indicted according to law in a criminal prosecution that may result in a sentence of imprisonment in a penitentiary. This restriction on the exercise of the rights recognized in Article 23 of the Convention is not envisaged among the circumstances provided for in this respect by paragraph 2 of Article 23, for which reason the Delegation of Uruguay expresses a reservation on this matter.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, whose full powers were found in good and due form, sign this Convention, which shall be called "PACT OF SAN JOSE, COSTA RICA" (in the city of San José, Costa Rica, this twenty-second day of November, nineteen hundred and sixty-nine).

STATUS OF CERTAIN INTERNATIONAL AGREEMENTS[1]

I. UNITED NATIONS

1. *Convention on the Prevention and Punishment of the Crime of Genocide* (Paris, 1948; entered into force on 12 January 1951) (see *Yearbook on Human Rights* for 1948, pp. 484-486).

Nepal acceded to the Convention on 17 January 1969.

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 1969, the following States became parties to the Convention by the instruments and on the dates indicated: Botswana (accession, 6 January), Canada (accession, 4 June), Ethiopia (accession, 10 November) and Zambia (notification of succession, 24 September).

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 1969, the following States became parties to the Convention by the instruments and on the dates indicated: Austria (ratification, 18 April), Ethiopia (ratification, 21 January), Laos (accession, 28 January) and Mauritius (notification of succession, 18 July).

4. *Convention on the International Right of Correction* (New York, 1952; entered into force on 24 August 1962) (see *Yearbook on Human Rights for 1952*, pp. 373-375).

Ethiopia ratified the Convention on 21 January 1969.

5. *Slavery Convention of 1926 as amended by the Protocol of December 1953* (signed in New York; as amended entered into force on 7 July 1955) (see *Yearbook on Human Rights for 1953*, pp. 345-346).

During 1969, the following States became parties to the Convention by the instruments and on the dates indicated: Ethiopia (ratification, 21 January) and Mauritius (notification of succession, 18 July).

6. *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 1969, the following States became parties to the Convention by the instruments and on the dates indicated: Botswana (notification of succession, 25 February) and Tunisia (accession, 29 July).

7. *Supplementary Convention on the Abolition of Slavery, 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 1969, the following States became parties to the Convention by the instruments and on the dates indicated: Ethiopia (ratification, 21 January) and Mauritius (notification of succession, 18 July).

8. *Convention on the Nationality of Married Women* (New York, 1957; entered into force on 11 August 1958) (see *Yearbook on Human Rights for 1957*, pp. 301-302).

Mauritius became a party to the Convention by notification of succession deposited on 18 July 1969.

9. *Convention on the Reduction of Statelessness* (New York, 1961; not yet in force) (see *Yearbook on Human Rights for 1961*, pp. 427-430).

During 1969, the following States became parties to the Convention by the instruments and on the dates indicated: Botswana (notification of succession, 25 February), Sweden (accession, 19 February) and Tunisia (accession, 29 July).

10. *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* (New York, 1962; entered into force on 9 December 1964) (see *Yearbook on Human Rights for 1962*, pp. 389-390).

During 1969, the following States acceded to the Convention on the dates indicated: Austria (1 October), Federal Republic of Germany (9 July), Spain (15 April) and Trinidad and Tobago (2 October).

11. *International Convention on the Elimination of All Forms of Racial Discrimination* (New York, 1965;

[1] Concerning the status of these agreements at the end of 1968, see *Yearbook on Human Rights for 1968*, p. 470. 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 1969*, of the International Committee of the Red Cross. With the exception of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character and the Agreement on the Importation of Educational, Scientific and Cultural Materials and Protocol thereto (for which the Secretary-General of the United Nations acts as depositary), the information concerning agreements under the auspices of UNESCO was furnished by the secretariat of UNESCO.

entered into force on 4 January 1969) (see *Yearbook on Human Rights for 1965*, pp. 389-394).

During 1969, the following States became parties to the Convention by the instruments and on the dates indicated: Byelorussian SSR (ratification, 8 April), Federal Republic of Germany (ratification, 16 May), Holy See (ratification, 1 May), Iraq (ratification, 14 January), Madagascar (ratification, 7 February), Mongolia (ratification, 6 August), Swaziland (accession, 7 April), Syria (accession, 21 April), Ukrainian SSR (ratification, 7 March), USSR (ratification, 4 February) and United Kingdom (ratification, 7 March).

12. *International Covenant on Economic, Social and Cultural Rights* (New York, 1966; not yet in force) (see *Yearbook on Human Rights for 1966*, pp. 437-441).

During 1969, the following States became parties to the Covenant by the instruments and on the dates indicated: Colombia (ratification, 29 October), Cyprus (ratification, 2 April), Ecuador (ratification, 6 March), Syria (accession, 21 April) and Tunisia (ratification, 18 March).

13. *International Covenant on Civil and Political Rights* (New York, 1966; not yet in force) (see *Yearbook on Human Rights for 1966*, pp. 442-450).

During 1969, the following States became parties to the Covenant by the instruments and on the dates indicated: Colombia (ratification, 29 October), Cyprus (ratification, 2 April), Ecuador (ratification, 6 March), Syria (accession, 21 April) and Tunisia (ratification, 18 March).

14. *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).

Colombia and Ecuador ratified the Protocol on 29 October and 6 March 1969 respectively.

15. *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 1969, the following States became parties to the Protocol by instruments of ratification deposited on the dates indicated: Belgium (8 April), Botswana (6 January), Canada (4 June), Ecuador (6 March), Ethiopia (10 November), Federal Republic of Germany (5 November), Swaziland (28 January), Togo (1 December) and Zambia (24 September).

16. *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity* (New York, 1968; not yet in force) (see *Yearbook on Human Rights for 1968*, pp. 459-460).

During 1969, the following States became parties to the Convention by instruments of ratification deposited on the dates indicated: Bulgaria (21 May), Byelorussian SSR (8 May), Hungary (24 June), Mongolia (21 May), Poland (14 February), Romania (15 September), Ukrainian SSR (19 June) and USSR (22 April).

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 1969, 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 1949, 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 1970) (see *Yearbook on Human Rights for 1948*, pp. 427-430).

Mongolia ratified the Convention on 3 June 1969.

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 1969, Congo (Dem. Rep. of), Mauritius, Mongolia and Southern Yemen became parties to the Convention by instruments of ratification deposited on 16 June, 2 December, 3 June and 4 April 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 1969, the following States ratified the Convention on the dates indicated: Afghanistan (12 August), Congo (Dem. Rep. of) (16 June), Mongolia (3 June) and Upper Volta (30 June).

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).

Austria ratified the Convention on 4 November 1969.

7. *Maternity Protection Convention (Revised), 1952* (Convention No. 103; entered into force on 2 September 1955) (see *Yearbook on Human Rights for 1955*, pp. 325-327).

During 1969, Austria, Luxembourg and Mongolia ratified the Convention on 4 December, 10 December and 3 June respectively.

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 1969, Colombia, Ecuador and Yemen ratified the Convention on 4 March, 3 October and 22 August respectively.

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 1969 the following States became parties to the Convention by instruments of ratification deposited on the dates indicated: Algeria (12 June), France (18 December), Mauritius (2 December), Southern Yemen (14 April) and Thailand (2 December).

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 1969, the following States ratified the Convention on the dates indicated: Afghanistan (1 October), Algeria (12 June), Colombia (4 March), Mongolia (3 June) and Yemen (22 August).

11. *Social Policy (Basic Arms 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 1969, Brazil, Ecuador and Paraguay ratified the Convention on 24 March, 7 October and 20 February respectively.

12. *Equality of Treatment (Social Security) Convention, 1962* (Convention No. 118; entered into force on 25 April 1964) (see *Yearbook on Human Rights for 1962*, pp. 394-397).

During 1969, the following States ratified the Convention on the dates indicated: Brazil (24 March), Denmark (17 June), Finland (15 August) and Pakistan (27 March).

13. *Guarding of Machinery Convention, 1963* (Convention No. 119; entered into force on 15 September 1965) (see *Yearbook on Human Rights for 1963*, pp. 417-420).

During 1969, the following States became parties to the Convention by instruments of ratification deposited on the dates indicated: Algeria (12 June), Ecuador (3 October), Finland (15 August), Norway (10 December) and USSR (4 November).

14. *Employment Policy Convention, 1964* (Convention No. 122; entered into force on 15 September 1966) (see *Yearbook on Human Rights for 1964*, pp. 329-330).

During 1969, the following States ratified the Convention on the dates indicated: Belgium (8 July), Brazil (24 March), Hungary (18 June), Paraguay (20 February) and Thailand (26 February).

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).

During 1969, Australia ratified the Convention on 1 February and Protocols 1, 2, 3 on 24 July, and Tunisia became a party to the Convention and Protocols 1, 2, 3 by instrument of acceptance deposited on 19 March.

2. *Convention and Protocol for the Protection of Cultural Property in the Event of Armed Conflict and Protocol thereto* (The Hague, 1954; entered into force on 7 August 1956) (see *Yearbook on Human Rights for 1954*, pp. 308-309).

During 1969, Kuwait and Upper Volta acceded to the Convention and Protocol on 6 June and 18 December respectively.

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 1969, the following States became parties to the Convention by the instruments and on the dates indicated: Federal Republic of Germany (ratification, 15 December) and Malawi (acceptance, 28 October).

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 1960*, p. 434).

The Federal Republic of Germany ratified the Convention on 3 October 1969.

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 1969, the following States became parties to the Convention by the instruments and on the dates indicated: Nigeria (acceptance, 18 November), Spain (acceptance, 20 August) and Tunisia (ratification, 29 August).

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 on 25 October 1968) (see *Yearbook on Human Rights for 1962*, pp. 398-401).

Costa Rica ratified the Convention on 11 December 1969.

IV. ORGANIZATION OF AMERICAN STATES

1. *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).

Panama ratified the Protocol in 1969.

2. *American Convention on Human Rights* (San José, 1969; yet not in force) (see above, pp. 390-400).

The Convention was signed on 22 November 1969 by the following States: Colombia, Chile, Costa Rica, Ecuador, El Salvador, Honduras, Guatemala, Nicaragua, Panama, Paraguay, Uruguay and Venezuela.

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).

Greece denounced the Convention on 12 December 1969.

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).

Greece denounced the Protocol on 12 December 1969.

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 1969.

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 1969.

5. *European Convention on Social and Medical Assistance and Protocol thereto* (Paris, 1953; Convention an Protocol entered into force on 1 July 1954) (see *Yearbook on Human Rights for 1953*, pp. 359-361).

Malta ratified the Convention and the Protocol on 6 May 1969.

6. *European Convention on Establishment* (Paris, 1955; entered into force on 23 February 1965) (see *Yearbook on Human Rights for 1956*, pp. 292-297).

During 1969, the following States ratified the Convention on the dates indicated: Luxembourg (6 March), Netherlands (21 May) and the United Kindgom (14 October).

7. *European Social Charter* (Turin, 1961; entered into force on 26 February 1965) (see *Yearbook on Human Rights for 1961*, pp. 442-450).

Austria ratified the Charter on 29 October 1969.

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).

Cyprus and the Federal Republic of Germany ratified the Protocol on 22 and 3 January 1969 respectively.

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).

Cyprus and the Federal Republic of Germany ratified the Protocol on 22 and 3 January 1969 respectively.

By the end of 1969, Protocols Nos. 2 and 3 had been ratified or signed without reservation in respect of ratification by 14 States; however, these Protocols will only enter into force when all States Parties to the Convention have become parties to it.

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 in to force on 2 May 1968) (see *Yearbook on Human Rights for 1963*, pp. 425-426).

Austria ratified the Protocol on 18 September 1969.

By the end of 1969, this Protocol was in force between eight States: Austria, Denmark, the Federal Republic of Germany, Iceland, Ireland, Luxembourg, Norway and Sweden.

The Governments of Denmark, the Federal Republic of Germany, Iceland, Ireland, Norway and Sweden have also extended their acceptance of the right of the individual petition (Article 25) of the compulsory jurisdiction of the European Court (Article 46) to applications concerning the rights guaranteed in this Protocol.

11. *European Code of Social Security* (Strasbourg, 1964; entered into force on 17 March 1968) (see *Yearbook on Human Rights for 1964*, pp. 331-334).

During 1969, no ratifications were deposited.

12. *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).

Belgium ratified the Protocol on 13 August 1969.

13. *Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Amending Articles 22 and 40 of the Convention* (Strasbourg, 1966; not yet in force) (see *Yearbook on Human Rights for 1966*, pp. 462-463).

During 1969, the Protocol was ratified by the following States on the dates indicated: Austria

(9 October), Cyprus (26 January) and the Federal Republic of Germany (3 January).

By the end of 1969, this Protocol had been ratified or signed without reservation in respect of ratification by twelve States. It will enter into force as soon as all the Contracting Parties to the Convention have become parties to it.

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).

During 1969, no ratifications were deposited.

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. 383-385).

During 1969, no ratifications were deposited.

16. *European Agreement relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights* (London, 1969; not yet in force) (see above, pp. 383-385).

By the end of 1969, the Agreement was signed by the following States: Belgium, Denmark, Federal Republic of Germany, Ireland, Luxembourg, Malta, Norway, Sweden and United Kingdom.

During 1969, no ratifications were deposited.

VI. OTHER INSTRUMENTS

1. *Geneva Conventions of 12 August 1949* (entered into force on 21 October 1950) (see *Yearbook on Human Rights for 1949*, pp. 299-309).

During 1969, the following States became parties to the Conventions by the instruments and on the dates indicated: Costa Rica (accession, 15 October), Ethiopia (ratification, 2 October) and Uruguay (ratification, 6 March).

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).

Paraguay ratified the Convention on 26 November 1969.

INDEX

INDEX

When the item on a particular page to which reference is made in this index is not readily identifiable, a further reference is given in parentheses after the page number.

R

S

Y